



# **TOWN OF VICTORIA PARK**

## **TOWN PLANNING SCHEME NO. 1**

### **SCHEME TEXT**

The Town of Victoria Park Town Planning Scheme No. 1 was gazetted on 30 September 1998. This edition is a consolidated Scheme Text incorporating all the following Scheme Amendments gazetted up to 9 February 2007:

| <b>AMENDMENT NO.</b> | <b>GAZETTAL DATE</b>    |
|----------------------|-------------------------|
| <b>3</b>             | <b>2 February 2001</b>  |
| <b>6</b>             | <b>8 October 2002</b>   |
| <b>8</b>             | <b>4 February 2003</b>  |
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| <b>23A</b>           | <b>6 April 2004</b>     |
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## **PART 1**

## **INTRODUCTORY**

1. Title
2. Commencement
3. Scheme Documents
4. Scheme Area
5. Responsible Authority
6. Objectives and Intentions
7. Relationship with Other Laws
8. Minor Town Planning Scheme
9. Repeals
10. Definitions

## 1. TITLE

This Town Planning Scheme may be referred to as the Town of Victoria Park Town Planning Scheme No. 1.

## 2. COMMENCEMENT

This Scheme commences on the Gazettal date.

NOTE:

The "Gazettal date" is defined in Schedule 1.

## 3. SCHEME DOCUMENTS

(1) This Scheme comprises the following documents -

- (a) the Scheme text;
- (b) each of the precinct plans;
- (c) each planning policy; and
- (d) each Council register.

(2) If there is any inconsistency between the Scheme text and any other Scheme document, the Scheme text is to prevail.

NOTES:

1. The "Scheme text", "precinct plans", "planning policy", and "Council register", are defined in Schedule 1.

2. The amendment procedures applying to each Scheme document are set out in clauses 46 and 47.

## 4. SCHEME AREA

This Scheme applies to the Scheme area which covers all the municipal district of the Town of Victoria Park apart from the area comprising the land known as the "Resort Lands" to which Section 7 of the Casino (Burswood Island) Agreement Act 1985 applies.

NOTE:

Parts of the Scheme area are also subject to other planning laws such as the Metropolitan Region Scheme (see clause 7) and a minor town planning scheme (see clause 8).

## 5. RESPONSIBLE AUTHORITY

The authority responsible for administering this Scheme is the Council.

NOTE:

The "Council" is defined in Schedule 1

## 6. OBJECTIVES AND INTENTIONS

- (1) The Council has prepared this Scheme for the purpose of controlling and guiding development and growth in a responsible manner and which can initiate, accommodate and respond to change.
- (2) The overall goal of this Scheme is to ensure that the Town of Victoria Park and its environs will be widely recognised as a providing a high level of services and amenities in a friendly and accountable manner.

- (3) The general objectives of this Scheme are –
- (a) to cater for the diversity of demands, interests and lifestyles by facilitating and encouraging the provision of a wide range of choices in housing, business, employment, education, leisure, transport and access opportunities;
  - (b) to protect and enhance the health, safety and general welfare of the Town's inhabitants and the social, physical and cultural environment of the Town;
  - (c) to ensure that the use and development of land is managed in an effective and efficient manner within a flexible framework which-
    - i. recognises the individual character and needs of localities within the Scheme area; and
    - ii. can respond readily to change;
  - (d) to ensure planning at the local level is consistent with the Metropolitan Region Scheme and wider regional planning strategies and objectives;
  - (e) to promote the development of a sense of local community and recognise the right of the community to participate in the evolution of localities;
  - (f) to promote and safeguard the economic well-being and functions of the Town;
  - (g) to co-ordinate and ensure that development is carried out in an efficient and environmentally responsible manner which -
    - (i) makes optimum use of the Town's growing infrastructure and resources;
    - (ii) promotes an energy efficient environment; and
    - (iii) respects the natural environment; and
  - (h) to promote and safeguard the cultural heritage of the Town by -
    - (i) identifying, conserving and enhancing those places which are of significance to the Town's cultural heritage;
    - (ii) encouraging development that is in harmony with the cultural heritage value of an area; and
    - (iii) promoting public awareness of cultural heritage generally.

## 7. RELATIONSHIP WITH OTHER LAWS

- (1) This Scheme is complementary to, and not a substitute for, the Metropolitan Region Scheme.
- (2) Where a provision of this Scheme is inconsistent with a provision of a by-law, the provision of this Scheme prevails.
- (3) The Residential Planning Codes are to be read as part of this Scheme.

### NOTES:

1. The "Metropolitan Region Scheme" is defined in Schedule 1

2. The authority responsible for implementing the Metropolitan Region Scheme is the Western Australian Planning Commission.

## 8. MINOR TOWN PLANNING SCHEME

The Council administers the Carlisle Minor Town Planning Scheme No. 3 which is complementary to this Scheme.

## 9. REPEALS

The following written laws are repealed -

| Name                                   | Date of Publication in the Government Gazette |
|--|---|
| (a) City of Perth City Planning Scheme | 20 December 1985                              |
| (b) Zoning By-law No. 63               | 10 October 1961                               |

### NOTE:

The repeal of this Scheme and By-law extends to any amendments to them (see section 33 of the Interpretation Act 1984).

## 10. DEFINITIONS

- (1) In this Scheme, unless the context otherwise requires, the words and expressions used have the meanings set out in Schedule 1.
- (2) Where a word or term is defined in the Residential Planning Codes then notwithstanding anything else in the Scheme that word or term when used in respect of residential development has the meaning given to it in the Residential Planning Codes.
- (3) Words and expressions used in the Scheme but not defined in Schedule 1, elsewhere in the Scheme or in the Residential Planning Codes shall have their normal and common meanings.

### NOTE:

The definitions of words and expressions set out in Section 2 (1) of the Town Planning and Development Act 1928 and Section 6 of the Metropolitan Region Town Planning Scheme Act 1959 are also relevant for the purposes of this Scheme.

## **PART 2**

## **LAND USE**

11. Precincts
12. Reserves and Scheme Zones
13. Types of Uses
14. Use of a Town of Victoria Park Scheme Reserve
15. Use of Land in a Scheme Zone
16. Unlisted Uses
17. Additional Uses
18. Non-Conforming Uses
19. Register of Non-Conforming Uses



## 11. PRECINCTS

- (1) The Scheme area is divided into the precincts set out in the precinct table at the end of this clause.
- (2) For each precinct, there is a precinct plan.

NOTE:

“precinct”, “precinct plan” and “Scheme area” are defined in Schedule 1.

### PRECINCT TABLE

|     |                    |
|-----|--------------------|
| P1  | Burswood Peninsula |
| P2  | Burswood           |
| P3  | Causeway           |
| P4  | McCallum           |
| P5  | Raphael            |
| P6  | Victoria Park      |
| P7  | Lathlain           |
| P8  | Carlisle           |
| P9  | Welshpool          |
| P10 | Shepperton         |
| P11 | Albany Highway     |
| P12 | East Victoria Park |
| P13 | Curtin             |

## 12. RESERVES AND SCHEME ZONES

- (1) The land within the Scheme area is classified into either -
  - (a) a Metropolitan Region Scheme reserve; or
  - (b) a Town of Victoria Park Scheme reserve; or
  - (c) one of the following Scheme zones -
    - (i) Residential;
    - (ii) Residential/Commercial;
    - (iii) Office/Residential;
    - (iv) Local Centre;
    - (v) District Centre;
    - (vi) Commercial;
    - (vii) Industrial (1);
    - (viii) Industrial (2); or
    - (ix) Special Use.
- (2) The classification of land within the Scheme area is shown on the precinct plan in which that land is located.

NOTE:

"Metropolitan Region Scheme reserve" and "Town of Victoria Park Scheme reserve" are defined in Schedule 1.

## 13. TYPES OF USES

- (1) Uses are classified in this Scheme as –
  - (a) permitted uses (see clauses 14 and 15);
  - (b) discretionary uses; and
  - (c) prohibited uses.

NOTE:

A use may be approved by the Council by the grant of planning approval under Part 4 of this Scheme.

## 14. USE OF A TOWN OF VICTORIA PARK SCHEME RESERVE

- (1) A permitted use for a Town of Victoria Park Scheme Reserve is -
  - (a) a use which gives effect to the purpose for which the land is reserved under this Scheme; and
  - (b) where the land is vested in a public authority, a Commonwealth agency or in the Council, a use which gives effect to any purpose for which the land may lawfully be used.

NOTES:

1. "public authority", "Commonwealth agency" and the "Council" are defined in Schedule 1.  
2. Planning approval is granted by the Council under Part 4 of this Scheme.

## 15. USE OF LAND IN A SCHEME ZONE

NOTE:

- (1) The Scheme Zoning Table indicates, subject to the provisions of the Scheme, the uses permitted in the Scheme Area in the various Zones. The permissibility of any use is determined by cross reference between the list of Use Classes on the left hand side of the Zoning Table and the list of Zones at the top of the Zoning Table.

Planning approval is required for most uses (see clauses 30 and 31)

The symbols used in the cross reference in the Zoning Table have the following meanings:

“P” means that the use is permitted by the Scheme.

“AA” means that the use is not permitted unless the Council has granted planning approval.

“X” means a use that is not permitted by the Scheme.

- (2) Where in the Zoning Table a particular use is mentioned it is deemed to be excluded from any other Use Class which by its more general term might otherwise include such particular use.

## ZONING TABLE

| Zone<br><br>Use Class  | Residential    | Residential/Commercial | Office/Residential | Local Centre | District Centre | Commercial        | Industrial (1) | Industrial (2) | Special Use                                 |
|--|----------------|------------------------|--------------------|--------------|-----------------|-------------------|----------------|----------------|---|
|  | 1.             | 2.                     | 3.                 | 4.           | 5.              | 6.                | 7.             | 8.             | 9.  |
| Consulting Rooms, Day Care Centre  | AA             | P                      | P/X <sup>2</sup>   | P            | P               | P                 | P              | P              | <b>Refer to provisions in Precinct Plan</b> |
| Convenience Store, Service Station   | X              | X                      | X                  | AA           | AA              | AA                | AA             | AA             |   |
| Educational Establishment, Place of Worship  | AA             | AA                     | AA/X <sup>2</sup>  | P            | P               | P                 | AA             | AA             |   |
| Fast Food Outlet, Restaurant   | X              | AA                     | P/X <sup>2</sup>   | P            | P               | P                 | P              | P              |   |
| General Industry, Transport Depot  | X              | X                      | X                  | X            | X               | X                 | AA             | P              |   |
| Hazardous Industry, Noxious Industry   | X              | X                      | X                  | X            | X               | X                 | X              | X              |   |
| Home Occupation  | AA             | AA                     | P                  | AA           | AA              | AA/X <sup>3</sup> | X              | X              |   |
| Home Office  | P              | P                      | P                  | P            | P               | P/X <sup>3</sup>  | X              | X              |   |
| Hospital, Nursing Home, Residential Building   | AA             | AA                     | AA/X <sup>2</sup>  | AA           | AA              | AA                | AA             | AA             |   |
| Hotel, Motel, Tavern   | X              | X                      | X                  | X            | AA              | AA                | X              | X              |   |
| Light Industry   | X              | X                      | X                  | X            | X               | AA                | P              | P              |   |
| Lodging House, Serviced Apartment  | AA             | AA                     | P/X <sup>2</sup>   | AA           | AA              | AA                | X              | X              |   |
| Massage Rooms  | X              | X                      | X                  | X            | X               | X                 | AA             | AA             |   |
| Motor Vehicles and Marine Sales Premises, Open Air Sales and Display                   | X              | X                      | X                  | X            | X               | AA                | P              | P              |   |
| Nightclub  | X              | X                      | X                  | X            | X               | X                 | X              | X              |   |
| Office   | X              | P                      | P                  | P            | P               | P                 | P              | P              |   |
| Restricted Premises  | X              | X                      | X                  | X            | AA              | AA                | AA             | AA             |   |
| Shop   | X              | P                      | AA/X <sup>2</sup>  | P            | P               | AA                | AA             | AA             |   |
| Showroom   | X              | P                      | P/X <sup>2</sup>   | X            | P               | P                 | P              | P              |   |
| Single Bedroom Dwelling  | AA             | P                      | P                  | P            | P               | P                 | X              | X              |   |
| Single House, Grouped Dwelling, Aged or Dependent Persons' Dwelling, Multiple Dwelling | P <sup>1</sup> | P                      | P                  | AA           | AA              | P/X <sup>3</sup>  | X              | X              |   |
| Warehouse  | X              | X                      | X                  | X            | AA              | P                 | P              | P              |   |

**P - Permitted Use**

**AA - Discretionary Use**

**X - Prohibited Use**

**Footnotes:**

1. Multiple Dwellings are only permitted in areas coded R40 and above, and in addition are subject to clause 22 Special Application of the Residential Planning Codes.
2. The "Prohibited Use" notation applies to the Office/Residential Zone within Precinct P10 - Shepperton Precinct.
3. The "Prohibited Use" notation applies to the Commercial Zone within Precinct P3 - Causeway Precinct.

