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PLANNING AND DEVELOPMENT ACT 2005

TOWN OF COTTESLOE

LOCAL PLANNING SCHEME
No. 3

PLANNING AND DEVELOPMENT ACT 2005**APPROVED LOCAL PLANNING SCHEME***Town of Cottesloe*

Local Planning Scheme No. 3

Ref: TPS/0412/7

It is hereby notified for public information, in accordance with section 87 of the *Planning and Development Act 2005* that the Minister for Planning approved the Town of Cottesloe Local Planning Scheme No. 3 on 22 July 2014, the scheme text of which is published as a schedule annexed hereto.

J. M. DAWKINS, Mayor.
C. ASKEW, Chief Executive Officer.

PREAMBLE

This Local Planning Scheme of the Town of Cottesloe consists of this Scheme Text and the Scheme Map. The Scheme Text should be read with the Local Planning Strategy for the Town of Cottesloe.

Part 2 of the Scheme Text sets out the Local Planning Framework. At the core of this Framework is the Local Planning Strategy which sets out the long-term planning directions for the local government, applies State and regional planning policies and provides the rationale for the zones and other provisions of the Scheme. In addition to the Local Planning Strategy, the Framework provides for Local Planning Policies which set out the general policies of the local government on matters within the Scheme.

The Scheme divides the local government district into zones to identify areas for particular uses and identifies land reserved for public purposes. Most importantly, the Scheme controls the types of uses and development allowed in different zones. There are particular controls included for heritage and special control areas. The Scheme Text also sets out the requirements for planning approval, enforcement of the Scheme provisions and non-conforming uses.

SCHEDULE DETAILS

PLANNING AND DEVELOPMENT ACT 2005

TOWN OF COTTESLOE

LOCAL PLANNING SCHEME No. 3

The Town of Cottesloe under the powers conferred by the *Planning and Development Act 2005*, hereinafter referred to as the Town Planning Act, makes the following Local Planning Scheme.

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PLANNING AND DEVELOPMENT ACT 2005**TOWN OF COTTESLOE****LOCAL PLANNING SCHEME No. 3****PART 1—PRELIMINARY****1.1. Citation**

1.1.1. The Town of Cottesloe Local Planning Scheme No. 3 (“the Scheme”) comes into operation on its Gazettal date.

1.1.2. The following Scheme is revoked—

Town of Cottesloe Town Planning Scheme No. 2.

1.2. Responsible authority

The Town of Cottesloe is the responsible authority for implementing the Scheme.

1.3. Scheme area

The Scheme applies to the Scheme area which covers the entire local government district of the Town of Cottesloe as shown on the Scheme Map.

Note: The Scheme area is also subject to the Metropolitan Region Scheme—see clause 1.10.

1.4. Contents of Scheme

The Scheme comprises—

- (a) the Scheme Text; and
- (b) the Scheme Map

The Scheme is to be read in conjunction with the Local Planning Strategy, as described in Part 2 of this Scheme Text.

1.5. Purposes of Scheme

The purposes of the Scheme are to—

- (a) set out the local government’s planning aims and intentions for the Scheme area;
- (b) set aside land as Local Reserves for public purposes;
- (c) zone land within the Scheme area for the purposes defined in the Scheme;
- (d) control and guide land use and development;
- (e) set out procedures for the assessment and determination of planning applications;
- (f) make provision for the administration and enforcement of the Scheme; and
- (g) address other matters set out in Schedule 7 of the Town Planning Act.

1.6. The aims of the Scheme

The aims of the Scheme are to—

- (a) facilitate implementation of the State Planning Strategy and relevant regional plans and policies, including the Metropolitan Region Scheme, by coordinating the Scheme with such plans and policies;
- (b) promote the Local Planning Strategy;
- (c) support land use, transport and development within the Scheme area;
- (d) sustain population levels within the Scheme area by maintaining residential zones and encouraging, where appropriate, residential use of buildings in other zones.
- (e) provide opportunities for housing choice and variety in localities which have a strong sense of community identity and high levels of amenity;
- (f) sustain the amenity, character and streetscape quality of the Scheme area;
- (g) ensure that residents and visitors continue to experience a high level of access to a range of transport modes within the Scheme area by maintaining the existing road grid pattern and making provision for an integrated road, rail, bus, cycle, and pedestrian network;
- (h) encourage the retention of local centres and shops for the convenience and social well being of the local community;

- (i) facilitate improvements in the appearance, amenity, function and accessibility of the Cottesloe town centre locality for residents and visitors;
- (j) ensure that land uses and development adjacent to Marine Parade are compatible with the residential and recreational nature of their setting and the amenity of the locality;
- (k) ensure that development adjacent to Marine Parade adds to the high aesthetic appeal, relaxed atmosphere and lifestyle quality of the beachfront environment;
- (l) provide a diverse and integrated network of open space catering for both active and passive recreation, including public access and visibility of the beachfront reserves;
- (m) ensure that new development is compatible with the conservation significance and aesthetic value of heritage places and areas and the coastal landscape;
- (n) protect the integrity, amenity and scenic quality of the coastal landscape;
- (o) ensure that proper regard is given to the needs of the local community in the determination of land use and development proposals;
- (p) ensure that development and the use of land within the district complies with accepted standards and practices for public amenity and convenience; and
- (q) recognise the principle of the maintenance and enhancement of important views to and from public places.

1.7. Definitions

1.7.1. Unless the context otherwise requires, words and expressions used in the Scheme have the same meaning as they have—

- (a) in the Town Planning Act; or
- (b) if they are not defined in that Act—
 - (i) in the Dictionary of defined words and expressions in Schedule 1; or
 - (ii) in the Residential Design Codes.

1.7.2. If there is a conflict between the meaning of a word or expression in the Dictionary of defined words and expressions in Schedule 1 and the meaning of that word or expression in the Residential Design Codes—

- (a) in the case of a residential development, the definition in the Residential Design Codes prevails; and
- (b) in any other case the definition in the Dictionary prevails.

1.7.3. Notes and instructions printed in *Italics*, are not part of the Scheme.

1.8. Relationship with local laws

Where a provision of the Scheme is inconsistent with a local law, the provision of the Scheme prevails.

1.9. Relationship with other Schemes

At the gazettal date, there are no other Schemes of the local government which apply to the Scheme area.

1.10. Relationship with the Metropolitan Region Scheme

The Scheme is complementary to the Metropolitan Region Scheme and the provisions of the Metropolitan Region Scheme continue to have effect.

Note: The authority responsible for implementing the Metropolitan Region Scheme is the Western Australian Planning Commission ("Commission")

PART 2—LOCAL PLANNING POLICY FRAMEWORK

2.1. Scheme determinations to conform to Local Planning Strategy

Except to the extent that the Local Planning Strategy is inconsistent with the Scheme, determinations of the local government under the Scheme are to be consistent with the Local Planning Strategy.

2.2. Local Planning Policies

The local government may prepare a Local Planning Policy in respect of any matter related to the planning and development of the Scheme area so as to apply—

- (a) generally or for a particular class or classes of matters; and
- (b) throughout the Scheme area or in one or more parts of the Scheme area,

and may amend or add to or rescind the Policy.

2.3. Relationship of Local Planning Policies to Scheme

2.3.1. If a provision of a Local Planning Policy is inconsistent with the Scheme, the Scheme prevails.

2.3.2. A Local Planning Policy is not part of the Scheme and does not bind the local government in respect of any application for planning approval but the local government is to have due regard to the provisions of the Policy and the objectives which the Policy is designed to achieve before making its determination.

Note: Local Planning Policies are guidelines used to assist the local government in making decisions under the Scheme. Although Local Planning Policies are not part of the Scheme they must be consistent with, and cannot vary, the intent of the Scheme provisions, including the Residential Design Codes. In

considering an application for planning approval, the local government must have due regard to relevant Local Planning Policies as required under clause 10.2.

2.4. Procedure for making or amending a Local Planning Policy

2.4.1. If the local government resolves to prepare a Local Planning Policy, the local government—

- (a) is to publish a notice of the proposed Policy once a week for two consecutive weeks in a newspaper circulating in the Scheme area, giving details of—
 - (i) where the draft Policy may be inspected;
 - (ii) the subject and nature of the draft Policy; and
 - (iii) in what form and during what period (being not less than 21 days from the day the notice is published) submissions may be made; and
- (b) may publish a notice of the proposed Policy in such other manner and carry out such other consultation as the local government considers appropriate.

2.4.2. After the expiry of the period within which submissions may be made, the local government is to—

- (a) review the proposed Policy in the light of any submissions made; and
- (b) resolve to adopt the Policy with or without modification, or not to proceed with the Policy.

2.4.3. If the local government resolves to adopt the Policy, the local government is to—

- (a) publish notice of the Policy once in a newspaper circulating in the Scheme area; and
- (b) if, in the opinion of the local government, the Policy affects the interests of the Commission, forward a copy of the Policy to the Commission.

2.4.4. A Policy has effect on publication of a notice under clause 2.4.3.(a).

2.4.5. A copy of each Local Planning Policy, as amended from time to time, is to be kept and made available for public inspection during business hours at the offices of the local government.