## 16. UNLISTED USES

If the use of land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the interpretation of one of the Use Class categories the Council may:

- (1) determine that the use is consistent with the objectives and purposes of the particular Zone and is therefore permitted; or
- (2) determine that the proposed use may be consistent with the objectives and purposes of the Zone and thereafter follow the advertising procedures of clause 37 in considering an application for planning approval; or
- (3) determine that the use is not consistent with the objectives and purposes of that particular Zone and is therefore not permitted.

### NOTES:

1. Planning approval must be obtained for most unlisted uses (see clauses 30, 31 and 37).
2. Planning approval is granted by the Council under Part 4 of this Scheme.

## 17. ADDITIONAL USES

- (1) An additional use is a use which, in relation to a specific site -
  - (a) is a prohibited use in the precinct in which that use is located;
  - (b) is listed, with reference to that site, in Schedule 2; and
  - (c) is taken, as the result of its listing in Schedule 2, to be a permitted use for that site subject to the conditions, if any, set out in Schedule 2 in respect of that use.
- (2) The Council may -
  - (a) after receiving an application for planning approval involving a prohibited use; or
  - (b) at any other time,

initiate an amendment to Schedule 2 of this Scheme to add, amend or delete an additional use to the site to which it applies or one or more conditions to which that use is subject.

- (3) The Council is not to initiate an amendment under subclause (2) unless it is satisfied that -
  - (a) a development involving the proposed additional use would be consistent with -
    - (i) the orderly and proper planning of the locality;
    - (ii) the conservation of the amenities of the locality; and
    - (iii) the statement of intent set out in the relevant precinct plan.
  - (b) the use of the specific site for that purpose would not have any undue adverse effect on

### NOTE:

The listing of any use, or the amendment or revocation of any use, in Schedule 2 is an amendment to this Scheme Text to which clause 47 applies.

- (i) the occupiers and users of the development;
- (ii) the property in, or the inhabitants of, the locality; or
- (iii) the likely future development of the locality.

## 18. NON-CONFORMING USES

- (1) Except as otherwise provided in this Scheme, no provision of the Scheme shall be deemed to prevent:
  - (a) the continued use of any land or building for the purpose for which it was being lawfully used at the Gazettal date of the Scheme;
  - (b) the carrying out of any development thereon for which, immediately prior to that time, an approval or approvals, lawfully required to authorise the development to be carried out, were duly obtained and are current; or
  - (c) the continued display of advertisements which were lawfully erected, placed or displayed prior to the approval of this Scheme.
- (2) A person shall not alter or extend a non-conforming use or erect, alter or extend a building used in conjunction with a non-conforming use without first having applied for and obtained the planning approval of the Council under the Scheme and unless in conformity with any other provision and requirements contained in the Scheme. All applications for planning approval under this clause will be subject to notice under clause 35 and the Council shall have special regard to the impact of the proposed erection, alteration or extension of the building on the preservation of the amenity of the locality.
- (3) Notwithstanding anything contained in the Zoning Table, the Council may grant its planning approval to the change of use of any land from a non-conforming use to another non-conforming use if the proposed use is, in the opinion of the Council, less detrimental to the amenity of the of the locality than the original non-conforming use and is, in the opinion of the Council, closer to the intended purpose of the Zone or Reserve.
- (4) When a non-conforming use of any land or buildings has been discontinued for a period of six months or more such land or building shall not thereafter be used otherwise than in conformity with the provisions of the Scheme.
- (5) The Council may effect the discontinuance of a non-conforming use by the purchase of the affected property, or by the payment of compensation to the owner or the occupier or to both the owner and the occupier of that property, and may enter into an agreement with the owner for that purpose.
- (6) When a building used for a non-conforming use is destroyed to 75 per cent or more of its value, the land on which the building is built shall not thereafter be used otherwise than in conformity

### NOTES:

1. A "non-conforming use" and "Gazettal date" are defined in Schedule 1.

2. The reference to the "Act" is to the Town Planning and Development Act 1928, Section 13 of which enables a Council to purchase or, with the consent of the Governor, take compulsorily subject to the Public Works Act 1902 any land within a town planning scheme.

3. Planning approval is granted by the Council under Part 4 of this Scheme.



with the Scheme, and the buildings shall not be repaired or rebuilt, altered or added to for the purpose of being used for a non-conforming use, or in a manner not permitted by the Scheme, except with the planning approval of the Council.

## **19. REGISTER OF NON-CONFORMING USES**

- (1) A person who wishes the Council to record a non-conforming use may submit to the Council in writing full details of the nature, location and extent of the non-conforming use.
- (2) Where the Council is satisfied that a non-conforming use exists, it is to record, in a register of non-conforming uses, details of each non-conforming use.
- (3) A copy of the register of non-conforming uses is to be –
  - (a) kept at the offices of the Council; and
  - (b) made available for public inspection during office hours.

## **PART 3**

## **DEVELOPMENT REQUIREMENTS**

### **Division 1 - General Development Requirements**

- 20. Source of Development Requirements
- 21. Residential Planning Codes
- 22. Special Application of the Residential Planning Codes
- 23. Densities
- 24. Sewerage Connection

### **Division 2 – Places of Cultural Heritage Significance**

- 25. Declaration of Places of Cultural Heritage Significance
- 26. Declaration of a Conservation Area
- 27. Register of Places of Cultural Heritage Significance
- 28. Heritage Agreements
- 29. Variations to Standards

### **Division 3 – Special Control Areas**

- 29A Operation of Special Control Areas
- 29AA Building and Design Areas
- 29AB Development Areas and Structure Plans

## **DIVISION 1 – GENERAL DEVELOPMENT REQUIREMENTS**

### **20. SOURCE OF DEVELOPMENT REQUIREMENTS**

Unless otherwise consistent with a planning approval, the development of land is to be in accordance with the standards and requirements contained in this Scheme text, the precinct plan applying to the land proposed to be developed, the planning policies, Council registers, and the Residential Planning Codes.

### **21. RESIDENTIAL PLANNING CODES**

- (1) For the purpose of this Scheme "Residential Planning Codes" means the Residential Planning Codes set out in Appendix 2 Statement of Planning Policy No. 1, together with any amendments thereto.
- (2) A copy of the Residential Planning Codes, as amended, shall be kept and made available for public inspection at the offices of the Council.
- (3) Unless otherwise provided for in the Scheme the development of land for any of the residential purposes dealt with by the Residential Planning Codes shall conform to the provisions of those Codes.
- (4) The Residential Planning Code dwelling density applicable to land within the Scheme Area shall be determined by reference to the Residential Planning Code's dwelling density number superimposed on the particular areas shown on the Scheme Map as being contained within the solid black line borders or where such an area abuts another area having a Residential Planning Code dwelling density, as being contained within the centre-line of those borders.

**NOTE:**

This Scheme comprises the Scheme Text, Precinct Plans, Planning Policies, and Council Registers.

## **22. SPECIAL APPLICATION OF THE RESIDENTIAL PLANNING CODES**

Notwithstanding the provisions of the Residential Planning Codes, the following special applications of the Residential Planning Codes apply -

- (1) Victoria Park Precinct – Multiple dwellings are not permitted within areas coded Residential R40;
- (2) Lathlain Precinct – Within the area coded Residential R40/R60, development to a maximum dwelling density of Residential R60 will only be permitted where two or more of the lots are amalgamated; and
- (3) Shepperton Precinct -
  - (a) in the area north of Shepperton Road and west of Oats Street, coded Residential R40, multiple dwellings are not permitted; and
  - (b) in the area south of Shepperton Road and west of Dane Street coded Residential R30 and Residential R40, multiple dwellings are not permitted.
- (4) Sunbury Park Precinct – setback, building heights, plot ratio and site coverage shall comply with the Site Design Guidelines for Sunbury Park – Part A and Part B as contained in the Town of Victoria Park Town Planning Scheme No. 1 – Policy Manual.

## **23. DENSITIES**

- (1) The permitted site dwelling density per hectare under the Residential Planning Codes for any land is to be determined by reference to the Residential Planning Codes density number, as illustrated on the relevant Precinct Plan, for that land.
- (2) Subject to compliance with the procedures set out in the Residential Planning Codes for notifying affected owners and occupiers, the Council may grant an increase in the permitted dwelling density by up to 50% if the proposed development effects the discontinuance of a non-conforming use.
- (3) Where the Council allows an increase in the permitted dwelling density, the standards and provisions of the Residential Planning Codes which relate to that higher density are to apply.
- (4) Land developed for the purpose of serviced apartments, hotels, motels, or other similar short term commercial accommodation, is to conform with the standards and requirements applicable to multiple dwellings under the Residential Planning Codes for the dwelling density illustrated on the relevant Precinct Plan for that land.

## **24. SEWERAGE CONNECTION**

- (1) Notwithstanding any provision of this Scheme to the contrary, all residential developments are to be connected to a comprehensive sewerage system, if one is available.
- (2) Where no comprehensive sewerage system is available, the Council is not to grant planning approval for any residential development, other than the erection of a single house, unless the proposed development complies with the requirements of the Government Sewerage Policy.

**NOTE:**

"Gazetted date" is defined in Schedule 1.

## **DIVISION 2 - PLACES OF CULTURAL HERITAGE SIGNIFICANCE**

### **25. DECLARATION OF PLACES OF CULTURAL HERITAGE SIGNIFICANCE**

**NOTE:**

A "place" is defined in Schedule 1. It may include works, buildings and contents of buildings.

- (1) If in the opinion of the Council a place -
  - (a) is of cultural heritage significance or possesses special interest related to or associated with the cultural heritage; and
  - (b) should be conserved or enhanced,

the Council may by resolution declare the place to be significant and worthy of conservation.
- (2) In considering a proposal to declare a place as significant and worthy of conservation, the Council is to -
  - (a) give the owner and occupier of the place -
    - (i) details of the proposal; and
    - (ii) 14 days, or such further time as the Council may determine, to make a written submission to the Council about the proposal; and
  - (b) take into account any written submission duly made under this clause.
- (3) Where the Council declares a place to be significant and worthy of conservation, it is to give notice of its declaration to the Heritage Council of Western Australia and the owner and occupier of the place.
- (4) In this clause, the power to declare a place to significant and worthy of conservation includes the power to amend or revoke a declaration of that type.

## 26. DECLARATION OF A CONSERVATION AREA

- (1) If, in the opinion of the Council, it is necessary or appropriate to have special planning controls to conserve or enhance the cultural heritage significance of an area, the Council may, by resolution, declare that area to be a conservation area.
- (2) In considering a proposal to declare an area to be a conservation area, the Council is to -
  - (a) give the owner and occupier of the place -
    - (i) details of the proposal; and
    - (ii) 28 days to make a written submission to the Council about the proposal; and
  - (b) take into account any written submission made within 28 days under this clause.
- (3) The Council may adopt for each conservation area a planning policy.
- (4) Where the Council declares an area to be a conservation area and adopts a planning policy for that area, it is to give notice of its declaration and, when available, a copy of the planning policy to -
  - (a) each of the owners and occupiers of land within that area; and
  - (b) the Heritage Council of Western Australia.
- (5) In this clause, the power to declare an area to be a conservation area includes the power to amend or revoke a declaration of that type.

### NOTE:

The procedures relating to the adoption of a planning policy are set out in clause 46.

## **27. REGISTER OF PLACES OF CULTURAL HERITAGE SIGNIFICANCE**

- (1) The Council is to record in a register of places of cultural heritage significance, a list of places which -
  - (a) are the subject of a declaration under clause 25;
  - (b) are being considered for the purposes of a declaration under clause 25; or
  - (c) are the subject of a declaration under clause 26.
  
- (2) A copy of the register is to be -
  - (a) kept at the offices of the Council; and
  - (b) made available for public inspection during office hours.

## **28. HERITAGE AGREEMENTS**

The Council may, in accordance with the Heritage of Western Australia Act 1990, enter into a heritage agreement with an owner or occupier of land or a building for the purpose of binding the land or affecting the use of the land or building insofar as the interest of that owner or occupier permits.

### **NOTES:**

1. A heritage agreement may include, a covenant, intended to run with the land, relating to the development or use of the land or any part of the land.
  
2. A heritage agreement may be entered into whether or not the place to which it applies is listed in the Register of Places of Cultural Heritage Significance.
  
3. Detailed provisions relating to heritage agreements are set out in Section 29 of the Heritage of Western Australia Act 1990.



## 29. VARIATIONS TO STANDARDS

- (1) Where a development is proposed which would -
- (a) conserve or enhance the whole or part of a conservation area or a place which has been declared by the Council to be significant and worthy of conservation; and
  - (b) not adversely affect the cultural heritage significance of the conservation area or place,

the Council may grant, by way of planning approval, modifications to any development requirement specified in this Scheme or in the Residential Planning Codes including -

- (c) in respect of a residential development - an increase of up to 50% from the specified maximum dwelling density; and
- (d) in respect of a non-residential development - an increase of up to 10% from the specified maximum plot ratio; and

as long as the increase or variation would not adversely affect the cultural heritage significance of that, or any other, conservation area or place including the streetscape or precinct in which it is located.