2.4.6. Clauses 2.4.1. to 2.4.5., with any necessary changes, apply to the amendment of a Local Planning Policy.

2.5. Revocation of Local Planning Policy

A Local Planning Policy may be revoked by—

- (a) the adoption by a local government of a new Policy under clause 2.4 that is expressed to supersede the existing Local Planning Policy; or
- (b) publication of a notice of revocation by the local government once a week for two consecutive weeks in a newspaper circulating in the Scheme area.

PART 3—RESERVES

3.1. Reserves

Certain lands within the Scheme area are classified as—

- (a) Regional Reserves; or
- (b) Local Reserves.

3.2. Regional Reserves

3.2.1. The lands shown as “Metropolitan Region Scheme Reserves” on the Scheme Map are lands reserved under the Metropolitan Region Scheme and are shown on the Scheme Map for the purposes of the Town Planning Act. These lands are not reserved under the Scheme.

3.2.2. The approval of the local government under the Scheme is not required for the commencement or carrying out of any use or development on a Regional Reserve.

Note: The provisions of the Metropolitan Region Scheme continue to apply to such Reserves and approval is required under the Metropolitan Region Scheme from the Commission for the commencement or carrying out of any use or development on a Regional Reserve unless specifically excluded by the Metropolitan Region Scheme.

3.3. Local Reserves

“Local Reserves” are delineated and depicted on the Scheme Map according to the legend on the Scheme Map.

3.4. Use and development of Local Reserves

3.4.1. A person must not—

- (a) use a Local Reserve; or
- (b) commence or carry out development on a Local Reserve,

without first having obtained planning approval under Part 9 of the Scheme.

3.4.2. In determining an application for planning approval the local government is to have due regard to—

- (a) the matters set out in clause 10.2; and
- (b) the ultimate purpose intended for the Reserve.

3.4.3. In the case of land reserved for the purposes of a public authority, the local government is to consult with that authority before determining an application for planning approval.

PART 4—ZONES AND THE USE OF LAND**4.1. Zones**

4.1.1. The Scheme area (other than Regional Reserves and Local Reserves) is classified into the zones shown on the Scheme Map.

4.1.2. The zones are delineated and depicted on the Scheme Map according to the legend on the Scheme Map.

4.2. Objectives of the zones

4.2.1. The objectives of the Residential zone are to—

- (a) encourage residential development only which is compatible with the scale and amenity of the locality;
- (b) provide the opportunity for a variety and choice in housing in specified residential areas;
- (c) allow for some non-residential uses where they are compatible with the amenity of residential localities; and
- (d) encourage the retention of local facilities and services within specified residential areas for the convenience of the local community.

4.2.2. The objectives of the Town Centre zone are to—

- (a) improve the amenity and function of the Cottesloe town centre;
- (b) provide for a wide range of land uses, including shops, offices, entertainment, health, and community facilities and services, consistent with the district-serving role of the centre;
- (c) provide the opportunity for residential uses and development within the town centre; and
- (d) give consideration to the maintenance and enhancement of important views to and from public places as a contributor to the character and amenity of the locality and the district overall.

4.2.3. The objectives of the Foreshore Centre zone are to—

- (a) provide the opportunity for a wide range of residential and community uses and a limited range of commercial, shopping, tourism, recreational and entertainment uses which are compatible with the character and amenity of the beachfront locality;
- (b) ensure that the predominantly residential and recreational nature of the locality is maintained;
- (c) ensure that the urban character, aesthetics and amenity of the locality are not compromised by inappropriate land use or development; and
- (d) give consideration to the maintenance and enhancement of important views to and from public places as a contributor to the character and amenity of the locality and the district overall.

4.2.4. The objectives of the Restricted Foreshore Centre zone are to—

- (a) provide the opportunity for a range of residential and a limited range of low-key non-residential uses which are compatible with the character and amenity of the beachfront locality and surrounding residential development;
- (b) ensure that the predominantly residential and recreational nature of the locality is maintained;
- (c) ensure that the urban character, aesthetics, amenity and residential streetscape quality of the locality are not compromised by inappropriate land use or development; and
- (d) give consideration to the maintenance and enhancement of important views to and from public places as a contributor to the character and amenity of the locality and the district overall.

4.2.5. The objectives of the Local Centre zone are to—

- (a) provide the opportunity for small-scale shops, facilities and services for the community within the surrounding residential locality;
- (b) encourage development which is compatible with the scale and amenity of the surrounding residential locality;
- (c) ensure that adequate provision is made for access and parking facilities without causing undue amenity effects on the surrounding residential locality;
- (d) allow for a mix of residential and non-residential uses provided the ground floor of existing buildings or proposed development is excluded from residential use; and
- (e) give consideration to the maintenance and enhancement of important views to and from public places as a contributor to the character and amenity of the locality and the district overall.

4.2.6. The objectives of the Hotel zone are to—

- (a) ensure that the hotel recreational, entertainment, accommodation and service uses are compatible with the amenity of the surrounding locality;
- (b) support the heritage provisions of the Scheme applicable to any land or buildings in the zone; and
- (c) give consideration to the maintenance and enhancement of important views to and from public places as a contributor to the character and amenity of the locality and the district overall.

4.2.7. The objectives of the Residential Office zone are to—

- (a) provide the opportunity for offices in a residential environment close to the town centre;
- (b) provide a transition in land use from the Town Centre zone to the Residential zone in the surrounding locality;
- (c) provide the opportunity for office development that is residential in appearance and scale so as to complement the use and development of the surrounding residential locality.

4.2.8. The objectives of the Development zone are to—

- (a) provide for detailed planning to guide the use and development of land or buildings that are of a size, location, nature, character or significance warranting a comprehensive, coordinated and integrated approach to planning and design;
- (b) ensure that land use and development within the zone is compatible with the amenity of the surrounding locality;
- (c) ensure that any development does not unduly adversely affect the amenity of the adjoining and surrounding properties or locality, including by reason of height, built form, overshadowing, traffic, parking or other relevant aspects;
- (d) allow for land use and development to contribute to the provision or enhancement of community facilities and services and to the public domain; and
- (e) give consideration to the maintenance and enhancement of important views to and from public places as a contributor to the character and amenity of the locality and the district overall.

4.2.9. The objective of the Place of Public Assembly zone is to provide for a limited range of community-related uses including churches, halls or grounds of a nature and scale compatible with surrounding residential use and amenity.

4.3. Zoning Table

4.3.1. The 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.

4.3.2. 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 providing the use complies with the relevant development standards and the requirements of the Scheme;
- 'D' means that the use is not permitted unless the local government has exercised its discretion by granting planning approval as required by clause 4.8;
- 'A' means that the use is not permitted unless the local government has exercised its discretion by granting planning approval as required by clause 4.8 after giving notice in accordance with clause 9.4; and
- 'X' means a use that is not permitted by the Scheme.

4.4. Interpretation of the Zoning Table

4.4.1. Where a particular use falls within the definition of a general use-class and a more specific use-class mentioned in the Zoning Table, it is deemed to be excluded from the more general use-class.

4.4.2. Where a combination of uses exist or is proposed, each use is to be defined and classified by its specific use-class when determining its land use permissibility.

4.4.3. If it is proposed to carry out on land any use that does not fall within the definition of any use-class mentioned in the Zoning Table, and that cannot reasonably be determined as falling within the type, class or genus of activity of any other use class, the local government may—

- (a) determine that the use is consistent with the objectives of the particular zone and is therefore permitted;
- (b) determine that the use may be consistent with the objectives of the particular zone and thereafter follow the notice procedures of clause 9.4 in considering an application for planning approval; or
- (c) determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.

4.5. Additional uses

Despite anything contained in the Zoning Table, the land specified in Schedule 2 may be used for the specific use or uses that are listed, in addition to any uses permissible in the zone in which the land is situated, subject to the conditions set out in Schedule 2 with respect to that land.

Note: An additional use is a land use that is permitted on a specific portion of land in addition to the uses already permissible in that zone that applies to the land.

4.6. Restricted uses

At the Gazettal date there are no Restricted Uses that apply to the Scheme.

Note: A restricted use is the only use or uses that are permitted on a specific portion of land and other uses that would otherwise be permissible in the zone are not permitted.

4.7. Special use zones

At the Gazettal date there are no Special Use Zones that apply to the Scheme.

Note: Special use zones apply to special categories of land use which do not comfortably sit within any other zone in the Scheme.

4.8. Uses requiring planning approval

Subject to clause 4.9 the commencement or change of use of land zoned or reserved under the Scheme requires the prior approval of the local government. A person must not commence or carry out any use or change of use of land without first having applied for and obtained the planning approval of the local government under Part 9.

Note: The planning approval of the local government is required for both the development of land (subject of Part 8) and the use of land (subject of this Part).

4.9. Uses not requiring planning approval

A change in the use of land from one use to another is permitted if—

- (a) the local government has exercised its discretion by granting of planning approval;
- (b) the change is to a use which is designated with the symbol 'P' in the cross reference to that zone in the Zoning Table and the proposed use complies with all the relevant development standards and any requirements of the Scheme;
- (c) the change is an extension of a use within the boundary of the lot which does not change the predominant use of the lot; or
- (d) the change is to an incidental use that does not change the predominant use of the land.

Notes: 1. *The planning approval of the local government is required for the development of land in addition to any approval granted for the use of land. In normal circumstances one application is made for both the use and development of land.*

2. *The local government will not refuse a 'P' use because of the unsuitability of the use for the zone but may impose conditions on the use of the land to comply with any relevant development standards or requirements of the Scheme, and may refuse or impose conditions on any development of the land.*

3. *In considering a 'D' or 'A' use, the local government will have regard to the matters set out in clause 10.2.*

4. *The local government must refuse to approve any 'X' use of land. Approval to an 'X' use of land may only proceed by way of an amendment to the Scheme.*

4.10. Continued use and development—non-conforming uses

Except as otherwise provided in the Scheme, no provision of the Scheme is to be taken to prevent—

- (a) the continued use of any land for the purpose for which it was being lawfully used immediately prior to the Gazettal date (hereinafter referred to as a non-conforming use);
- (b) the carrying out of any development on that land for which, immediately prior to the Gazettal date, an approval or approvals, lawfully required to authorise the development to be carried out, were duly obtained and are current; or
- (c) subject to clause 11.2.1, the continued display of advertisements which were lawfully erected, placed or displayed prior to the Gazettal date.

Note: 1. *"Land" has the same meaning as in the Town Planning Act and includes houses, buildings and other works and structures.*

2. *"Non-conforming use" has the same meaning as in the Town Planning Act.*

4.11. Extension of or change to a non-conforming use

4.11.1. A person must not—

- (a) alter or extend a non-conforming use;
- (b) erect, alter or extend a building used in conjunction with or in furtherance of a non-conforming use; or
- (c) change the use of land from an existing non-conforming use to another use, other than as set out in clause 4.9(a),

without first having applied for and obtained planning approval under the Scheme.

4.11.2. An application for planning approval required by this clause is to be advertised in accordance with clause 9.4.

4.11.3. Despite anything contained in the Zoning Table, the local government may approve the change of use of land from an existing non-conforming use to a use that is not permitted under this Scheme, if the local government considers that the proposed use is less detrimental to the amenity of the locality than the existing non-conforming use and is closer to the intent of the zone.

4.11.4. In determining an application for a change of use of land from an existing non-conforming use to a use that is not permitted under this Scheme, or to alter or extend a non-conforming use, or to erect, alter or extend a building used in conjunction with or in furtherance of a non-conforming use, the local government is to have regard to the objectives of the zone in which the use or building is located and is to determine the development requirements applicable to the land.

4.12. Termination of a non-conforming use

4.12.1. Where a non-conforming use of any land has been discontinued for a period of six months the land must not be used after that period otherwise than in conformity with the provisions of the Scheme.

4.12.2. The local government may effect the termination of a non-conforming use by the purchase of the land, or by the payment of compensation to the owner or occupier or to both the owner and occupier of that land, and may enter into an agreement with the owner for that purpose.

Note: Section 190 and 191 of the Town Planning Act enables the local government to purchase, or, with the consent of the Governor, compulsorily acquire land for the purpose of a local planning scheme, subject to Part 9 of the Land Administration Act 1997, that section and the Scheme.

4.13. Destruction of non-conforming use buildings

If a building used for a non-conforming use is destroyed to 75 per cent or more of its value, the building is not to be repaired, 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 local government.

4.14. Deeming provision

For the purposes of section 174(i)(c) of the Town Planning Act, the requirement to obtain planning approval under clause 4.11 or clause 4.13 above is deemed not to prohibit wholly or partially the continuance of the non-conforming use or the erection, alteration or extension on the land of any building in connection with or in furtherance of any non-conforming use.

4.15. Special Provisions

Despite any other provision of the Scheme, the land specified in Schedule 12 shall be developed in accordance with the special provisions set out in Schedule 12 with respect to that land.

Note: Where a scheme amendment involves incorporation into the scheme of special provisions for the development of particular land, they are to be listed in this schedule as tied to that land.

TABLE 1—ZONING TABLE**KEY TO COLUMNS—**

| | | | | | |
|----|--|---|--------------------|---|--------------------------|
| 1A | RESIDENTIAL R20, R25 and R30 | 4 | HOTEL | 8 | PLACE OF PUBLIC ASSEMBLY |
| 1B | RESIDENTIAL R35, R40, R50, R60, and R100 | 5 | TOWN CENTRE | 9 | DEVELOPMENT |
| 2 | FORESHORE CENTRE | 6 | LOCAL CENTRE | | |
| 3 | RESTRICTED FORESHORE CENTRE | 7 | RESIDENTIAL OFFICE | | |

| USE CLASSES | 1A | 1B | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|-------------------------------|----|----|---|---|---|---|---|---|---|---|
| 1. Amusement Parlour | X | X | D | X | D | D | X | X | X | * |
| 2. Bed and Breakfast | A | A | P | A | X | D | D | D | X | * |
| 3. Betting Agency | X | X | A | X | P | A | D | X | X | * |
| 4. Caretaker's Dwelling | D | D | D | D | D | D | D | D | A | * |
| 5. Car Park | A | A | D | A | D | A | D | D | A | * |
| 6. Child care premises | A | A | D | X | X | D | D | A | X | * |
| 7. Cinema / Theatre | X | X | D | X | X | D | X | X | X | * |
| 8. Civic Use | A | A | D | D | X | D | D | D | X | * |
| 9. Club Premises | X | X | D | X | X | A | X | A | X | * |
| 10. Community Purpose | A | A | D | A | D | D | D | A | D | * |
| 11. Consulting Rooms | A | A | D | X | X | D | D | A | X | * |
| 12. Convenience Store | X | X | P | A | X | P | P | A | X | * |
| 13. Corrective Institution | X | X | X | X | X | X | X | X | X | * |
| 14. Dry Cleaning Premises | X | X | D | X | D | D | D | X | X | * |
| 15. Educational Establishment | A | A | D | X | X | D | D | A | X | * |
| 16. Exhibition Centre | X | X | D | D | D | D | D | A | X | * |
| 17. Family Day Care | P | P | X | A | X | P | P | P | X | * |
| 18. Fast Food Outlet | X | X | D | X | X | D | D | X | X | * |
| 19. Fuel Depot | X | X | X | X | X | X | X | X | X | * |
| 20. Funeral Parlour | X | X | X | X | X | D | X | X | X | * |
| 21. Garden Centre | X | X | X | X | X | D | D | X | X | * |
| 22. Grouped Dwelling | P | P | D | D | X | D | D | D | X | * |
| 23. Home Business | A | A | P | P | X | P | P | A | X | * |

| USE CLASSES | 1A | 1B | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|---|----|----|---|---|---|---|---|---|---|---|
| 24. Home Occupation | A | A | P | P | X | P | P | P | X | * |
| 25. Home Office | P | P | P | P | X | P | P | P | X | * |
| 26. Home Store | A | A | P | P | X | P | P | A | X | * |
| 27. Hospital | X | A | X | X | X | D | D | D | X | * |
| 28. Hotel | X | X | D | X | P | A | X | X | X | * |
| 29. Industry—Cottage | A | A | D | D | X | D | D | A | X | * |
| 30. Industry—Extractive, General and Noxious | X | X | X | X | X | X | X | X | X | * |
| 31. Industry—Light | X | X | X | X | X | A | X | X | X | * |
| 32. Industry—Service | X | X | D | D | X | D | A | A | X | * |
| 33. Market | X | X | A | X | A | A | X | X | X | * |
| 34. Medical Centre | X | X | D | X | X | D | X | A | X | * |
| 35. Motel | X | X | D | D | D | D | X | X | X | * |
| 36. Motor Vehicle, Boat or Caravan Sales | X | X | X | X | X | D | X | X | X | * |
| 37. Motor Vehicle Repair | X | X | X | X | X | A | X | X | X | * |
| 38. Multiple Dwelling | D | P | D | D | X | D | D | D | X | * |
| 39. Night Club | X | X | X | X | X | A | X | X | X | * |
| 40. Office | X | X | D | D | D | P | D | P | X | * |
| 41. Place of Worship | A | A | D | D | X | D | D | A | P | * |
| 42. Reception Centre | X | X | D | D | D | D | X | X | X | * |
| 43. Recreation—Private | X | X | D | D | X | D | A | X | X | * |
| 44. Residential Building | X | A | D | X | D | D | X | A | X | * |
| 45. Restaurant | X | X | D | D | D | D | D | X | X | * |
| 46. Restricted Premises | X | X | X | X | X | A | X | X | X | * |
| 47. Service Station | X | X | X | X | X | D | D | X | X | * |
| 48. Serviced Apartment | X | A | D | D | D | D | X | D | X | D |
| 49. Shop | X | X | D | D | D | P | P | X | X | * |
| 50. Short-stay accommodation | X | X | D | D | D | D | X | A | X | * |
| 51. Showroom | X | X | X | X | X | D | X | X | X | * |
| 52. Single House | P | P | X | P | X | P | X | P | X | * |
| 53. Small Bar | X | X | D | D | D | D | D | X | X | D |
| 54. Storage | X | X | X | X | X | D | D | X | X | * |
| 55. Tavern | X | X | A | X | P | D | X | X | X | * |
| 56. Telecommunications Infrastructure | D | D | D | D | D | D | D | D | A | * |
| 57. Trade Display | X | X | X | X | X | D | X | X | X | * |
| 58. Veterinary Centre | X | X | D | X | X | D | D | X | X | * |
| 59. Veterinary Hospital | X | X | X | X | X | X | X | X | X | * |
| 60. Warehouse | X | X | X | X | X | D | X | X | X | * |

*Development and use of land is to be in accordance with an approved Structure Plan prepared and adopted under clause 6.2.