- (2) The Council is not to grant planning approval for a development that requires the grant, under subclause (1), of a modification which might, in the Council's opinion, significantly affect an adjoining property or a property in the general locality unless -
- (a) the application seeking the incentive or bonus is advertised in accordance with clause 37; and
  - (b) any submissions duly received in response to that advertising are considered by the Council.

## **DIVISION 3 – SPECIAL CONTROL AREAS**

### **29A OPERATION OF SPECIAL CONTROL AREAS**

- (1) The following Special Control Areas are shown on the Scheme Map:
  - (a) Building and Design Areas shown on the Precinct Plans as BD with a number and included in Schedule 7.
  - (b) Development Areas shown on the Precinct Plans as DA with a number and included in Schedule 7.
- (2) In respect of a Special Control Area shown on Precinct Plans, the provisions applying to the Special Control Area apply in addition to the provisions applying to any underlying zone or reserve and any general provisions of the Scheme.

### **29AA BUILDING AND DESIGN AREAS**

Schedule 7 describes the Building and Design Areas in more detail and sets out the purpose and particular requirements that may apply to the Building and Design Areas.

### **29AB DEVELOPMENT AREAS AND STRUCTURE PLANS**

- (1) Interpretation

In clause 29AB, unless the context otherwise requires:

‘Owner’ means an owner or owners of land in the Development Area; and

‘Structure Plan’ means a Structure Plan that has come into effect in accordance with clause 29AB(12)(a).
- (2) Purpose of Development Areas
  - (a) The purpose of Development Areas are to:
    - (i) identify areas requiring comprehensive planning; and
    - (ii) coordinate subdivision and development in areas requiring comprehensive planning.
  - (b) Schedule 7 describes the Development Areas in detail and sets out the specific purposes and requirements that apply to the Development Areas.

- (3) Subdivision and Development in Development Areas
- (a) The development of land within a Development Area is to comply with Schedule 7.
- (b) The subdivision and development of land within a Development Area is to generally be in accordance with any structure plan that applies to that land.
- (4) Structure Plan Required
- (a) The local government is not to:
- (i) consider recommending subdivision; or
- (ii) approve development
- of land within a Development Area unless there is a structure plan for the Development Area or for the relevant part of the Development Area.
- (b) Notwithstanding clause 29AB(4)(a), a local government may recommend subdivision or approve the development of land within a Development Area prior to a structure plan coming into effect in relation to that land, if the local government is satisfied that this will not prejudice the specific purposes and requirements of the Development Area.
- (5) Preparation of Proposed Structure Plans
- (a) A proposed structure plan may be prepared by:
- (i) the local government; or
- (ii) an owner.
- (b) A proposed structure plan may be prepared for all, or part of, a Development Area.
- (6) Details of Proposed Structure Plan
- (a) A proposed structure plan is to contain the following details:
- (i) a map showing the area to which the proposed structure plan is to apply;

- (ii) a site analysis map showing the characteristics of the site including:
  - landform, topography, and capability;
  - conservation and environmental values including bushland, wetlands, damp lands, streams and water courses, foreshore reserves and any environmental policy areas;
  - hydrogeological conditions including approximate depth to water table;
  - sites and features of Aboriginal and European heritage value;
- (iii) a context analysis map of the immediate surrounds to the site including:
  - the pattern of neighbourhoods, and existing and planned neighbourhood, town and regional centres;
  - transport routes, including freeways, arterial routes and neighbourhood connector alignments, public transport routes, strategic cycle routes, bus stops and rail stations;
  - existing and future land use;
- (iv) for district structure plans a map showing proposals for:
  - the pattern of neighbourhoods around town and neighbourhood centres;
  - arterial routes and neighbourhood connector streets;

- the protection of natural features such as water courses and vegetation;
  - major open spaces and parklands;
  - major public transport routes and facilities;
  - the pattern and disposition of land uses;
- (v) for local structure plans a map showing proposals for:
- neighbourhoods around proposed neighbourhoods and town centres;
  - existing and proposed commercial centres;
  - natural features to be retained;
  - street block layouts;
  - the street network including street types;
  - transportation corridors, public transport network, and cycle and pedestrian networks;
  - land uses including residential densities and estimates of population;
  - schools and community facilities;
  - public parklands; and
  - urban water management areas;
- (vi) a written report to explain the mapping and to address the following:
- the planning framework for the structure plan including any applicable regional or district structure plans, and any policies, strategies and scheme provisions which apply to the land, and any environmental conditions which apply under the Scheme;

- the site analysis including reference to the matters listed in clause 29AB(6)(a)(ii) above, and, in particular, the significance of the conservation, environmental and heritage values of the site;
- the context analysis including reference to the matters listed in clause 29AB(6)(a)(iii) above;
- how planning for the structure plan area is to be integrated with the surrounding land;
- the design rationale for the proposed pattern of subdivision, land use and development;
- traffic management and safety;
- parkland provision and management;
- urban water management;
- proposals for public utilities including sewerage, water supply, drainage, gas, electricity and communication services;
- the proposed method of implementation including any cost sharing arrangements and details of any staging of subdivision and development.

(b) The maps referred to in clause 29AB(6)(a) are to:

- (i) be drawn to a scale that clearly illustrates the details referred to in clause 29AB(6)(a) ; and
- (ii) include a north point, visual bar scale, key street names and a drawing title and number.

- (c) A proposed structure plan may, to the extent that it does not conflict with the Scheme, impose a classification on the land included in it by reference to reserves, zones or the *Residential Planning Codes*, and where the proposed structure plan becomes a structure plan, the local government is to have due regard to such reserves, zones or *Residential Planning Codes* when recommending subdivision or approving development of land within a Development Area.
  - (d) A proposed structure plan must, in the opinion of the local government, be consistent with orderly and proper planning.
- (7) Submission To Local Government and Commission
  - (a) A proposed structure plan prepared by an owner is to be submitted to the local government.
  - (b) Within 7 days of preparing or receiving a proposed structure plan which proposes the subdivision of land, the local government is to forward a copy of the proposed structure plan to the Commission.
  - (c) The Commission is to provide comments to the local government as to whether it is prepared to endorse the propose structure plan with or without modifications.
  - (d) The Commission must provide its comments to the local government within 30 days of receiving the proposed structure plan.

(8) Advertising of Structure Plan

(a) Within 60 days of preparing or receiving a proposed structure plan that conforms with clause 29AB(6) and complies with the Scheme (or such longer time as may be agreed in writing between the owner who submitted the proposed structure plan and the local government), the local government is to:

i) advertise, or require the owner who submitted the proposed structure plan to advertise, the proposed structure plan for public inspection by one or more of the following ways:

- notice of the proposed structure plan published in a newspaper circulating in the Scheme area;
- a sign or signs displaying notice of the proposed structure plan to be erected in a conspicuous place or places in the Development Area, or part of the Development Area, to which the proposed structure plan applies; and

(ii) give notice or require the owner who submitted the proposed structure plan to give notice, in writing to:

- all owners whose land is included in the proposed structure plan;
- all owners and occupiers who, in the opinion of the local government, are likely to be affected by the adoption of the proposed structure plan;



- such public authorities and other persons as the local government nominates.

- (b) The advertisement and notice are to:
- (i) explain the scope and purpose of the proposed structure plan;
  - (ii) specify when and where the proposed structure plan may be inspected; and
  - (iii) invite submissions to the local government by a specified date being not less than 21 days after the giving or erection of the notice or publication of the advertisement, as the case requires.

(9) Adoption of Proposed Structure Plan

- (a) The local government is to consider all submissions received and within 60 days of the latest date specified in the notice or advertisement for the making of submissions is to:
- (i) adopt the proposed structure plan, with or without modifications; or
  - (ii) refuse to adopt the proposed structure plan and, where the proposed structure plan was submitted by an owner, give reasons for this to the owner.
- (b) (i) In making a determination under clause 29AB(9)(a), the local government is to have due regard to the comments and advice received from the Commission in relation to the proposed structure plan.
- (ii) If the Commission requires modifications to the proposed structure plan, the local government is to consult with the Commission prior to making a determination under clause 29AB(9)(a).

- (c) If the local government, after consultation with the Commission, is of the opinion that a modification to the proposed structure plan is substantial, the local government may:
  - (i) readvertise the proposed structure plan; or
  - (ii) require the owner who submitted the proposed structure plan to readvertise the proposed structure plan;

and thereafter, the procedures set out in clause 29AB(8)(a) onwards are to apply.

- (d) If within the period referred to in clause 29AB(9)(a), or such further time as may be agreed in writing between the owner who submitted the proposed structure plan and the local government, the local government has not made a determination under clause 29AB(9)(a), the local government is deemed to have refused to adopt the proposed structure Plan.

(10) Endorsement by Commission

- (a) If the proposed structure plan proposes the subdivision of land, then within 7 days, of making its determination under clause 29AB(9)(a), the local government is to forward the proposed structure plan to the Commission for its endorsement.
- (b) As soon as practicable after receiving the proposed structure plan, the Commission is to determine whether to endorse the proposed structure plan.
- (c) The Commission is to notify the local government of its determination under clause 29AB(10)(b).

- (11) Notification of Structure Plan
- (a) As soon as practicable after adopting a proposed structure plan under clause 29AB(9)(a) and if clause 29AB(10) applies, as soon as practicable after being notified of the Commission's decision under clause 29AB(10)(c), the local government is to forward a copy of the structure plan to:
    - (i) any public authority or person that the local government thinks fit; and
    - (ii) where the structure plan was submitted by an owner, to the owner.
- (12) Operation of Structure Plan
- (a) A structure plan comes into effect:
    - (i) where the structure plan proposes the subdivision of land, on the day on which it is endorsed by the Commission pursuant to clause 29AB(10)(b); or
    - (ii) on the day on which it is adopted by the local government under clause 29AB(9)(a) in all other cases.
  - (b) If a provision of a structure plan is inconsistent with a provision of the Scheme, then the provision of the Scheme prevails to the extent of the inconsistency.
- (13) Inspection of Structure Plan
- (a) The structure plan and the Commission's notification under clause 29AB(10)(c) is to be kept at the local government's administrative offices, and is to be made available for inspection by any member of the public during office hours.
- (14) Variation to Structure Plan
- (a) The local government may vary a structure plan:
    - (i) by resolution if, in the opinion of the local government, the variation does not materially alter the intent of the structure plan;

- (ii) otherwise, in accordance with the procedures set out in clause 29AB(6) onwards.
  - (b) If the local government varies a structure plan by resolution, and the variation does not propose the subdivision of land, the local government is to forward a copy of the variation to the Commission within 10 days of making the resolution.
  - (c) If the local government varies a structure plan by resolution, and the variation proposes the subdivision of land, the local government is to forward a copy of the variation to the Commission within 10 days of making the resolution for its endorsement.
  - (d) As soon as practicable after receiving the copy of the variation referred to in clause 29ab(14)(c), the commission is to determine whether to endorse the proposed variation.
  - (e) The Commission is to notify the local government of its determination under clause 29AB(14)(d).
  - (f) A variation to a structure plan by resolution comes into effect:
    - (i) where the variation proposes the subdivision of land, on the day on which it is endorsed by the Commission pursuant to clause 29AB(14)(d), or
    - (ii) on the day on which the local government resolves to make the variation under clause 29AB(14)(a)(i).
- (15) Detailed Area Plan
- (a) Where it is considered desirable to enhance, elaborate or expand the details or provisions contained in a structure plan for a particular lot or lots, a detailed area plan may be prepared by:

- (i) the local government; or
  - (ii) an owner.
- (b) A detailed area plan may include details as to:
- (i) building envelopes;
  - (ii) distribution of land uses within a lot;
  - (iii) private open space;
  - (iv) services;
  - (v) vehicular access, parking, loading and unloading area, storage yards and rubbish collection closures;
  - (vi) the location, orientation and design of buildings and the space between buildings;
  - (vii) advertising signs, lighting and fencing;
  - (viii) landscaping, finished site levels and drainage;
  - (ix) protection of sites of heritage, conservation or environmental significance;
  - (x) special development controls and guidelines; and
  - (xi) such other information considered relevant by the local government.
- (c) When a proposed detailed area plan is prepared under clause 29AB(15)(a), the local government is to:
- (i) advertise, or require the owner who submitted the proposed detailed area plan to advertise, the proposed detailed area plan for public inspection by one or more of the following ways:
    - notice of the proposed detailed area plan published in a newspaper circulating in the Scheme area;
    - a sign or signs displaying notice of the proposed detailed area plan to be erected in a conspicuous place or places in the Development Area, or part of the Development Area, to which the proposed detailed area plan applies; and

- (ii) give notice or require the owner who submitted the proposed detailed area plan to give notice, in writing to:
  - all owners whose land is included in the proposed detailed area plan;
  - all owners and occupiers who, in the opinion of the local government, are likely to be affected by the adoption of the proposed detailed area plan;
  - such public authorities and other persons as the local government nominates.
  
- (d) The advertisement and notice are to:
  - (i) explain the scope and purpose of the proposed detailed area plan;
  - (ii) specify when and where the proposed detailed plan may be inspected; and
  - (iii) invite submissions to the local government by a specified date being not less than 21 days after the giving or erection of the notice or publication of the advertisement, as the case requires.
  