PART 5—GENERAL DEVELOPMENT REQUIREMENTS

5.1. Compliance with development requirements

Any development of land is to comply with the provisions of the Scheme and unless otherwise provided for in the Scheme, all development shall comply with the requirements specified in Table 2—Development Requirements.

Note: Development in the Development Zone is subject to the requirements in Schedule 14 and any approved Structure Plan, as required by clause 6.2.

5.2. Residential Design Codes

5.2.1. A copy of the Residential Design Codes is to be kept and made available for public inspection at the offices of the local government.

5.2.2. Unless otherwise provided for in the Scheme, the development of land for any of the residential purposes dealt with by the Residential Design Codes is to conform to the provisions of those Codes.

5.2.3. The Residential Design Codes density applicable to land within the Scheme area is to be determined by reference to the Residential Design Codes density number superimposed on the

particular areas contained within the borders shown on the Scheme Map or where such an area abuts another area having a Residential Design Code density, as being contained within the area defined by the centre-line of those borders.

Note: The density and development provisions of the Residential Design Codes do not apply to short-stay accommodation (being for holiday or other temporary accommodation purposes), including hotel, motel or other types of non-permanent residential short-stay accommodation use.

5.3. Special application of Residential Design Codes

5.3.1. The following provisions operate as exclusions and variations to the Residential Design Codes and apply notwithstanding any provisions to the contrary in the Residential Design Codes.

5.3.2. In this clause “**Residential Development**” means any development for residential purposes dealt with by the Residential Design Codes.

5.3.3. Building Height

Despite anything contained in the Residential Design Codes to the contrary, the building height for Residential Development shall comply with the provisions of clause 5.7.

5.3.4. Development in certain areas abutting Stirling Highway

Despite anything contained in the Residential Design Codes to the contrary, Residential Development in the areas coded R30/60 on the Scheme Map abutting Stirling Highway shall be in accordance with the R30 development standards unless the Residential Development—

- (a) has no direct vehicular access to and from Stirling Highway; and
- (b) is a comprehensive redevelopment of more than one lot abutting Stirling Highway,

in which case the local government may permit development in accordance with the R60 development standards.

5.3.5. Redevelopment of existing grouped dwellings or multiple dwellings

Despite anything contained in the Residential Design Codes and notwithstanding the density codes shown on the Scheme Map, existing grouped dwellings or multiple dwellings that exceed a density code shown on the Scheme Map at the Gazettal date of the Scheme can, with the approval of the local government, be redeveloped at a density higher than that shown on the Scheme Map, equal to, but not exceeding the existing built density, subject to the proposed development—

- (a) complementing the character of the streetscape;
- (b) not detrimentally increasing the mass, scale or surface area of the development relative to existing development on surrounding properties;
- (c) resulting in improved landscaping of the land;
- (d) providing adequate and safe means of vehicular and pedestrian access to the land; and
- (e) providing an adequate number of car parking spaces on the land.

Furthermore, and notwithstanding any other clause in this Scheme, the proposed development may be considered for additional building height (maximum one additional storey) over the prevailing permissible building height for the locality where, in the opinion of the local government, the original number of dwellings (and their replacement plot ratio) cannot be appropriately accommodated on the lot without an increase in height.

5.3.6. Mixed-use development

Despite anything contained in the Residential Design Codes to the contrary, where development which involves both Residential Development and development other than Residential Development (“Non-Residential Development”) is proposed in—

- (a) the Residential Office or Restricted Foreshore Centre zones, the applicable requirements shall be as specified for the Non-Residential Development in Table 2;
- (b) the Town Centre or Local Centre zones, the applicable requirements shall be as specified for the Non-Residential Development in Table 2; or
- (c) a Development zone, the applicable requirements shall be as specified in Schedule 14 and, if applicable, Schedule 15 and any structure plan in accordance with clause 6.2.

5.3.7. Front setback

Despite anything contained in the Residential Design Codes to the contrary, in the case of areas with a residential density code of R30, the local government may require an R20 front setback of 6m to be applied, for the preservation of streetscapes, view corridors and amenity.

5.4. Restrictive Covenants

5.4.1. Subject to clause 5.4.2, a restrictive covenant affecting any land in the Scheme Area by which, or the effect of which is that, the number of residential dwellings which may be constructed on the land is limited or restricted to less than the provisions of the Residential Design Codes which apply under the Scheme, those provisions are hereby extinguished or varied to the extent that it is inconsistent with the provisions of the Residential Design Codes which apply under the Scheme.

5.4.2. Where clause 5.4.1 operates to extinguish or vary a restrictive covenant, the local government is not to grant planning approval to a development of the land which would, but for the operation of clause 5.4.1 have been prohibited, unless the application for planning approval has been dealt with as an ‘A’ use and has complied with the notice requirements of clause 9.4.

5.5. Variations to site and development standards and requirements

5.5.1. Except for residential development, if a development is the subject of an application for planning approval and does not comply with a standard or requirement prescribed under the Scheme with respect to that development, the local government may, despite the non-compliance, approve the application unconditionally or subject to such conditions as the local government thinks fit.

5.5.2. An application for planning approval requiring the exercise of the discretion under clause 5.5.1 above is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any standard or requirement as the local government thinks fit.

5.5.3. In considering an application for planning approval under this clause, the local government is to have regard to any submissions received in accordance with the advertising of the application under clause 9.4.

5.5.4. The power conferred by this clause may only be exercised—

- (a) subject to the exclusions, limitations, maximums and other provisions set out in Schedule 13;
- (b) if the local government is satisfied that approval of the proposed development would be appropriate having regard to the matters set out in clause 10.2; and
- (c) if the local government is satisfied that the non-compliance will not have an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.

5.6. Environmental conditions

5.6.1. Environmental conditions to which the Scheme or any amendment to the Scheme is subject are incorporated into the Scheme by Schedule 10 of the Scheme.

5.6.2. Where appropriate, the environmental conditions are indicated on the Scheme Map by the symbol “EC” to indicate that environmental conditions apply to the land.

5.6.3. The local government is to—

- (a) maintain a register of all relevant statements published under sections 48F and 48G of the Environmental Protection Act; and
- (b) make the statements available for public inspection at the offices of the local government.

Note: Environmental conditions are those required to be incorporated into a Scheme or an amendment to a Scheme following assessment under the Environmental Protection Act 1986.

5.7. Building height

5.7.1. In this clause—

“**Building Height**” means the maximum vertical distance between any point of natural ground level and the uppermost part of the building directly above that point (roof ridge, parapet, or wall), excluding minor projections above that point.

“**Storey**” means that part of a building between the top of any floor and the top of the floor next above, or if there is no floor above, between the top of the floor and the ceiling above it; but does not include any undercroft space designed or used for a lift shaft, stairway, meter room, bathroom, shower room, laundry, water closet, other sanitary compartment, cellar, corridor, hallway, lobby, the parking of vehicles, storeroom without windows or workshop appurtenant to a car parking area, where that floor-to-floor or floor to-ceiling-space as defined herein is not higher than 1 metre above the footpath level measured at the centre of the land along the boundary to which the space has frontage, or where that floor-to-floor or floor to-ceiling-space as defined herein is below the level of the natural ground level measured at the centre of the site as determined by the local government.

“**Wall Height**” means the vertical distance between—

- (a) any point of natural ground level; and
- (b) the level of the roof or the top of a parapet from that point in accordance with Figures 1, 2, 3 or 4 in Schedule 11.

5.7.2. All buildings shall comply with each of the following maximum heights, as applicable to the building—

- | | |
|-------------------------|---|
| (a) 1 storey | (i) <i>Building Height—6.0 metres maximum height.</i> |
| | (ii) <i>Wall Height (to level of roof)—3.0 metres maximum height.</i> |
| | (iii) <i>Wall Height (to top of a parapet)—4.0 metres maximum height.</i> |
| (b) 2 storeys | (i) <i>Building Height—8.5 metres maximum height.</i> |
| | (ii) <i>Wall Height (to level of roof)—6.0 metres maximum height.</i> |
| | (iii) <i>Wall Height (to top of a parapet)—7.0 metres maximum height.</i> |
| (c) More than 2 storeys | (i) <i>Building Height—8.5 metres, plus 3.0 metres for each storey more than 2, maximum height.</i> |
| | (ii) <i>Wall Height (to level of roof)—6.0 metres, plus 3.0 metres for each storey more than 2, maximum height.</i> |
| | (iii) <i>Wall Height (to top of a parapet)—3.0 metres for each storey up to the highest storey, plus 4.0 metres for the highest storey, maximum height.</i> |

5.7.3. Unless otherwise provided for in the Scheme, all development shall comply with the requirements of Table 2 in relation to height.