- (e) The local government is to consider all submissions received and:
  - (i) approve the detailed area plan with or without conditions; or
  - (ii) refuse to approve the detailed area plan and, where the proposed detailed area plan was submitted by an owner, give reasons for this to the owner.
  
- (f) If within 60 days of receiving a detailed area plan prepared under clause 29AB(15)(a)(ii), or such longer period as may be agreed in writing between the owner and the local government, the local government has not made one of the determinations referred to in clause 29AB(15)(e), the local government is deemed to have refused to approve the detailed area plan.

- (g) On approval by the local government, the detailed area plan constitutes a variation of the structure plan.
- (h) The local government may vary a detailed area plan in accordance with the procedures set out in clause 29AB(15) on wards provided such variations do not prejudice the intention of any related structure plan.

(16) Appeal

- (a) An owner who has submitted a proposed structure plan under clause 29AB(7)(a) may appeal, under Part V of the Town Planning Act:
  - (i) any failure of the local government to advertise, or require the owner to advertise, a proposed structure plan within the required time period under clause 29AB(8)(a);
  - (ii) any determination of the local government:
    - to refuse to adopt a proposed structure plan (including a deemed refusal); or
    - to require modifications to a proposed structure plan that are unacceptable to that owner.
- (b) An owner who has submitted a detailed area plan in accordance with clause 29AB(15) may appeal, in accordance with Part V of the Town Planning Act, any discretionary decision made by the local government under clause 29AB(15)."

## **PART 4**

## **PLANNING APPROVAL**

30. Need for Planning Approval
31. Exemption from Planning Approval
32. Unauthorised Existing Developments
33. Form of Application
34. Design Advisory Committee
35. Advertising Procedure
36. Determination of Application - General Provisions
37. Determination of Application for an Unlisted Use
38. Determination of Non-Complying Applications
39. Determination of Application for Demolition
40. Notice of Council Decision
41. Term of Planning Approval
42. Temporary Planning Approval
43. Deemed Refusal
44. Revocation of Planning Approval for Home Occupations
45. Appeals



### **30. NEED FOR PLANNING APPROVAL**

- (1) A person shall not begin or continue development of any land or building in the Scheme area, unless it is a development exempted by clause 31, without first having applied for and obtained planning approval.
- (2) To avoid any doubt, development for which planning approval is required includes both use (which is the subject of Part 2 of this Scheme) and development (which is the subject of Part 3).

#### NOTES:

1. A "planning approval", which is defined in Schedule 1 is granted by the Council. In some cases, approval might also be required by the Western Australian Planning Commission under the Metropolitan Region Town Planning Scheme Act 1959.

2. A "development" is defined in Schedule 1. As well as building works it includes any changes of use for which planning approval may be required (see clause 31); an unlisted use (see clause 16); or demolition (see clause 39).

## 31. EXEMPTION FROM PLANNING APPROVAL

- (1) Planning approval is not required for the following development -
  - (a) building or other work for the maintenance, improvement or other alteration of any building or structure where those works affect only its interior or do not materially affect its external appearance unless the building or structure is -
    - (i) located in a place that has been entered in the Register of Heritage Places under the Heritage of Western Australia Act 1990;
    - (ii) the subject of an Order under Part 6 of the Heritage of Western Australia Act 1990; or
    - (iii) listed in the Register of Places of Cultural Heritage Significance; or
  - (b) building or other work carried out by the Town, a public authority or a Commonwealth agency in connection with the maintenance or improvement of a public street; or
  - (c) building or other work carried out by the Town, a public authority or a Commonwealth agency in connection with any public utility; or
  - (d) development on a Metropolitan Region Scheme Reserve; or
  - (e) all advertisements with the exception of land, buildings, objects, structures and places included on the Register of Places of Cultural Heritage Significance, and those advertisements listed in Schedule 4;
  - (f) Home office.
  - (g) a change in the use of land or a building where the new use and the last approved use are within the same Use Class that does not:
    - (i) involve any internal works that alter the approved use areas; or
    - (ii) involve any external building works or that alters the external appearance of the building; or
  - (h) the use of land in a reserve, where such land is held by the Council or vested in a public authority -
    - (i) for the purpose for which the land is reserved under the Scheme; or
    - (ii) in the case of land vested in a public authority, for any purpose for which the land may be lawfully used by that authority.
  - (i) a family day care service for five children or less (including any children of the service provider(s)), when operated within the hours of 7am and 7pm by no more than one person in addition to any occupier of the dwelling.
  - (j) a satellite dish with a diameter of 1.0 metre or less not visible from the street.

### NOTES:

1. The Register of Places of Cultural Heritage Significance also contains a list of each area declared by the Council to be a conservation area (see clauses 25-and 27).

2. Planning approval is not required for -  
(a) certain developments carried out in accordance with subdivisional approval - see Section 20D of the Town Planning and Developmental Act 1928; and  
(b) development on certain land subject to the Casino (Burswood Island) Agreement Act 1985, referred to in clause 4.

3. Development of a Metropolitan Region Scheme reserve may require approval under the Metropolitan Region Town Planning Scheme Act 1959 and the Metropolitan Region Scheme.

## **32. UNAUTHORISED EXISTING DEVELOPMENTS**

- (1) Where a development has been, or is being, carried out contrary to clause 30, a person may apply to the Council for planning approval for that development.
- (2) If the Council grants planning approval in respect of an application made under subclause (1), the planning approval is not to be taken as -
  - (a) authorising development before the date on which the Council resolved to grant the planning approval; or
  - (b) preventing action being taken in respect of the unauthorised development before the date on which the Council resolved to grant planning approval.

## **33. FORM OF APPLICATION**

- (1) An application for planning approval is to –
  - (a) be made generally in the form set out in Schedule 3 of the Scheme and contain the information and material set out in the Council's Planning Policy for applications for planning approval and be forwarded to the Council;
  - (b) be made by the owner of the land on which the development is proposed or a person authorised in writing by the owner to make an application for planning approval; and
  - (c) include all information, plans and documents required, by a provision of this Scheme Text, a Planning Policy or otherwise, to be included in an application for planning approval.

### **NOTE:**

The prescribed form of an application for planning approval is set out in Schedule 3 of the Scheme Text.

## **34. DESIGN ADVISORY COMMITTEE**

- (1) The Council may appoint a design advisory committee for the purpose of considering, and advising the Council with respect to, applications.
- (2) The design advisory committee may be consulted on design matters relating to development.

### **NOTE:**

Matters relating to the powers, constitution and procedures of an advisory committee are set out in section 5.8 – 5.18 of the Local Government Act 1995.

## **35. ADVERTISING PROCEDURE**

- (1) Where an application involves an unlisted use, the Council is to direct the applicant to advertise the application in any manner that it considers to be appropriate.
- (2) Where an application does not involve an unlisted use, the Council may direct the applicant to advertise the application in any manner that it considers to be appropriate.
- (3) Written submissions in respect of an application advertised in accordance with this clause are to be lodged with the Council within the period and in the form (if any) prescribed in the relevant advertisement or notice.
- (4) The Council may decline to consider a submission that has not been lodged on time or fails to comply with any other requirement applying to it.

### **NOTES:**

1. An application which seeks a variation to a development requirement under clause 29 must also be advertised in accordance with this clause.

2. The Council may make a planning policy under clause 46 setting out advertising requirements and procedures.

### **36. DETERMINATION OF APPLICATION - GENERAL PROVISIONS**

NOTE:

Applications for demolition are dealt with in clause 39.

- (1) The Council may refuse to consider an application which does not comply with the requirements of this Part.
- (2) In assessing an application, the Council -
  - (a) may consult with any person or body; and
  - (b) is to have regard to any written submissions lodged with the Council under clause 35 (3).
- (3) Subject to subclause (4), the Council may -
  - (a) refuse an application; or
  - (b) approve an application either -
    - (i) unconditionally; or
    - (ii) subject to such conditions as the Council considers to be appropriate.
- (4) In respect of an application -
  - (a) for demolition; or
  - (b) which must be advertised or which requires the support of the Western Australian Planning Commission or both,

the Council may refuse or approve the application in accordance with clauses 16, 17, or 39 respectively.

- (5) Without limiting the scope of the Council's discretion to determine an application under subclause (3), the Council is to have regard to -
  - (a) the provisions of this Scheme and of any other written law applying within the Scheme area including the Metropolitan Region Scheme;
  - (b) any relevant planning policy;
  - (c) any relevant precinct plan;
  - (d) any Statement of Planning Policy of the Western Australian Planning Commission;
  - (e) any planning study approved by the Council;
  - (f) any submission accompanying or related to the application;
  - (g) the orderly and proper planning of the locality;
  - (h) the conservation of the amenities of the locality; and
  - (i) the design, scale and relationship to existing buildings and surroundings of any proposed building or structure.

### **37. DETERMINATION OF APPLICATION FOR AN UNLISTED USE**

- (1) Subject to subclause (2), the Council may refuse or approve an application which involves an unlisted use.
  
- (2) The Council cannot grant planning approval for a development which involves an unlisted use unless -
  - (a) the advertising procedure referred to in clause 35 has been followed; and
  - (b) it is satisfied, by an absolute majority, that the proposed development is consistent with the matters listed in clause 36 (5).

NOTE:

Unlisted uses are described and identified in clause 16.

## **38. DETERMINATION OF NON-COMPLYING APPLICATIONS**

- (1) In this clause –
  - (a) an application which does not comply with a standard or requirement of this Scheme (including a standard or requirement set out in a planning policy or in the relevant Precinct Plan), where the standard or requirement does not provide for any permitted variation, is called a “non-complying application”; and
  - (b) a non-complying application does not include an application involving a prohibited use.
- (2) Subject to subclause (3), the Council may refuse or approve a non-complying application.
- (3) The Council cannot grant planning approval for a non-complying application unless -
  - (a) if so required by the Council under clause 35 (2), the application has been advertised; and
  - (b) the Council is satisfied by an absolute majority that –
    - (i) if approval were to be granted, the development would be consistent with -
      - the orderly and proper planning of the locality;
      - the conservation of the amenities of the locality; and
      - the statement of intent set out in the relevant Precinct Plan; and
    - (ii) the non-compliance would not have any undue adverse affect on -
      - the occupiers or users of the development;
      - the property in, or the inhabitants of, the locality; or
      - the likely future development of the locality.

### **39. DETERMINATION OF APPLICATION FOR DEMOLITION**

In considering an application for or involving demolition, the Council is to have regard to the matters listed in clause 36 (5) and -

- (a) may defer consideration of the application until -
  - (i) it has granted planning approval for subsequent development of the relevant site;
  - (ii) it has issued a building licence for that development; and
  - (iii) it is satisfied that the subsequent development will commence;
- (b) may approve the application, subject to conditions including -
  - (i) the retention, maintenance, reinstatement or repositioning of any part of the existing building or structure;
  - (ii) the screening of the site during redevelopment; and
  - (iii) where the development that has been approved has not been substantially commenced for a total period of more than six months, the landscaping of or other treatment of the site to the satisfaction of the Council; or
- (c) may refuse the application.



## **39A.DETERMINATION OF APPLICATION FOR ADVERTISEMENT**

- (1) In considering an application for or involving an advertisement, the Council is to have regard to the matters listed in Clause 36(5) and –
  - (a) the impact of the sign on the quality of the streetscape where it is to be displayed and more generally of the district;
  - (b) whether the size of the sign appropriately relates to the architectural style, design and size of a building on which the sign is to be displayed, and in measuring the size of a sign a polygon shall be taken immediately around the text, graphics or image of the sign and not the entire background, except where the finish or colour of the background differs substantially from the background against which the sign is to be displayed;
  - (c) whether the colour scheme and materials of the sign are compatible with the architectural style and design of a building on which the sign is to be displayed;
  - (d) whether the colour scheme and materials of the sign are compatible with the overall architectural style and design of the area or precinct in which the sign is to be display; and
  - (e) how many signs are on the land where the sign will be displayed.
  
- (2) Council may refuse to approve an application where:
  - (a) the sign may obstruct the sight lines of a person driving or riding a vehicle or a pedestrian;
  - (b) the sign may unreasonably distract persons driving or riding vehicles;
  - (c) the sign may detract from the quality of the streetscape or area where it is to be displayed;
  - (d) the size of the sign does not appropriately relate to the architectural style, design and size of a building on which the sign is to be displayed;
  - (e) the colour scheme and materials of the sign are not compatible with the architectural style and design of a building on which the sign is to be displayed;
  - (f) the colour scheme and materials of the sign are not compatible with the overall architectural style and design of the area or precinct in which the sign is to be displayed; or
  - (g) the sign will be additional to other signs on the land where it will be displayed.

## **40. NOTICE OF COUNCIL DECISION**

As soon as is practicable after making a decision in relation to an application, the Council is to give to the applicant, in writing, generally in the form prescribed in Schedule 5 -

- (a) notice of the approval or refusal;
- (b) the reason or reasons for the approval or refusal; and
- (c) the conditions, if any, to which approval is subject.

NOTE:

The prescribed form of the Notice of Council Decision is set out in Schedule 5 of the Scheme Text.