Note: Development in the Development Zone is subject to the requirements in Schedule 14 and any approved Structure Plan, as required by clause 6.2.

5.7.4. In the Residential Zone the local government may permit a third storey to be located within the roof space of a dwelling, provided that the development complies with the maximum wall and roof height requirements stipulated in clause 5.7.2 and also provided that, in the opinion of the local government, the dwelling will retain the appearance of a two-storey dwelling and will not unduly adversely affect local amenity.

5.8. Vehicle parking requirements—Table 3

5.8.1. Unless otherwise provided for in the Scheme, where land is to be used for a use listed in Table 3, the car parking spaces of the number specified in Table 3 shall be provided.

5.8.2. In the case of a use not listed in Table 3, car parking spaces shall be provided of a number determined by the local government considering the likely demand for parking by the proposed use having regard to the nature of the proposed use, the likely volumes of goods or materials and the numbers of people moving to or from the land, and the likelihood of traffic congestion on roads or in public places in the locality.

5.8.3. In the Town Centre zone, where the use of an existing building is proposed to change, the local government may permit such change of use notwithstanding that there may be insufficient parking on or near the land, subject to the local government having regard to the nature of the proposed use, the likely volumes of goods or materials and the numbers of people moving to or from the land, and the likelihood of traffic congestion on roads or in public places in the locality.

In the Town Centre, Hotel, Foreshore Centre, Restricted Foreshore Centre and Development zones, when considering redevelopment or new development or change of use applications, the local government may credit towards the amount of parking required to be provided as specified in Table 3, the parking deficiency that an existing tourism use may have when calculated against those provisions applicable to the subject site and its uses under this Scheme, having regard to the size and shape of the land, the number and availability of parking spaces in the vicinity, the likelihood of traffic congestion, and the opportunity to improve the appearance, amenity, function and accessibility of the locality provided that the decision to credit such a deficiency is made in the context of a Local Planning Policy adopted pursuant to Part 2 of this Scheme. For the purposes of this clause, tourism use means the “Hotel”, “Motel”, “Short-stay Accommodation”, “Serviced Apartment”, “Small Bar” and “Restaurant” uses.

In the Town Centre, Foreshore Centre, Restricted Foreshore Centre, Hotel, Development and Residential Office zones, the local government may approve development without the required number of parking spaces being provided on the land, subject to the applicant making arrangements satisfactory to the local government enabling the local government to provide public off-street parking in the vicinity, equivalent to the deficiency in parking spaces; and in this regard the local government may accept cash in lieu of parking spaces on the land, subject to the following—

- (a) the cash in lieu payment shall not be less than the estimated cost to the owner or developer of—
 - (i) constructing the deficiency of parking spaces required by the Scheme as calculated by a qualified civil engineer and a quantity surveyor appointed by the local government; plus
 - (ii) the value of the area of land which would have been occupied by the parking spaces as estimated by a licensed valuer appointed by the local government;
- (b) the construction standard for the purposes of estimating the cash in lieu shall be assumed to be in the form of a decked structure (full civil works, including lighting, signage, line marking and landscaping), with the area of land deemed to have been occupied by a parking space for the purposes of this clause being 27 square metres per bay but only included in the calculation for the first level of parking; and
- (c) the cash in lieu payment shall only be accepted by the local government after a Local Planning Policy has been adopted under Part 2 of this Scheme which identifies the planned infrastructure including the land upon which it is planned to be located and the planned timing of expenditure of payments made under this clause;
- (d) payments made under this clause shall be paid into a special fund to be used to provide public parking stations or for the provision of public transportation infrastructure situated upon land under the control of the local government, in order to alleviate parking demand in the vicinity of the development;
- (e) in lieu of accepting a cash in lieu payment, the local government may accept a parcel of land of the equivalent value of the cash in lieu payment being transferred to it in freehold or as Crown Reserve or dedicated public road where such parcel has been identified for future public parking, and if such land is transferred as freehold then the land shall be always held by the local government for parking purposes unless otherwise agreed to by the Minister; and
- (f) any parking bays provided as a result of cash in lieu contributions shall remain available to the public.

5.8.4. In the Town Centre, Hotel, Foreshore Centre, and Development ‘A’ zones, the number of vehicle parking spaces determined to be required by the local government is to be provided as follows—

- (a) for Serviced Apartment, Short-stay Accommodation, Motel and Hotel room uses, the required vehicle parking spaces shall be provided on-site with all such spaces provided being for the

exclusive use of the occupiers of the accommodation units and key associated staff and being held in common and not permanently allocated to individual accommodation units or other tenancies.

5.8.5. Except in the Town Centre, Foreshore Centre, Restricted Foreshore Centre, Hotel or Development zones, in assessing the number of parking spaces required for a development containing more than one use, the local government may have regard to the likely patterns of usage, in particular the likely maximum use of the development at any time, and may reduce the number of parking bays required.

5.9. Development requirements—Local Planning Policy Design Guidelines

5.9.1. The local government may prepare and adopt Local Planning Policy Design Guidelines in accordance with the procedure outlined in clause 2.4, to augment the Scheme provisions with more detail to guide the planning and design of development proposals.

5.9.2. In considering an application for planning approval for land to which adopted Local Planning Policy Design Guidelines apply, the local government shall have regard to the Design Guidelines and shall use them as a basis on which to determine any variation allowed under the Scheme.

5.10. Filling of land and height of retaining walls

In considering applications for planning approval, in relation to the maximum permissible height of land fill and the height of retaining walls the following shall apply—

- (a) on level land, fill will not generally be permitted, as determined by the local government; and
- (b) on sloping land, the local government may permit fill and the construction of retaining walls, provided there is approximately equal cut and fill of the existing ground levels and the amenity of surrounding properties is not unduly adversely affected.

5.11. Local Centre zone—mixed-use development

In the Local Centre zone, in the case of mixed-use non-residential and residential development, the following shall apply—

- (a) for the Eric Street local centre, the ground floor shall be used only for shops, services or, subject to approval by the local government, offices or other uses, and not for any residential use; and
- (b) for the Railway Street local centre (near Swanbourne Station), the ground floor shall exclude residential use.

5.12. Residential development in Non-Residential zones

Residential development in the Town Centre, Foreshore Centre, Restricted Foreshore, Residential Office, Hotel and Development A zones shall be located such that no habitable rooms are located at ground level with street frontage; however, some residential development (such as parking, entrances, ancillary rooms and minor habitable rooms), may be permitted at ground level, either all or predominantly behind non-residential uses and with only incidental street frontage, subject to Council having regard to design requirements, the interfaces with non-residential or other residential development, and the primary objective of encouraging active, non-residential street frontages.

TABLE 2—DEVELOPMENT REQUIREMENTS

| ZONE | MAXIMUM PLOT RATIO | MAXIMUM SITE COVER | MINIMUM BOUNDARY SETBACKS | MAXIMUM HEIGHT (Refer clause 5.7.) |
|--|---|---|---|--|
| RESIDENTIAL | | | | |
| (a) Residential development | In accordance with Residential Design Codes | In accordance with Residential Design Codes | In accordance with Residential Design Codes | 2 storey |
| (b) Non-residential development | 0.5:1 | 50% | In accordance with Residential Design Codes | 2 storey |
| RESIDENTIAL OFFICE | | | | |
| (a) Residential development | 0.8:1 | In accordance with Residential Design Codes | In accordance with Residential Design Codes | 2 storey |
| (b) Non-residential development | 0.8:1 | 50% | In accordance with Residential Design Codes | 2 storey |
| TOWN CENTRE | | | | |
| (a) Land bounded by Jarrad Street, Stirling Highway and Brixton Street | 1.15:1 | 100% | In accordance with Design Guidelines | 3 storey and 11.5m, subject to no undue adverse impact on amenity and to design guidelines |

| ZONE | MAXIMUM PLOT RATIO | MAXIMUM SITE COVER | MINIMUM BOUNDARY SETBACKS | MAXIMUM HEIGHT (Refer clause 5.7.) |
|---|---|--|---|--|
| (b) Land with frontage to Napoleon Street | 1.0:1 | 100% | In accordance with Design Guidelines | 2 storey, provided that the second storey to the northern side of the street is set back to the satisfaction of the local government sufficient to avoid overshadowing of the footpath or alfresco areas on the southern side of the street. |
| (c) Remaining land | 1.15:1 | 100% | In accordance with Design Guidelines | 2 storey or 3 storey and 11.5m, subject to no undue adverse impact on amenity and to design guidelines |
| LOCAL CENTRE All development | 0.5, or as determined by the local government up to 0.8, subject to appropriate upper floor setbacks, building design and landscaping. | As determined by the local government. | Nil to street frontages for first storey of premises and as determined by the local government for all other setbacks at any level. | 9 metres |
| FORESHORE CENTRE | In accordance with Clause 6.4 and Schedule 15 | | | |
| RESTRICTED FORESHORE CENTRE All development | 0.8:1 | 75% | In accordance with Design Guidelines | 3 storey and— 9m to top of wall; 10m to top of parapet; and 11.5m to top of roof ridge |
| HOTEL | In accordance with Clause 6.4 and Schedule 15. | | | |
| DEVELOPMENT | Development in the Development Zone is subject to the requirements in Schedule 14 and any approved Structure Plan, as required by clause 6.2, and in the case of Development zone 'A' the requirements of clause 6.4 and Schedule 15. | | | |

TABLE 3—VEHICLE PARKING REQUIREMENTS

| | USE | NUMBER OF PARKING SPACES |
|----|--|--|
| 1. | Single House, Grouped Dwelling and Multiple Dwelling | In accordance with the Residential Design Codes. |
| 2. | Residential Building | 1 space to each room used as a bedroom plus 1 space to every 20 square metres of gross floor area of service buildings. |
| 3. | Motel | 0.5 spaces for each motel unit, with all such spaces provided being for the exclusive use of the occupiers of the units and key staff, and being held in common and not permanently allocated to individual accommodation units or any other tenancy. |
| 4. | Hotel and Tavern | 0.5 spaces to each hotel room, where all such spaces shall be for the exclusive use of the occupiers of the hotel rooms and key accommodation staff, being held in common and not permanently allocated to any individual hotel room or other tenancy; plus 1 space to every 6.5 square metres of floor or ground area open to the public for the consumption of liquor. |
| 5. | Educational Establishment: | |
| | (a) Primary School | 1 space to each member of teaching staff. |
| | (b) Secondary School | 1 space to each member of teaching staff plus 1 to each rostered canteen helper plus 1 for every classroom and an additional space for every 25 students the school is designed to accommodate for the final 2 years of secondary education. |
| | (c) Other | To be determined by the local government. |
| 6. | Motor Vehicle Repair and Service Station | 2 spaces to each working bay plus 1 to each person employed on site. |
| 7. | Warehouse, Showroom and Storage | 1 space to every 90 square metres of gross floor area and 1 to every 100 square metres of open space used for display, except in the Town Centre zone where the requirement shall be 1 space to every 40 square metres of gross floor area and open space used for display. |
| 8. | Industry | 1 space to every 50 square metres of gross floor area. |

| | USE | NUMBER OF PARKING SPACES |
|----|--------------------------------------|---|
| 9. | Shop | 1 space to every 20 square metres of gross floor area. |
| 10 | Restaurant | 1 space to every 8 persons the development is designed to accommodate. |
| 11 | Office | 1 space to every 50 square metres of gross floor area. |
| 12 | Recreation— gymnasium/health club | 1 space to every 25 square metres of gross floor area. |
| 13 | Medical—consulting rooms | 1 space to every 25 square metres of gross floor area. |
| 14 | Medical—medical centre | 4 spaces to each practitioner. |
| 15 | Serviced Apartment | 0.5 spaces for each accommodation unit, with all such spaces provided being for the exclusive use of the occupiers of the units and key accommodation staff, and being held in common and not permanently allocated to individual units or any other tenancy. |
| 16 | Short-stay Accommodation | 0.5 spaces to every 8 persons the development is designed to accommodate. |
| 17 | Small Bar | 1 space to every 8 persons the development is designed to accommodate. |
| 18 | All other uses | To be determined by the local government considering the likely demand for parking by the proposed use having regard to the nature of the proposed use, the likely volumes of goods or materials and the numbers of people moving to or from the land, and the likelihood of traffic congestion on roads or in public places in the locality. |

- Notes:*
1. *Parking requirement is to be rounded to the nearest whole number.*
 2. *Council may formulate further provisions or policies for greater flexibility and discretion in car parking requirements, such as for cash in lieu, reciprocal parking, reduced commercial parking and so on.*

PART 6—SPECIAL CONTROL AREAS

6.1. Operation of special control areas

6.1.1. The following special control areas are shown on the Scheme Map—

- (a) Development Zones as shown on the Scheme Map coloured pale yellow with a red border with a corresponding letter A-E and as included in Schedule 14.
- (b) Special Control Area 1—Tukurua and Le Fanu House.
- (c) Special Control Area 2—Cottesloe Beach Hotel site, Ocean Beach Hotel site and Foreshore Centre Zone.

6.1.2. In respect of a special control area shown on a Scheme Map, 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.

6.1.3. In this Part “existing heritage buildings” means those buildings or structures contained within any heritage-listed place included within the special control area.

6.2. Development Zones

6.2.1. Interpretation

In clause 6.2, unless the context otherwise requires—

‘**Proponent**’ means any owner or owners of land to which the Proposed Structure Plan relates that has or have submitted that Proposed Structure Plan;

‘**Proposed Structure Plan**’ means a structure plan, which may apply to either a local area or a district, that has been prepared in accordance with clause 6.2.4; and

‘**Structure Plan**’ means a Proposed Structure Plan that has been both approved by the Commission and adopted by the local government under clause 6.2.5.15.

6.2.2. Purpose

- (a) To identify areas requiring comprehensive planning prior to subdivision, strata subdivision and development.
- (b) To coordinate subdivision, strata subdivision, land use and development in areas requiring comprehensive planning.
- (c) To facilitate appropriate use and development of land by providing guidance on the intentions and requirements for the land in the formulation and consideration of development proposals; and
- (d) To provide mechanisms to ensure comprehensive and detailed planning and design for the use and development of the land.

6.2.3. Planning requirements

6.2.3.1. The local government requires a Structure Plan for a Development Zone, or for any particular part or parts of a Development Zone, before recommending subdivision or approving development of land within the Development Zone.

6.2.3.2. Where a Structure Plan exists, the subdivision and development of land is to generally be in accordance with the Structure Plan and any associated provisions contained in Schedule 14.

6.2.3.3. The local government or the Commission may, as a condition of adopting or approving a Proposed Structure Plan, require a more detailed Structure Plan in future if the local government or the Commission considers that it will be necessary to provide additional detail to the proposals contained in the Proposed Structure Plan.

6.2.3.4. Schedule 14 describes the Development Zones in more detail and sets out the purpose and particular requirements that may apply to the Development Zones.

6.2.4. Preparation of Structure Plans

6.2.4.1. A Structure Plan may include plans and other documents.

6.2.4.2. A Structure Plan may, with the agreement of the local government, be prepared and implemented in stages.

6.2.4.3. A Structure Plan may relate to only part of a Development Zone.

6.2.4.4. A Structure Plan is to contain such detail as, in the opinion of the local government, is required to satisfy the planning requirements of the Development Zone, and, without limiting the generality of the foregoing, may include the following details—

- (a) the area to which the Structure Plan applies;
- (b) key opportunities and constraints of the Development Zone including landform, topography, hydrology, landscape, vegetation, soils, conservation and heritage values, ownership, land use, roads and public transport, and services;
- (c) the planning context for the Development Zone including the regional and neighbourhood structure, relevant strategies, Scheme provisions and policies and where appropriate, indicating how the Proposed Structure Plan is to be integrated into the surrounding area;
- (d) proposed major land uses, in particular, residential areas, public open space, school sites, civic and community uses, commercial uses (including the location and hierarchy of commercial centres), mixed use, industrial and mixed business uses;
- (e) the proposed indicative lot pattern and general location of any major buildings;
- (f) estimates of future lots, dwellings, population, employment and retail floor space;
- (g) provision for major infrastructure, including main drainage, sewerage, water supply and other key infrastructure services;
- (h) the proposed road network and hierarchy, public transport services, and bicycle and pedestrian networks;
- (i) the timeframe and staging of subdivision and development, and the method of implementation, including any proposals for funding by development contributions;
- (j) details as appropriate relating to—
 - (i) vehicular access and parking;
 - (ii) the location, orientation and design of buildings and the space between buildings;
 - (iii) conservation areas;
 - (iv) heritage places; and
 - (v) special development control provisions; and
- (k) such other information as may be required by the local government.

6.2.4.5. In considering a Proposed Structure Plan for part of a Development Zone, the local government may require the Proponent to demonstrate how planning for the subject land may be integrated with planning for the balance of the Development Zone, including how broad land uses, essential services, main movement systems and major conservation and recreation areas are to be integrated and provide information on the arrangements for implementation.

6.2.5. Adoption and approval of Structure Plans

6.2.5.1. A Proposed Structure Plan may be prepared by a Proponent or the local government. Where prepared by a Proponent, the Proposed Structure Plan is to be submitted to the local government.