## **41. TERM OF PLANNING APPROVAL**

- (1) Subject to subclause (2), a planning approval is valid from the date on which the Council resolved to grant planning approval until expiry of the period, if any, imposed by the Council under clause 42.
- (2) A planning approval is to lapse if the development has not been substantially commenced before the expiration of two years, or such further period as the Council may determine, from the date on which the Council resolved to grant planning approval.

## **42. TEMPORARY PLANNING APPROVAL**

The Council may, in granting planning approval, limit the period during which the development may be carried out where -

- (a) it considers that development in excess of that period might adversely affect the amenities of the locality or the orderly and proper planning of the locality; or
- (b) for any other reason it considers that approval ought to be granted for a limited or trial period.

### **43. DEEMED REFUSAL**

- (1) Subject to subclauses (2) and (3), an application is taken to have been refused where notice of planning approval is not given to the applicant by the Council within –
  - (a) 60 days of the receipt of the application; or
  - (b) such further time as may be agreed in writing between the applicant and the Council within that period of 60 days.
  
- (2) Subject to subclause (3), an application in respect of any place which -
  - (a) is listed in the Register of Places of Cultural Heritage Significance; or
  - (b) is being considered, under clause 25 or 26, for the purposes of being declared to be significant and worthy of conservation,

is taken to have been refused where notice of planning approval is not given to the applicant within;

  - (c) 90 days of the receipt of the application; or
  - (d) such further time as may be agreed in writing between the applicant and the Council within that period of 90 days.
  
- (3) Nothing in this clause prevents the Council from making a decision about an application after the expiry of the periods referred to in subclauses (1) and (2).

NOTE:

An applicant for planning approval has a right of appeal where there has been a deemed refusal (see clause 45).

### **44. REVOCATION OF PLANNING APPROVAL FOR HOME OCCUPATIONS**

If, in the case of a planning approval granted for a Home Occupation, a notice served under clause 52 (1) is not complied with, the Council may, without further notice to the owner or occupier, revoke its planning approval.

NOTE:

Where planning approval has been revoked under this clause, a fresh application for planning approval must be submitted to and approved by the Council before any development which was the subject of the revoked planning approval can be continued or recommenced.

### **45. APPEALS**

- (1) Subject to the provisions of the Act, an applicant for planning approval has a right of appeal against the exercise by the Council of a discretion to -
  - (a) impose a condition of planning approval; or
  - (b) refuse to grant planning approval.

NOTES:

1. The appeal provisions are set out in Part V of the Town Planning and Development Act 1928.
2. An appeal may be either to the Minister for Planning or to the Town Planning Appeal Tribunal.

## **PART 5**

## **MISCELLANEOUS**

46. Planning Policies
47. Amendment of Other Scheme Documents
48. Agreements and Dealings with Land
49. Delegation
50. Compensation
51. Election to Purchase and Valuation

## **46. PLANNING POLICIES**

- (1) The Council may make planning policies, which are to -
  - (a) relate to an aspect or aspects of development control or any other matter relevant to this Scheme; and
  - (b) apply to all or a part of the Scheme area.
- (2) In preparing a draft planning policy, the Council is to have regard to -
  - (a) the purpose for which land is set aside under this Scheme;
  - (b) the orderly and proper planning of the locality;
  - (c) the conservation of the amenities of the locality;
  - (d) any strategies, studies or objectives adopted by the Council; and
  - (e) any other matters it considers to be relevant.
- (3) The procedure for Council advertising and adopting a planning policy requires the Council to undertake a town planning scheme amendment in accordance with the provisions set out in Section 7 of the Act.
- (4) A planning policy adopted by the Council may be altered or rescinded only by following the procedure set out in this clause for making and adopting a planning policy.

## **47. AMENDMENT OF OTHER SCHEME DOCUMENTS**

- (1) Council may only amend or revoke a Scheme document with the exception of a Council register in accordance with the procedures applying to a town planning scheme amendment set out in Section 7 of the Act.
- (2) An amendment to a Council Register may be made by resolution of the Council.

### **NOTES:**

1. The reference to the Act is to the Town Planning and Development Act 1928.

2. The Interpretation Act 1984 defines "amend" to include "replace, substitute, in whole or in part, add to or vary".

3. The detailed provisions applying to a town planning scheme amendment are contained in the Town Planning Regulations 1967 made under the Town Planning and Development Act 1928.

## **48. AGREEMENTS AND DEALINGS WITH LAND**

- (1) For the purpose of carrying out this Scheme and ensuring compliance with it, the Council may -
  - (a) enter into any agreement with any owner, occupier or other person having an interest in land affected by this Scheme;
  - (b) acquire any land within the Scheme area; and
  - (c) deal with or dispose of any land which it has acquired.

## **49. DELEGATION**

- (1) The Council may, either generally or in a particular case or in a particular class of cases, by resolution passed by an absolute majority of the Council, delegate to -
  - (a) a Committee of the Council; or
  - (b) an Officer of the Council,
- (2) Any power conferred or duly imposed on the Council under this Scheme.

### **NOTE:**

Sections 58 and 59 of the Interpretation Act 1984 apply to the construction and scope of this delegation power.

## **50. COMPENSATION**

- (1) Except as otherwise provided, the time limit for the making of claims for compensation for injurious affection pursuant to Section 11 of the Act resultant from the making of, or the making of an amendment to the Scheme is six (6) months from the date of publication of the Scheme or the Scheme Amendment in the Government Gazette.
- (2) Where, in respect of any application for planning approval to commence and carry out development on land reserved under this Scheme, the Council, or any appellate body thereafter, refuses or grants approval subject to conditions such that the effect of the decision is to permit the land to be used or developed for no purpose other than a public purpose, the owner of the land may, within six (6) months of the date of the relevant decision, claim compensation from the Council for injurious affection.

### **NOTES:**

1. The reference to the Act is to the Town Planning and Development Act 1928.

2. The "Gazettal date" is defined in Schedule 1.

## **51. ELECTION TO PURCHASE AND VALUATION**

- (1) Where compensation for injurious affection is claimed pursuant to clause 50, the Council may, at its option elect to acquire the land so affected instead of paying compensation.
- (2) Where the Council elects to acquire the land in respect of which the claim for compensation for injurious affection is made, the Council shall give notice of that election to the claimant by notice in writing within three (3) months of the claim for compensation being made.
- (3) Where the Council elects to acquire land as provided in subclause (1), if the Council and the owner of the land are unable to agree as to the price to be paid for the land by the Council, the price at which the land may be acquired by the Council shall be the value of the land as determined in accordance with sub-clause (4).
- (4) The value of the land referred to in subclause (3) shall be the value thereof on the date that the Council elects to acquire the land and that value shall be determined -
  - (a) by arbitration in accordance with the Commercial Arbitration Act 1985; or
  - (b) by some other method agreed upon by the Council and the owner of the land,

and the value shall be determined without regard to any increase or decrease, if any, in value attributable wholly or in part to this Scheme.

- (5) The Council may deal with or dispose of land acquired for a Council reserve pursuant to the preceding subclause (4) or upon such terms and conditions as it thinks fit provided the land is used for, or preserved for, a use compatible with the use for which it was reserved.

## **PART 6**

## **ENFORCEMENT**

- 52. Notices
- 53. Authorised Entry
- 54. Offences



## 52. NOTICES

- (1) A notice required to be given by the Council under section 10 (1) of the Act is to be a 28 day notice signed by the Chief Executive and sent by registered post to the owner and to any occupier or lessee of the premises affected by the notice.
- (2) The Council may recover expenses under section 10 (2) of the Act in any manner in which it is from time to time entitled to recover rates levied by it under the Local Government Act 1960.

### NOTE:

The reference to the Act is to the Town Planning and Development Act.

## 53. AUTHORISED ENTRY

- (1) An officer authorised by the Council may, with any assistance required, enter at any reasonable time any building or land to determine whether the provisions of this Scheme have been or are being observed.
- (2) An authorised officer exercising the power of entry under subclause (1) or any other person accompanying an authorised officer who -
  - (a) finds a person committing; or
  - (b) on reasonable grounds suspects a person of having committed a breach of a provision of this Scheme,may ask that person for his or her name and address.
- (3) A person who -
  - (a) in any way opposes the exercise of an authorised officer's power of entry; or
  - (b) when asked to do so under subclause (2), refuses to state his or her name or address or states a false name or address,

commits an offence.

- (4) A person who gives or is suspected of giving a false name or address to the person making the enquiry under subclause (2) may, without any other warrant, be apprehended by the person making the demand and taken before a Justice to be dealt with according to law.

## 54. OFFENCES

- (1) Subject to Part 4 of this Scheme, a person shall not erect, alter or add to a building or use or change the use of any land or building, or permit or suffer any land or building to be used, or the use of any land or building to be changed for any purpose -
  - (a) other than a purpose permitted or approved of by the Council in the Zone in which that land or building is situated;
  - (b) unless all approvals, consents or licences required by this Scheme or any other law have been granted or issued;
  - (c) unless all conditions imposed upon the grant or issue of any approval, consent or licence required by this Scheme or any other law have been and continue to be complied with; and
  - (d) unless all standards laid down and all requirements prescribed by this Scheme or determined by the Council pursuant to this Scheme with respect to that building, or the use of that land or building have been and continue to be complied with.
  
- (2) Where the Council has granted planning approval for the development of land on a condition which involves the maintenance or continuance of the state or condition of any place, area, matter or thing a person shall not use or permit or suffer the use of that land for any purpose while the state or condition of that place, area, matter or thing is not being maintained or continued in accordance with that condition.

### NOTE:

A person who fails to comply with a provision of this Scheme is guilty of an offence and is subject to the penalty set out in Section 10 (4) of the Town Planning and Development Act 1928.

## **SCHEDULES**

|             |  |
|-------------|--|
| Schedule 1. | Definitions  |
| Schedule 2. | Additional Uses                                      |
| Schedule 3. | Application for Planning Approval                    |
| Schedule 4. | Advertisements Requiring Planning Approval           |
| Schedule 5. | Notice of Council Decision                           |
| Schedule 6. | Register of Places of Cultural Heritage Significance |
| Schedule 7  | Special Control Areas                                |

## SCHEDULE 1 - DEFINITIONS

### 1. In this Scheme, unless the contrary intention appears -

“**absolute majority**” in relation the Council, means a total majority of the members for the time being of the Council, whether present and voting or not;

“**Act**” means the Town Planning and Development Act 1928;

“**additional use**” means a use, in respect of a specific site, listed in Schedule 2 to which clause 17 applies;

“**advertisement**” means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or partly for the purpose of an advertisement, announcement or direction and includes any hoarding or similar structure use or adapted for use, for the display of advertisements and "advertising" has a correlative meaning;

“**aged or dependent persons’ dwelling**” means an independently constructed dwelling for the purpose of accommodating a person who is aged 55 years or over or is a person with a recognised form of handicap requiring special accommodation provisions for independent living or special care.

“**amenities**”, depending on its context, means -

- (a) the expectations of those living and working in an area about the quality of their environment including its pleasantness, character, beauty, harmony in the exterior design of buildings, privacy and security; or
- (b) facilities providing use, convenience or enjoyment;

“**amusement facility**” means any land or buildings, open to the public, used for not more than two amusement machines where such use is incidental to the predominant use;

“**application**” means an application for planning approval;

“**approved plan**” means any plan that -

- (a) forms part of an application for which planning approval has been granted; and
- (b) has been endorsed with the approval of the Council;

“**building**” includes a structure erected or placed on land;

“**caretaker’s dwelling**” means a building used as a dwelling by a person having the care of the building, plant, equipment or grounds associated with an industry, business, office or recreation area carried on or existing on the same site;

“**car park**” means premises used primarily for parking private vehicles or taxis whether or not -

- (a) as a public or private car park; and
  - (b) for reward,
- but does not include -
- (c) any part of a public road used for parking or for a taxi rank, or
  - (d) any premises used for the display of vehicles for sale;

“**Chief Executive**” means the Chief Executive or Deputy Chief Executive of the Council;

“**Child care premises**” has the same meaning as in the *Community Services (Child Care) Regulations 1988*.

#### **Note:**

Section 3 of the *Community Services (Child Care) Regulation 1988* defines “child care premises” to mean “premises specified in a licence or permit as premises in which a child care service may be provided”.

“**commercial**” means any activity involving any form of purchase, hire or sale of goods or services;

**“Commonwealth agency”** includes a Commonwealth Minister, department, body or officer and an agency or instrumentality of the Crown in right of the Commonwealth;

**“community uses”** means those uses, in a particular locality, which provide services or facilities, such as health or social services or meeting facilities, to those who live or work in that locality;

**“conservation”** has the same meaning given to it in the Heritage of Western Australia Act 1990;

**Note:**

Under the Heritage of Western Australia Act 1990, "conservation" is defined to mean, in relation to any place -

"the management of that place in a manner that will -

- (a) enable the cultural heritage significance of that place to be retained; and
- (b) yield the greatest sustainable benefit for the present community without diminishing the cultural heritage significance of that place, and may include the preservation, stabilisation, protection, restoration, reconstruction, adaptation, and maintenance of that place in accordance with relevant professional standards, and the provision of an appropriate visual setting".

**“Day Care Centre”** means “Child Care Premises” or “Family Day Care” as defined in this schedule;

**“conservation area”** means an area declared by the Council under clause 26 of this Scheme;

**“consulting rooms”** means premises used for the investigation and/or treatment of physical or mental injuries or ailments (not including a hospital) in the practice of a profession by a person who is a legally qualified medical practitioner, dentist, physiotherapist, podiatrist or similar, but does not include a masseur and does not include a premises practising therapeutic massage or similar services;

**“convenience store”** means land and buildings used for the retail sale of convenience goods being those goods commonly sold in supermarkets, delicatessens and newsagents but including the sale of petrol and operated during hours which may include, but which may extend beyond normal trading hours and provide associated parking. The buildings associated with a convenience store shall not exceed 300m<sup>2</sup> gross leasable area;

**“Council”** means the Council of the Town of Victoria Park;

**“Council register”** means -

- (a) register of places of cultural heritage significance;
- (b) register of non-conforming uses; and
- (c) any other register kept by the Council under this Scheme;

**“cultural heritage significance”** has the same meaning given to it in the Heritage of Western Australia Act 1990;

**Note:**

The Heritage of Western Australia defines "cultural heritage significance" to mean, in relation to a place - "the relative value which that place has in terms of its aesthetic, historic, scientific or social significance, for the present community and future generations".

**“development”** has the same meaning as is given to it in the Act;

**Note:**

Section 2 (1) of the Town Planning and Development Act 1928 defines "development" to mean -

"the development or use of any land, including any demolition, erection, construction, alteration or addition to any building or structure on the land and the carrying out on the land of any excavation or other works and, in the case of a place to which a Conservation Order made under section 59 of the Heritage of Western Australia Act 1990 applies, also includes any act or thing that -

- (a) is likely to change the character of that place or the external appearance of any building; or
- (b) would constitute an irreversible alteration of the fabric of any building".

**“discretionary use”** means a use described in clauses 13 and 15;

“dwelling” has the same meaning given to it in the Residential Design Codes:

**Note:**

Clause 2.2 of the Residential Design Codes defines “dwelling” to mean – “a building or portion of a building being used, adapted or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family”.

“**educational establishment**” means a school, college, university, technical institute, kindergarten, academy or other educational centre, but does not include an institutional building;

“**family day care**” means premises used to provide family day care within the meaning of the *Community Services (Child Care) Regulations 1988*”.

**Note:**

Section 3 of the *Community Services (Child Care) Regulations 1988* defines “family day care” to mean “a child care service provided to a child in a private dwelling in a family or domestic environment”.

“**fast food outlet**” means premises where food is prepared and sold -

- (a) to be taken away; or
- (b) for consumption on those or adjacent premises - if the operation of the premises is likely to attract considerable vehicular traffic to those premises for short periods;

**Note:**

The related definition of "restaurant" is set out later in this schedule.

“**floor area of a building**” means -

- (a) for a private building used for residential purposes – for a private building used for residential purposes – has the same meaning as plot ratio as defined in the Residential Design Codes;
- (b) for a non-private residential building - the gross total area of -
  - (i) each of the floors of a lodging house; or
  - (ii) those parts of each of the floors used for residential purposes of a hotel, a motel, a serviced apartment, a private hotel, an educational establishment, an institutional building or a hospital which accommodates members of the staff of the hospital, including the area of passages, lobbies, amenities and accessways, but shall not include the area of lift shafts, stairs, plant rooms, non-habitable floorspace in basements, private car parks and any portion of an open balcony which portion is of not more than 2.4 metres in depth provided that the longest open side of the balcony has no enclosure other than a balustrade of not more than 1.05 metres in height and to which there is no access other than by way of the tenancy of which it forms an exclusive part; and
- (c) for a building not used for residential purposes - the gross total area of each of the floors of the building including the area of car parking spaces in public fee-paying car parks but shall not include the area of private car parks, the areas of lift shafts, stairs, toilets, amenities, plant rooms and the thickness of any external walls;

“**frontage**” means the boundary line or lines between land and the street or streets upon which that land abuts;

“**Gazettal date**” means the date on which this Scheme is published in the Government Gazette;

“**general industry**” means an industry other than a cottage, extractive, hazardous, light or noxious industry;

“**grouped dwelling**” has the same meaning given to it in the Residential Design Codes;

**Note:**

Clause 2.2 of the Residential Design Codes defines “grouped dwelling” to mean – “a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above another, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property”;

**“hazardous industry”** means an industry which, when in operation and when all measures proposed to minimise its impact on the locality have been employed (including measures to isolate the industry from existing or likely future development on other land in the locality), would pose a significant risk in relation to the locality, to human health, life or property, or to the biophysical environment. Examples of such industry include oil refineries and chemical plants but would generally exclude light, rural or service industries;

**“Health Act”** means the Health Act 1911;

**“height”** when used in relation to a building that is used for -

- (a) residential purposes, has the same meaning given to it in and for the purpose of the Residential Planning Codes; or
- (b) purposes other than residential purposes, means the measurement taken from the natural ground level immediately in front of the centre of the face of the building to a level at the top of the eaves, parapet or flat roof, whichever is the highest, but does not include -
  - (i) any lift plant, water tower or similar utility or service, not exceeding 3.0 metres in height; or
  - (ii) any architectural feature or decoration (other than a free-standing sign) not used for any form of accommodation which may be approved by the Council;

**“heritage agreement”** means an agreement entered into under clause 28 of this Scheme and section 29 of the Heritage of Western Australia Act;

**“Heritage of Western Australia Act”** means the Heritage of Western Australia Act 1990;

**“home occupation”** means the carrying on or any business conducted in a dwelling or within the boundaries of the lot upon which a dwelling is constructed but does not include the sale or hire of any goods;

**“home office”** means a home occupation limited to a business carried out solely within a dwelling by a resident of the dwelling but which does not –

- (a) entail clients, customers or delivery vehicles travelling to and from the dwelling;
- (b) involve any advertising signs on the premises; or
- (c) require any external change to the appearance of the dwelling.

**“hospital”** means a building in which persons are received and lodged for medical treatment or care and includes a maternity hospital;

**“hotel”** means premises providing accommodation for the public the subject of a hotel licence under the Liquor Licensing Act 1988 and may include a betting agency operated in accordance with the Totalisator Agency Betting Board Act 1960, but does not include a motel, tavern or boarding house the subject of a limited hotel licence or other licence granted under that Act;

**“industry”** means the carrying out of any process for or incidental to -

- (a) the making, altering, repairing or ornamentation, painting, finishing, cleaning, packing or canning or adapting for sale or the breaking up or demolition of any article or part of any article;
- (b) the winning, processing or treatment of minerals;
- (c) the generation of electricity or the production of gas;
- (d) the manufacture of edible goods for human or animal consumption - being a process carried on in the course of trade or business, whether or not for gain, but the term does not include operations connected with -
- (e) the carrying out of agriculture;
- (f) site work on buildings, works or land; and
- (g) in the case of the manufacture of goods referred to in paragraph (d), the preparation of food for sale on the premises of a shop;

“**land**” has the same meaning given to it in the Act;

**Note:**

Section 2 (1) of the Town Planning and Development Act 1928 defines "land" to include - land tenements and hereditaments and any interest therein, and also houses, buildings, and other works and structures".

“**landscaped area**” means any area developed by the planting of lawns, garden beds, shrubs or trees and includes any area developed with rockeries, ornamental ponds, swimming pools, barbecue areas or children's playgrounds and includes any other area approved by the Council as landscaped area;

“**light industry**” means an industry;

- (a) in which the processes carried on, the machinery used, and the goods and commodities carried to and from the premises, will not cause any injury to, or will not adversely affect the amenity of the locality by reason of the emission of light, noise, electrical interference, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water or other waste products; and
- (b) the establishment of which will not, or the conduct of which does not, impose an undue load on any existing or proposed service for the supply or provision of water, gas, electricity, sewerage facilities, or any other like services;

“**local area traffic management**” means the management of traffic on residential or other streets;

“**lodging house**” has the same meaning given to it in the Health Act;

**Note:**

Section 3 (1) of the Health Act defines "Lodging-house" to mean - "any building or structure, permanent or otherwise, and any part thereof, in which provision is made for lodging or boarding more than 4 persons, exclusive of the family or the keeper thereof, for hire or reward; but the term does not include -

- (a) premises licensed under a publican's general licence, limited hotel licence, or wayside-house licence, granted under the Licensing Act 1911;
- (b) premises used as a boarding school approved under the Education Act 1928; or
- (c) any building comprising residential flats".

“**lot**” has the same meaning given to it in the Act;

**Note:**

Section 2 (1) of the Town Planning and Development Act 1928 defines "Lot" to mean - "a defined portion of land depicted on a plan or diagram publicly exhibited in the public office of the Department of Land Administration, or deposited in the Office of Titles or Registry of Deeds and for which a separate Crown Grant or Certificate of Title has been or can be issued; or depicted on a subdivisional plan or diagram, whether so exhibited or deposited or not, but which is, whether before or after the coming into operation of the Town Planning and Development Act Amendment Act 1956, approved by the Commission and includes the whole of the land the subject -

- (a) of a crown Grant issued under the Land Act 1933; or
- (b) of a certificate of title issued under the Transfer of Land Act 1893; or
- (c) of a survey into a lot pursuant to a direction given under section 17 of the Land Act 1933; or
- (d) of a part-lot shown on a plan of subdivision or diagram deposited in the Department of Land Administration, Office of Titles, or Registry of Deeds; or
- (e) of a conveyance registered under the Registration of Deeds Act 1856."

“**massage rooms**” means premises used by a masseur or which provides therapeutic massage or similar services;

“**Metropolitan Region Scheme**” means the Metropolitan Region Scheme made under the Metropolitan Region Town Planning Scheme Act 1959;



**“Metropolitan Region Scheme reserve”** means land reserved under the Metropolitan Region Scheme;

**“Minister”** means the Minister for Planning or the Minister of the Western Australian Government responsible for town planning;

**“motel”** means any land or buildings used or intended to be used to accommodate patrons in a manner similar to a hotel but in which specific provision is made for the accommodation of patrons with motor vehicles and to which a licence under the *Liquor Licensing Act 1988* may have been granted.

**“motor vehicles and marine sales premises”** means any land or buildings used for the display and sale of new or second hand motor-cycles, cars, trucks, caravans and boats or any one or more of them and may include the servicing of motor vehicles sold from the site;

**“multiple dwelling”** has the same meaning given to it in the Residential Design Codes.

**Note:**

Clause 2.2 of the Residential Design Codes defines “multiple dwelling” to mean – a dwelling in a group of more than one dwelling on a lot where any part of a dwelling is vertically above part of any other but does not include a grouped dwelling;

**“net floor area”**, for the purpose of determining car parking requirements under the parking policy, has the same meaning as “floor area of a building”, but does not include any area of public fee paying car parks;

**“nightclub”** means premises in respect of which a cabaret licence is required pursuant to the Liquor Licensing Act 1988 in order to trade and includes any land or other premises associated with the licensed premises.

**“non-conforming use”** means a use of land which, although lawful immediately prior to the coming into operation of this Scheme, is a prohibited use;

**“noxious industry”** means an industry which is subject to licensing as “Prescribed Premises” under the Environmental Protection Act 1986 (as amended);

**“nursing home”** means any building used for the medical treatment or care of sick persons, whether resident or not, but does not include consulting rooms;

**“office”** means a building or part of a building used for the conduct of administration, the practise of a profession, the carrying on of agencies, a post office, bank, building society, insurance office, estate agency, typist and secretarial services, or services of a similar nature, and where not conducted on the site thereof, the administration of or the accounting in connection with a commercial or industrial undertaking;

**“open air sales and display”** means the use of land for the display, sale or hire of goods or equipment in the open air;

**“owner”** in relation to any land includes the Crown in right of the State and the Commonwealth and every person who jointly or severally, whether at law or in equity-

- (a) is entitled to the land for any estate of fee simple in possession; or
- (b) is a person to whom the Crown has lawfully contracted to grant the fee simple of the land; or
- (c) is entitled to receive or is in receipt of, or if the lands were let to a tenant, would be entitled to receive the rents and profits, whether as a beneficial owner, trustee, mortgagee in possession or otherwise;

**“permitted use”** means a use described in clauses 13 and 15;

**“place”** for the purposes of Division 2 of Part 3 dealing with places of cultural heritage significance, has the same meaning as given to it in the Heritage of Western Australia Act, 1990;

**Note:**

Section 3 (1) of the Heritage of Western Australia Act 1990 defines "place" to mean - "an area of land sufficiently identified by survey, description or otherwise as to be readily ascertainable, and includes -

- (a) an area of land situated below low water mark on the sea shore or on the bank of tidal waters, or in the bed of any watercourse, lake or estuary,
- (b) any works or buildings situated there, their contents relevant to the purposes of this Act and such of their immediate surroundings as may be required for the purposes of the conservation of those works or buildings; and
- (c) as much of the land beneath the place as is required for the purposes of its conservation".