6.2.5.2. Upon receiving a Proposed Structure Plan, the local government is to either—

- (a) determine that the Proposed Structure Plan is satisfactory for advertising;
- (b) determine that the Proposed Structure Plan is not to be advertised until further details have been provided or modifications undertaken; or
- (c) determine that the Proposed Structure Plan is not satisfactory for advertising and give reasons for this to the Proponent.

6.2.5.3. If within 60 days of receiving a Proposed Structure Plan for approval for advertising, or such longer period as may be agreed in writing between the Proponent and the local government, the local government has not made one of the determinations referred to in clause 6.2.5.2, the local government is deemed to have determined that the Proposed Structure Plan is not satisfactory for advertising.

6.2.5.4.

- (a) Where the Proponent is aggrieved by a determination of the local government under clause 6.2.5.2(b) or (c) or clause 6.2.5.3, the Proponent may request the local government by notice in writing to forward the Proposed Structure Plan to the Commission.
- (b) Within 21 days of receiving a notice from the Proponent under clause 6.2.5.4(a), the local government is to forward to the Commission—
 - (i) a copy of the Proposed Structure Plan;

- (ii) details of the local government's determination including any modifications to the Proposed Structure Plan required by the local government; and
 - (iii) any other information the local government considers may be relevant to the Commission's consideration of approval of the Proposed Structure Plan for advertising.
- (c) Upon receiving a Proposed Structure Plan in accordance with clause 6.2.5.4(b), the Commission is to make one of the determinations referred to in clause 6.2.5.2 and advise the local government and the Proponent accordingly.
- (d) If the Commission requires modifications to the Proposed Structure Plan, the Commission is to consult with the local government prior to making its determination under clause 6.2.5.4(c).
- (e) If within 60 days of receiving a Proposed Structure Plan under clause 6.2.5.4(b), or such longer period as may be agreed in writing between the Proponent and the Commission, the Commission has not made one of the determinations referred to in clause 6.2.5.2, the Commission is deemed to have determined that the Proposed Structure Plan is not satisfactory for advertising.

6.2.5.5. Where the local government, or the Commission under clause 6.2.5.4, has determined that the Proposed Structure Plan is satisfactory for advertising, the local government is to—

- (a) advertise, or require the Proponent to advertise, the Proposed Structure Plan for public inspection by one or more of the methods of advertising proposals for development as set out in clause 9.4 of the Scheme; and
- (b) give notice or require the Proponent to give notice in writing to—
 - (i) all landowners affected by the Proposed Structure Plan; and
 - (ii) such public authorities and other persons as the local government nominates, and such advertisement and notice are to explain the scope and purpose of the Proposed Structure Plan, when and where it may be inspected, and invite submissions to the local government by a specified date being at least 21 days from the date of the notice and advertisement.

6.2.5.6. Within 7 days of determining that a Proposed Structure Plan is satisfactory for advertising, the local government is to forward a copy of the Proposed Structure Plan to the Commission.

6.2.5.7. The local government is to consider all submissions received and within 60 days of the latest date specified in the notice under clause 6.2.5.5 is to either—

- (a) adopt the Proposed Structure Plan with or without modifications; or
- (b) refuse to adopt the Proposed Structure Plan and give reasons for this to the Proponent.

6.2.5.8. If within the 60 day period, or such further time as may be agreed in writing between the Proponent and the local government, the local government has not made one of the determinations referred to in clause 6.2.5.7, the local government is deemed to have refused to adopt the Proposed Structure Plan.

6.2.5.9. Within 21 days of the local government making its determination under clause 6.2.5.7, or deemed refusal under clause 6.2.5.8, the local government is to forward to the Commission—

- (a) a summary of all submissions and comments received by the local government in respect of the Proposed Structure Plan, and the local government's decisions or comments in relation to these;
- (b) the local government's recommendation to the Commission to approve, modify or refuse to approve the Proposed Structure Plan; and
- (c) any other information the local government considers may be relevant to the Commission's consideration of the Proposed Structure Plan.

6.2.5.10. The Commission is to either—

- (a) approve the Proposed Structure Plan with or without modifications; or
- (b) refuse to approve the Proposed Structure Plan and give reasons for its decision to the Proponent and the local government.

6.2.5.11. If within 60 days of receiving the information referred to in clause 6.2.5.9, or such further time as may be agreed in writing between the Proponent and the Commission, the Commission has not made one of the determinations referred to in clause 6.2.5.10, the Commission is deemed to have refused to approve the Proposed Structure Plan.

6.2.5.12. If the Commission approves the Proposed Structure Plan, it is to notify the local government and the Proponent of its decision within 14 days of the date of the Commission's decision.

6.2.5.13. If the Commission requires modifications to the Proposed Structure Plan, the Commission is to consult with the local government prior to approving the Proposed Structure Plan under clause 6.2.5.10.

6.2.5.14. If the local government, following consultation with the Commission, is of the opinion that any modification to the Proposed Structure Plan is substantial, the local government may—

- (a) re-advertise the Proposed Structure Plan; or
- (b) require the Proponent to re-advertise the Proposed Structure Plan and, thereafter, the procedures set out in clause 6.2.5.5 onwards are to apply.

6.2.5.15. As soon as practicable after receiving notice of the approval of the Proposed Structure Plan by the Commission, the local government is to adopt the Proposed Structure Plan and forward a copy of the Structure Plan to—

- (a) the Proponent;
- (b) the Commission; and
- (c) any other appropriate person or public authority which the local government thinks fit.

6.2.5.16. A Structure Plan 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.

6.2.6. Change or Departure from Structure Plan

6.2.6.1. The local government may adopt a minor change to or departure from a Structure Plan if, in the opinion of the local government, the change or departure does not materially alter the intent of the Structure Plan.

6.2.6.2.

- (a) The local government is to forward a copy of the minor change or departure to the Commission within 10 days from the date of adopting the minor change or departure.
- (b) If the Commission considers that the change or departure adopted by the local government under clause 6.2.6.1 materially alters the intent of the Structure Plan, then the Commission—
 - (i) may require the local government to follow the procedures set out in clause 6.2.5 in relation to the change or departure; and
 - (ii) is to notify the local government of this requirement within 10 days.

6.2.6.3. Any change to or departure from a Structure Plan that is not within clause 6.2.6.1 is to follow the procedures set out in clause 6.2.5.

6.2.7. Detailed area plans

6.2.7.1.

- (a)
 - (i) The local government or the Commission may, by notice in writing, require a person to prepare and submit to the local government a detailed area plan within the time specified in the notice.
 - (ii) A person may prepare and submit to the local government a detailed area plan.
 - (iii) The local government may prepare a detailed area plan.
- (b) A detailed area plan is to relate to a particular lot or lots and may be prepared and submitted—
 - (i) to enhance, elaborate or expand on the details or provisions contained in a Proposed Structure Plan or a Structure Plan;
 - (ii) in place of a development approval required to comply with clause 2.5 of the *Residential Design Codes*; or
 - (iii) for any other planning purpose.
- (c) The local government is to—
 - (i) approve with or without conditions; or
 - (ii) refuse to approve the detailed area plan.
- (d) If within 60 days of receiving a detailed area plan under clause 6.2.7.1(a), or such longer period as may be agreed in writing between the person and the local government, the local government has not made one of the determinations referred to in clause 6.2.7.1(c), the local government is deemed to have refused to approve the detailed area plan.
- (e) The local government is to forward a copy of the detailed area plan to the Commission within 10 days of approving the detailed area plan.
- (f) The local government's refusal to approve a detailed area plan under clause 6.2.7 is not a valid reason for the local government to refuse to adopt or the Commission to refuse to approve a Proposed Structure Plan under clause 6.2.5.

6.2.7.2. Unless clause 6.2.7.1(b) (ii) applies, once approved by the local government, the detailed area plan is to be used as the basis for—

- (a) making recommendations to the Commission on subdivision applications including strata subdivision; and
- (b) determining development and strata subdivision applications with respect to the land subject to the detailed area plan.

6.2.7.3. A detailed area plan may include details as to—

- (a) building envelopes;
- (b) distribution of land uses within a lot;
- (c) private open space;
- (d) services;
- (e) vehicular access, parking, loading and unloading areas, storage yards and rubbish collection closures;

- (f) the location, orientation and design of buildings and the space between buildings;
- (g) advertising signs, lighting and fencing;
- (h) landscaping, finished site levels and drainage;
- (i) protection of sites of heritage, conservation or environmental significance;
- (j) special development controls and guidelines; and
- (k) such other information considered relevant by the local government.

6.2.7.4.

- (a) An approved detailed area plan may be modified or varied with the approval of the local government, but where there is a related Structure Plan, such modifications or variations are to conform with the intent of any related Structure Plan.
- (b) The local government is to forward a copy of the modification or variation to the detailed area plan to the Commission within 10 days of approving the modification or variation.

6.2.8. Operation of Structure Plan

6.2.8.1. A Structure Plan commences operation on the date it is adopted by the local government pursuant to clause 6.2.5.15.