**“planning approval”** means approval, with or without conditions, granted by Council in respect of an application, to begin or continue development;

**“planning policy”** means a planning policy made by the Council under clause 46;

**“plot ratio”** means the ratio of the floor area of a building to the area of land within the boundaries of the lots on which that building is located;

**Note:**

The "floor area of a building" is defined earlier in this Schedule.

**“precinct”** means an area or neighbourhood of limited size having -

- (a) a similar use or other characteristics; and
- (b) specified boundaries.

**“precinct plan”** means a document setting out the planning intentions for a particular precinct;

**“premises”** includes lands and buildings;

**“prohibited use”** means a use described in clauses 13 and 15;

**“public authority”** has the same meaning given to it in the Act;

**Note:**

Section 2 (1) of the Act defines "public authority" to mean -

"a Minister of the Crown acting in his official capacity, a State Government department, State trading concern, State instrumentality, State public utility and any other person or body, whether corporate or not, who or which, under the authority of any Act, administers or carries on for the benefit of the State, a social service or public utility".

**“public utility”** means any works or undertaking constructed or maintained by a public authority, Commonwealth agency or municipality to provide water, sewerage, electricity, gas, drainage, communications or other similar services;

**“public worship - place of”** means any land or buildings used primarily for religious activities but does not include an institution for primary, secondary, or higher education, or a residential training institution;

**“register of non-conforming uses”** means the register kept in accordance with clause 19;

**“register of places of cultural heritage significance”** means the register kept in accordance with clause 27;

**“research and development”** means scientific and industrial research and the development, production and assembly of products associated with that research;

**“residential building”** has the same meaning given to it in the Residential Design Codes;

**Note:**

Clause 2.2 of the Residential Design Codes defines “residential building” to mean – a building or portion of a building, together with rooms and outbuildings separate from such building but incidental thereto; such building being used or intended, adapted or designed to be used for the purpose of human habitation:

- temporarily by two or more persons; or
- permanently by seven or more persons,

who do not comprise a single family, but does not include a hospital or sanatorium, a prison, a hotel, a motel, or a residential school.

**“Residential Design Codes”** means the Residential Design Codes set out in Appendix 1 of the Statement of Planning Policy No. 3.1 prepared under Section 5AA of the Act, as amended from time to time;

**“Residential Planning Codes”** means the Residential Planning Codes set out in Appendix 2 to the Statement of Planning Policy No.1 prepared under 5AA of the Act gazetted on 13 December 1991;

**Note:**

The Statement of Planning Policy No. 1 Residential Planning Codes has been revoked as of 4 October 2002 and replaced with Statement of Planning Policy No. 3.1 Residential Design Codes. Reference to the Residential Planning Codes shall be regarded as a reference to the Residential Design Codes;

**“restaurant”** means premises where food is prepared and sold principally for consumption on those or adjacent premises but does not include a fast food outlet;

**Note:**

A "fast food outlet" is defined earlier in this Schedule.

**“restricted premises”** means any premises used or designed primarily for the sale by retail or wholesale, or the offer for hire, loan or exchange or the exhibition, display or delivery of -

- (a) publications that are classified as restricted publications pursuant to the Indecent Publications and Articles Act 1902; or
- (b) materials, compounds, preparations or articles which are used or intended to be used primarily in or in connection with any form of sexual behaviour or activity;

**“retail”** means the sale or hire of products, goods or services to the public generally in small quantities and from a shop, showroom or fast food outlet;

**“retail floor area”** means the floor area of each of the floors of a building used for the display or sale of goods but does not include floor areas used for concealed storage, food preparation, a workshop or a toilet;

**“Scheme area”** means the area defined in clause 4 of this Scheme;

**“Scheme text”** means the document to which this Schedule is attached and includes this and all other Schedules;

**“Scheme zone”** means an area, identified in clause 12 (1), for which permitted uses are described in the Zoning Table;

**“serviced apartment”** means a building or buildings which include self-contained units for transient accommodation;

**“service station”** means any land or buildings used for the retail sale of petroleum products and motor vehicle accessories and for carrying out greasing, tyre repairs, minor mechanical repairs to motor vehicles but does not include a transport depot, panel beating, spray painting, major repairs or wrecking;

**“shop”** means any building wherein goods are kept, exposed or offered for sale by retail, or within which services of a personal nature are provided (including a hairdresser, beauty therapist or manicurist) but does not include a showroom, fast food outlet or any other premises specifically defined elsewhere in this part;

**Note:**

The Interpretation Act 1984 defines "sell" to include barter, exchange, offer to sell and expose for sale".

**“showroom”** means any building or part of a building used or intended for use for the purpose of displaying or offering for sale by wholesale or retail, automotive spare parts, carpets, large electrical appliances, furniture, hardware or goods of a bulky nature but does not include the sale by retail of foodstuffs, liquor or beverages, items of clothing or apparel, magazines, newspapers, books or paper products, china, glassware or domestic hardware, or items of personal adornment;

**“single bedroom dwelling”** has the same meaning given to it in the Residential Design Codes;

**Note:**

Clause 2.2 of the Residential Design Codes defines “single bedroom dwelling” to mean – a dwelling that contains a living room and no more than one other habitable room that is capable of use as a bedroom;

**“single house”** has the same meaning given to it in the Residential Design Codes;

**Note:**

Clause 2.2 of the Residential Design Codes defines “single house” to mean – a dwelling standing wholly on its own green title or survey strata lot, together with any easement over adjoining land for support of a wall or for access or services and excludes dwellings on titles with areas held in common property;

**“storey”** means that portion of a building which is situated between the top of any floor and the top of the floor next above it and if there is no floor above it, that portion between the top of the floor and the ceiling above it but does not include any portion of a building used solely for car parking and having 50% or more of its volume below natural ground level;

**“street alignment”** means the boundary between the land comprising a street and the land abutting it, but, where a new street alignment is prescribed, means the boundary between that land and that new street alignment;

**“substantially commenced”** means that work or development the subject of planning approval has been begun by the performance of some substantial part of that work or development;

**“tavern”** means any land or buildings the subject of a Tavern Licence granted under the provisions of the Liquor Licensing Act 1988;

**“Town”** means the Town of Victoria Park established as a municipality under the Local Government Act;

**Note:**

The division of the municipality of the former City of Perth was effected by S.9 of the City of Perth Restructuring Act 1993.

**“Town of Victoria Park Scheme reserve”** means land reserved under this Scheme and shown on a Precinct Plan as a Town of Victoria Park Scheme reserve;

**“transport depot”** means any premises used -

- (a) for the garaging of vehicles used or intended for use for the carriage of goods for hire or reward;
- or
- (b) for the transfer of goods from one such vehicle to another such vehicle whether or not the land or the building is also used for the maintenance and repair of the vehicles;

**“unlisted use”** has the meaning given to it in clause 16 of the Scheme Text;

**“warehouse”** means a building wherein goods are stored and may be offered for sale by wholesale;

**“Western Australian Planning Commission”** means the Commission established by Section 4 of the Western Australian Planning Commission Act 1985;

**“Zoning Table”** means the table set out at the end of clause 15;

2. In this Scheme, unless the contrary intention appears, a reference to -
  - (a) land, includes part of the land;
  - (b) premises, includes part of the premises; and
  - (c) a building, includes part of the building;

**Note:**

The reference to "this Scheme" in clauses 1 and 2 includes all the Scheme documents listed in clause 3 (1) of the Scheme text.

## SCHEDULE 2 - ADDITIONAL USES

| Ref No. | Land Particulars   | Permitted Uses                             | Development Standards/Conditions   |
|---------|--|--|--|
| 1       | No. 47 (Lot 10) Star Street, Carlisle on Diagram 65589   | Office for Accountants only                | <ol style="list-style-type: none"> <li>1. Additional Use of Office is restricted to use by accountants.</li> <li>2. Additional Use of Office for accountants to be limited to the existing building identified by Strata Lot 2 on Strata Plan 11861.</li> <li>3. Additional Use of Office for Accountants to be limited to existing building only with any redevelopment, extension or demolition relating to the subject Strata Lot 2 extinguishing the Additional Use.</li> <li>4. A maximum of one sign to a maximum size of 1m<sup>2</sup> is permitted on Strata Lot 2.</li> </ol>  |
| 2       | Lot. 9 (Lot 712, Strata Lot 11) McMillan Street, Victoria Park on Volume 2546, Folio 485 Strata Plan 43914 | Office for Financial Planning Service only | <ol style="list-style-type: none"> <li>1. Additional Use of Office is restricted to use by Financial Planning Service.</li> <li>2. Additional Use of Office for Financial Planning Service to be limited to the existing building identified by Strata Lot 11 on Strata Plan 43914.</li> <li>3. Additional Use of office for Financial Planning Service to be limited to existing building only with any redevelopment, extension or demolition relating to the subject Strata Lot 11 extinguishing the Additional Use.</li> <li>4. A maximum net floor area of 94.6m<sup>2</sup> to be used for the Office for Financial Planning Service.</li> <li>5. A minimum of two carparking bays to be provided on Strata Lot 11 at all times for use of the Office for Financial Planning Service.</li> </ol> |

## SCHEDULE 3 – APPLICATION FOR PLANNING APPROVAL

| <b>TOWN OF VICTORIA PARK</b><br><b>APPLICATION FOR APPROVAL</b>  |   |   |   |
|--|---|---|---|
| PLEASE TICK WHICH APPROVAL IS BEING SOUGHT & FILL IN THE APPROPRIATE SECTION(S) ONLY:  |   |   |   |
| Planning Approval <input type="checkbox"/>   | <input style="width: 100%; height: 15px;" type="text"/> | Building Licence <input type="checkbox"/> | <input style="width: 100%; height: 15px;" type="text"/> |
| Demolition Licence <input type="checkbox"/>  | <input style="width: 100%; height: 15px;" type="text"/> | Sign Licence <input type="checkbox"/>     | <input style="width: 100%; height: 15px;" type="text"/> |
| <input type="checkbox"/> <b>PROPERTY DETAILS:</b><br>Lot No. * _____ House/Street No* _____ Loc. No _____ Plan or Diagram _____<br>Certificate of title: _____ Vol. _____ Folio _____ Lot Area (m <sup>2</sup> ) _____<br>Title Encumbrances _____<br>Street Name * _____ Suburb * _____<br><small>* Note: These details must be provided to assist in the processing of this application.</small>   |   |   |   |
| <input type="checkbox"/> <b>OWNER DETAILS:</b><br>Name _____<br>Address _____<br>_____ Postcode _____<br>Phone (Home) _____ (Work) _____ Fax _____<br>Contact Person _____<br>Landowner(s) _____ Date _____<br>Signature _____<br>Company _____ Position(s) _____<br>Office Bearer _____<br>Strata Owners _____ Address _____<br>Signature(s) _____ Address _____<br>_____ Address _____<br>_____<br><small>The signature of the landowner(s) is required for Planning Approval. The Signature of the landowner(s) is required for Building Licence applications unless prior Planning Approval * has been obtained.<br/>                     * Planning Approval also is required for a Single House, additions to a Single House and Demolitions under the provisions of the Town Planning Scheme.</small> |   |   |   |
| <input type="checkbox"/> <b>APPLICANT DETAILS:</b><br>Name _____<br>Address _____<br>_____ Postcode _____<br>Phone _____ Fax _____<br>Contact Name _____<br>Signature(s) _____ Date _____  |   |   |   |
| <input type="checkbox"/> <b>PLANNING APPROVAL:</b><br>Existing Land Use _____<br>Approx. Cost of Development _____ Est. Date of Completion _____<br>Description of Development / or purpose of use _____<br>_____<br>_____   |   |   |   |

## SCHEDULE 3: APPLICATION FOR PLANNING APPROVAL

|   |                                 |                                |
|---|---------------------------------|--------------------------------|
| <input type="checkbox"/> <b>BUILDING LICENCE:</b><br>Description of Works _____<br><hr/> Builder: Name _____<br>Address _____ Suburb _____ Post Code _____<br>BRB No. _____ Phone _____ Fax _____<br>Building Details: Area (m <sup>2</sup> ) _____ Outbuildings Area _____<br>Contract Value \$ _____ Building Height _____ Signature _____  |                                 |                                |
| <input type="checkbox"/> <b>DEMOLITION LICENCE:</b><br>Type of Building/Structure _____ Number of Storeys _____<br>Rat Bait Certificate Issued Yes <input type="checkbox"/> No <input type="checkbox"/> Type/Date Laid _____<br>Whole of Part Demolition Details _____<br>Demolition Contractor Name _____<br>Address _____<br>Phone _____ Fax _____<br>Signature _____ Date _____  |                                 |                                |
| <input type="checkbox"/> <b>SIGN LICENCE:</b><br>Applicant Name _____<br>Address _____<br>Type of Sign _____ Position _____<br>Dimensions _____ Materials _____<br>Illumination _____ Wording _____   |                                 |                                |
| <b>AUTHORITY TO COPY AND DISTRIBUTE PLANS (VOLUNTARY)</b><br>I, _____ (Name of Person Authorised to Sign) of<br>_____ (Company and/or Address)<br>agree that, during the application process, copies of the plans (Plan Reference and/or Address of Property)<br>_____<br>_____<br>can be made by Council's Administration and distributed to adjoining owners and/or occupiers for the<br>purpose of community consultation in accordance with the Town of Victoria Park Council Policy GEN3.<br>Signature _____ Date _____<br>(Company or individual responsible for preparation of Plans and/or Owner of Copyright)<br>Note: This section is to be signed by the person/company that has prepared the plans, not by the owner,<br>applicant or any other person involved in the application. |                                 |                                |
| <input type="checkbox"/> <b>RECEIPT DETAILS:</b><br>Receipt No. _____ Building Fee _____ BRB Levy _____<br>Planning Fee _____ BCITF Levy _____ Demolition Fee _____   |                                 |                                |
| <b>OFFICE USE ONLY:</b><br>Metropolitan Region<br><br>Serial No. /  | <b>APPLICATION NO:</b><br><br>/ | <b>DATE RECEIVED:</b><br><br>/ |



**SCHEDULE 4: ADVERTISEMENTS REQUIRING PLANNING APPROVAL**

| <b>Type of Advertisement</b>   | <b>Locations</b>   |
|--|--|
| Signs that require planning approval under Part 6 of the Town of Victoria Park Signs Local Law 2006 (as amended from time to time) | All properties within the municipal district of the Town |
|  |  |

## SCHEDULE 5: NOTICE OF COUNCIL DECISION

Date: .....

File No:.....

Serial No:.....

THIS IS NOT A BUILDING LICENCE

### TOWN PLANNING AND DEVELOPMENT ACT 1928 (AS AMENDED) TOWN OF VICTORIA PARK TOWN PLANNING SCHEME NO. 1

#### NOTICE OF PLANNING APPROVAL/REFUSAL

PROPOSAL:

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LOCATION:

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NAME OF OWNER OF LAND ON WHICH THE DEVELOPMENT IS PROPOSED:

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SURNAME/COMPANY NAME:

---

OTHER NAMES:

---

ADDRESS:

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Approval to commence development in accordance with the Application for Planning Approval dated \_\_\_\_\_ and the approved/refused plans date stamped \_\_\_\_\_ was **APPROVED/REFUSED** by the Council, at its Meeting held on \_\_\_\_\_, in accordance with the provisions of the Town of Victoria Park Town Planning Scheme No. 1 and the Metropolitan Region Scheme, subject to the attached conditions/and having regard to the matters it is required to consider by the Schemes generally and in particular for the following reasons:

**NOTE:** SHOULD THE APPLICANT BE AGGRIEVED BY THIS DECISION A RIGHT OF APPEAL MAY EXIST UNDER THE PROVISIONS OF THE TOWN PLANNING SCHEME OR THE METROPOLITAN REGION SCHEME.

This approval is valid for a period of \_\_\_\_\_ months only. If development is not substantially commenced within this period a fresh approval must be obtained before commencing or continuing the development.

\_\_\_\_\_  
CHIEF EXECUTIVE OFFICER

\_\_\_\_\_  
DATE

## SCHEDULE 6: REGISTER OF PLACES OF CULTURAL HERITAGE SIGNIFICANCE

This Register contains places of cultural heritage significance. Places will be added to the Register occasionally and the Council's Planning Department should be contacted to confirm whether or not a place is being considered for inclusion on the Register.

It should be noted that the Register contains the following three types of listings

- individual places;
- groups of places; and
- precincts.

Where a letter appears after the address of a place it signifies that the place is either part of a group of places (G), a precinct (P) or both (PG).

| Location                               | Place  | Estimated Date of Construction | Entry into Register of Places of Cultural Heritage Significance | Heritage Council of WA – Register of Heritage Places & Date of Listing |
|--|--|--------------------------------|---|--|
| No. 314 Albany Hwy, Victoria Park      | Broken Hill Hotel  | 1899                           | Gazettal date of Town Planning Scheme No 1                      |  |
| No. 414-420 Albany Hwy, Victoria Park  | Victoria Park Post Office                                | 1913 to c1955                  | Gazettal date of Town Planning Scheme No. 1                     | Permanent Listing – 10 October 1995                                    |
| No. 990 Albany Hwy, East Victoria Park | Edward Millen Home (Hillview)                            | 1912                           | Gazettal date of Town Planning Scheme No 1                      |  |
| No.1 Cargill Street, Victoria Park     | Victoria Park Primary School                             | C1894 to 1940                  | Gazettal date of Town Planning Scheme No 1                      | Permanent Listing – 27 February 1996                                   |
| No. 86 Mackie Street, Victoria Park    | 'Devenish House' (formerly known as 'Forrest Farmhouse') | 1890                           | Gazettal date of Town Planning Scheme No 1                      |  |

## “SCHEDULE 7: SPECIAL CONTROL AREAS

| Area No | Land Description   | Purpose and Particular Requirements   |
|---------|--|---|
| DA 1    | The whole of the area being portion of Swan Loc 35 (known as Belmont Park Racecourse)  | A structure Plan must be prepared and approved prior to any subdivision and/or development of the land, with the exception of development or use associated with the current racecourse activities.   |
| BD 1    | Lot 905 Burswood Road (known as Sands & McDougall site) as being land designated on Precinct Plan P3 – Causeway Precinct as BD 1 and included in Plan “BD 1 - Lot 905 Burswood Road, Burswood” | <p><b>(1) Planning Objectives</b><br/> The objectives for development and planning decisions making within BD 1 are:</p> <ul style="list-style-type: none"> <li>(a) the development of BD 1 as a whole in a co-ordinated manner;</li> <li>(b) the adequate provision of carparking areas for residents and visitors;</li> <li>(c) the adequate provision of landscaped areas and green space offering attractive areas for pedestrians and residents;</li> <li>(d) where provision is made between subdivisional lots for the sharing of open space, ensuring the long term availability of shared communal open space to occupiers of those lots; and</li> <li>(e) ensuring the long term re-arrangement of plot ratio entitlements between parts of BD 1 which are or may be subdivided into separate lots.</li> </ul> <p>(2) In addition to the matter referred to in clause 36(5) the Council shall have regard to the objectives set out in the preceding subclause when determining any application for planning approval on land within BD 1.</p> <p><b>(3) Conflict with other provisions of the Scheme</b><br/> Where a provision contained in this Schedule pertaining to BD 1 is inconsistent with any other provision of the Scheme, the provision contained in this Schedule pertaining to BD 1 shall prevail.</p> <p><b>(4) Plot Ratio</b></p> <ul style="list-style-type: none"> <li>(a) Reference in this clause to Lot 1, Lot 2, Lot 3 or Lot 4, or to the ROW is a reference to the land so designated in Plan ‘BD 1 – Lot 905 Burswood Road’ as contained in this Schedule.</li> <li>(b) For the purpose of determining plot ratio with respect to land within BD 1, Lot 1 and Lot 2 shall be treated as separate sites, each having plot ratio entitlements in accordance with the Scheme.</li> </ul> |

|  |  |  |
|--|--|--|
|  |  | <p>(c) The area of any land taken from either of Lot 1 or Lot 2 and added to the ROW shall be notionally added back to the area of the Lot from which it was taken for the purpose of calculating the plot ratio entitlement of that lot.</p> <p>(d) Lots 3 and 4 shall be treated as one site for the purpose of calculating plot ratio. Regardless of how the plot ratio is distributed between the lots, the total plot ratio entitlements over the area of the two lots shall not exceed the plot ratio entitlements applicable to that area of land under this Scheme.</p> <p><b>(5) Carparking</b></p> <p>(a) Reference in this clause to Lot 1, Lot 2, Lot 3 or Lot 4, or to the ROW is a reference to the land so designated in Plan BD 1 'Lot 905 Burswood Road' as contained in this Schedule.</p> <p>(b) For the purpose of determining provisions for parking under the Scheme with respect to the land within BD 1, Lot 1 and Lot 2 shall be treated as separate sites, each having parking requirements and making provision for parking as required by any development approval issued by the Council.</p> <p>(c) Lot 3 and Lot 4 shall be treated as one site for the purpose of calculating parking requirements. Regardless of how parking areas are distributed between the lots, the total requirement for parking for the development established on the two lots shall comply with the requirements of the Scheme. The Council shall not allow any deficit of parking bays for development on one of the lots which is not made up by additional parking already provided or otherwise secured to the satisfaction of the Council on the other lot.</p> <p>(d) When the Council has approved development on either Lot 3 or Lot 4 that depends upon the provision of parking on the other lot, nothing may be done on either lot which would restrict free access from the lot benefited to the parking provided on the lot burdened by that requirement.</p> <p><b>(6) Open Space</b></p> <p>(a) Reference in this clause to Lot 1, Lot 2, Lot 3 or Lot 4, or to the ROW is a reference to the land so designated in Plan 'BD 1 Lot 905 Burswood Road' as contained in this Schedule.</p> |
|--|--|--|

|  |  |   |
|--|--|---|
|  |  | <p>(b) For the purpose of determining the allocation of communal open space on private land within BD 1, Lots 3 and 4 shall be treated as one site. The requirement for open space applicable to the total area of those lots may be distributed between the lots in such manner as the Council approves.</p> <p>(c) Subject to any determination by the Council to the contrary, nothing shall be done on either lot 3 and lot 4 which restricts free access for persons on one of those lots to communal open space areas provided on the other lot.</p> <p><b>(7) Staged Development</b></p> <p>(a) Reference in this clause to Lot 1, Lot 2, Lot 3 or Lot 4, or to the ROW is a reference to the land so designated in Plan 'BD 1 – lot 905 Burswood Road' contained in this Schedule.</p> <p>(b) If development on either Lot 3 or Lot 4 or Lots 3 and 4 combined occurs in stages, each stage shall be constructed in such a manner that the stage has the appearance of a completed development, and without limiting the generality of the foregoing:</p> <p>(i) the common facilities such as basement carparking areas and any common areas of open space shall be completed as part of the first stage of development; and</p> <p>(ii) should either Lot 3 or Lot 4 be developed and development on the other lot not be commenced within twelve months after commencement of development on the first lot, the vacant land is to be landscaped to prevent unsightly vacant area.</p> <p><b>(8) Application for Town Planning Approval</b><br/>Notwithstanding any other provision of the Scheme, Council shall seek comments from all owners in the BD 1 area prior to determination of an Application for Planning Approval by the Council.</p> <p><b>(9) Existing Planning Approval</b></p> <p>(a) The provisions contained in this Schedule pertaining to BD1 do not in any way extend the validity of any current planning approval issued prior to the coming into operation of these provisions, beyond the time period stipulated in that approval.</p> <p>(b) If at the time of coming into operation of the provisions contained in this Schedule pertaining to BD 1 a valid</p> |
|--|--|---|

|  |  |   |
|--|--|---|
|  |  | <p>planning approval remains in operation in respect to the whole or part of any land within the area of BD 1, development may be carried out in accordance with the terms of the approval.</p> <p>(c) Notwithstanding the preceding provisions of this subclause, any development carried out within BD 1 whether planning approval was given before or after the coming into operation of the provisions contained in this Schedule pertaining to BD 1, shall comply with the provisions of this Schedule pertaining to BD 1, and the use of land within the area of BD 1 shall be carried out in accordance with the provisions contained in this Schedule pertaining to BD 1.</p> <p>(d) To give effect to the provisions of paragraph (c), to the extent that it is necessary, it is intended that the provisions of contained in this Schedule pertaining to BD 1 shall have retrospective effect.</p> <p><b>(10) Cessation of the Provisions Contained in This Schedule Pertaining to BD 1</b></p> <p>(a) The provisions contained in this Schedule pertaining to BD 1, with the exception of this clause, shall cease to have effect if within 5 years of the gazettal date of the amendment adding the BD 1 area to this Schedule 100% of the earthworks and footings for the floor area of the development of any one of the four lots has not been completed.</p> <p>(b) In the event that the provisions contained in this Schedule pertaining to BD 1 cease to have effect by the operation of subclause (a), any special endorsement notation or provision whatsoever on Precinct Plan P3 – Causeway Precinct relating to BD 1 shall cease to have effect.”</p> |
|  |  |   |

## **ADOPTION**

Adopted by resolution of the Council of the Town of Victoria Park at the Ordinary Meeting of the Council held on the 9<sup>th</sup> day of August 1994.

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**J A E LEE**  
**MAYOR**

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**J M BONKER**  
**CHIEF EXECUTIVE OFFICER**

## **FINAL ADOPTION**

Adopted for final approval by resolution of the Council of the Town of Victoria Park at the Ordinary Meeting of the Council held on the 11<sup>th</sup> day of August 1998 and the seal of the Municipality was pursuant to that resolution, hereunto affixed in the presence of:

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**J A E LEE**  
**MAYOR**

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**J M BONKER**  
**CHIEF EXECUTIVE OFFICER**

## **RECOMMENDED FOR FINAL APPROVAL**

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**CHAIRMAN OF THE**  
**WESTERN AUSTRALIAN PLANNING COMMISSION**

Date \_\_\_\_\_

## **FINAL APPROVAL GRANTED**

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**MINISTER FOR PLANNING**

Date \_\_\_\_\_