6.2.8.2. Subject to clause 6.2.8.5, if a Structure Plan imposes a classification on the land included in it by reference to reserves, zones, or the *Residential Design Codes* then—

- (a) the provisions of the Structure Plan apply to the land as if its provisions were incorporated into the Scheme and it is binding and enforceable in the same way as corresponding provisions incorporated in the Scheme; and
- (b) provisions in the Scheme applicable to land in those classifications under the Scheme apply to the Development Zone.

6.2.8.3. Without limiting the generality of clause 6.2.8.2, under a Structure Plan—

- (a) the standards and requirements applicable to the zones and density codings under the Scheme apply to the areas having corresponding designations under the Structure Plan;
- (b) the planning approval procedures including the procedures for the approval of uses and developments under the Scheme are to apply as if the land were correspondingly zoned or reserved under the Scheme;
- (c) where land is classified as a local reservation, the rights, provisions and procedures, and the obligations of the local government in regard to compensation set out in clauses 11.5 and 11.6 inclusive apply as if the land were correspondingly reserved under the Scheme; and
- (d) any other provision, standard or requirement in the Structure Plan is to be given the same force and effect as if it were a provision, standard or requirement of the Scheme.

6.2.8.4. A Structure Plan may distinguish between the provisions, requirements or standards which are intended to have effect as if included in the Scheme, and any provisions, requirements, or standards which are only for guidance or such other purposes as stipulated in the Structure Plan.

6.2.8.5. If a provision of a Structure Plan which imposes a classification on the land included in it by reference to reserves, zones or *Residential Design Codes* is inconsistent with a provision of the Scheme, then the provision of the Scheme prevails to the extent of any inconsistency.

6.2.9. Appeal

6.2.9.1. The Proponent or the local government that prepared a Structure Plan may appeal, in accordance with Part 14 of the Town Planning Act, any—

- (a) determination or decision made by the Commission;
- (b) requirement imposed by or modification sought by the Commission; or
- (c) determinations deemed to have been made by the Commission under clauses 6.2.5.4 or 6.2.5.11 in the exercise of the Commission's powers under clause 6.2.

6.2.9.2. The Proponent may appeal, in accordance with Part 14 of the Town Planning Act, any decision made by the local government under clause 6.2.6.1.

6.2.9.3. A person who has submitted a detailed area plan under clause 6.2.7 may appeal, in accordance with Part 14 of the Town Planning Act, any decision made by the local government under clauses 6.2.7.1 or 6.2.7.4.

6.3. **Special Control Area 1—Tukurua and Le Fanu House**

6.3.1. The objectives of this special control area are to—

- (a) encourage conservation and restoration of the existing heritage buildings within Special Control Area 1;
- (b) ensure that any future development within Special Control Area 1 does not unduly adversely affect the significance of the existing heritage buildings and their setting; and
- (c) ensure that any future development within Special Control Area 1, including alterations and additions to the existing heritage buildings, will enhance the setting and protect the visual prominence of the existing heritage buildings.

6.3.2. Notwithstanding the land use limitations specified in Table 1—Zoning Table in Clause 4.3, the local government may, after taking into account any advice from the Heritage Council of Western Australia, and following the notification procedures specified in clause 9.4, approve the use of the

existing heritage buildings, including any alterations or additions to the existing heritage buildings, for any purpose and may vary any car parking requirements specified in the Scheme for that use, but only if the local government is satisfied that—

- (a) the use is unlikely to prejudice the heritage significance of the existing buildings or their setting; and
- (b) the use or variation of the car parking requirements would have little or no adverse effect on the amenity of the locality.

6.3.3. In granting approval pursuant to clause 6.3.2 the local government will, as a condition of that approval, require the applicant and / or the owner to enter into a heritage agreement as specified in clause 7.3, for the purposes of securing the conservation and restoration of the existing buildings and their setting.

6.3.4. The local government shall not grant approval to development on land within Special Control Area 1 unless it has made, or has required the applicant to make, an assessment of the effect that the proposed development would have on the heritage significance of the existing heritage buildings within Special Control Area 1 and on their setting, and in doing so the local government or the applicant shall take into account the following matters—

- (a) any advice from the Heritage Council of Western Australia in regard to the proposal;
- (b) whether the form, height and scale of the proposed development is compatible with the existing heritage buildings within Special Control Area 1;
- (c) whether the colour, texture, style, size and type of finish of the materials to be used on the exterior of the proposed development do not unduly detract from the visual appearance and prominence of the existing heritage buildings; and
- (d) whether any horticultural, landscape, archaeological or other feature of the land should be retained.

6.3.5. The local government shall, in determining an application under this clause, take into consideration the matters listed in sub-clause 6.3.4 in addition to those relevant matters listed in clause 10.2.

6.3.6. In this special control area, the height of all development for any use shall conform to the requirements for single-storey or two-storey development as set out in clause 5.7.2.

6.4. Special Control Area 2—Cottesloe Beach Hotel site, Ocean Beach Hotel site and Foreshore Centre Zone

6.4.1. The objectives of this Special Control Area are to ensure that—

- (a) the development, subdivision and strata subdivision of these sites is compatible and consistent with its regionally important beachfront location, surrounding development and the amenity of the locality; and
- (b) the Building Design Control Diagrams which form the basis of development, subdivision and strata subdivision control in this special control area appropriately guide and manage built form, bulk and scale, amenity impacts, the type, mix, location and arrangement of land uses, and other relevant considerations accordingly.

6.4.2. All applications for planning approval, subdivision and strata subdivision in Special Control Area 2 shall comply with the provisions of clause 6.4 and Schedule 15—Building Design Controls applicable to the site. The local government shall, in determining an application for planning approval or strata subdivision, or when making a recommendation on a subdivision or development application, have due regard to the aims of the Scheme, the objectives of Special Control Area 2, the objectives and provisions of the zone, the objectives of the adjacent zones, the matters to be considered under clause 10.2 and any other relevant provisions applicable to the subject site.

6.4.3. In Special Control Area 2, the following development standards and requirements shall be applied. These Building Design Controls comprise specific controls that apply in addition to any other applicable provision, development standard or requirement under the Scheme. Where there is any inconsistency between a specific Building Design Control provision and any general provision, development standard or requirement of the Scheme, then the specific Building Design Control provision shall prevail.

6.4.3.1. General Provisions Applicable to Special Control Area 2

- (a) The height of all development for any use, at the Marine Parade frontage, shall be a maximum of three storeys (12 metres);
- (b) The maximum extent of development on each site shall comply with the building heights, form, storeys, setbacks and other requirements prescribed in the Building Design Control Diagrams for the Cottesloe Beach Hotel and Ocean Beach Hotel sites, and for the Foreshore Centre zone, contained in Schedule 15, notwithstanding the requirements of any other provision of the Scheme;
- (c) In respect of vehicle parking requirements, the provisions of the Residential Design Codes are modified for the Grouped Dwelling and Multiple Dwelling use classes, with no visitor parking being required; and
- (d) Of the total number each of Multiple Dwellings or Grouped Dwellings on a site overall, a minimum of—
 - (i) 25% shall comprise a maximum plot ratio area of 70 square metres; and
 - (ii) 25% shall comprise a maximum plot ratio area of greater than 70 square metres but no greater than 90 square metres.

6.4.3.2. Additional Provisions Applicable to the Cottesloe Beach Hotel site

- (a) Notwithstanding the use permissions in Table 1, the Multiple Dwelling use may be permitted as an 'A' use on the rear portion of the Cottesloe Beach Hotel site, as defined on the Building Design Control Diagram No. 9 in Schedule 15, but only subject to the conservation and redevelopment, to the satisfaction of the Heritage Council of Western Australia, of the existing hotel building on that portion of the site as shown on the Building Design Control Diagram No. 9 in Schedule 15 as "Hotel";
- (b) Subdivision or strata subdivision of the rear portion of the site shall not be permitted unless conservation and redevelopment of the "Hotel" portion of the site, as shown on the Building Design Control Diagram No. 9 in Schedule 15, is first carried out to the satisfaction of the Heritage Council of Western Australia, or there is a legal agreement for the required works in place between the landowners and the Heritage Council of Western Australia, and the "Hotel" portion of the site shall remain as one lot and shall not be strata-subdivided;
- (c) No building or structure shall be constructed that protrudes over any portion of the existing "Hotel" building as shown on the Building Design Control Diagram No. 9 in Schedule 15;
- (d) No vehicular ingress from or egress to Marine Parade is permitted; and
- (e) Any redevelopment of the site shall incorporate a minimum total of 50 Hotel, Motel and/or Short-stay Accommodation rooms/units, which shall be managed together with the hotel.

6.4.3.3. Additional Provisions Applicable to the Ocean Beach Hotel site

- (a) Notwithstanding any other provision of the Scheme, the Single House use is not permitted within the Ocean Beach Hotel site;
- (b) No vehicular ingress from or egress to Marine Parade is permitted;
- (c) No subdivision or strata subdivision shall be permitted unless in accordance with a Structure Plan adopted pursuant to clause 6.2 and in accordance with clause 6.4 and Schedule 15;
- (d) Any redevelopment of this site shall incorporate a minimum total of 120 Hotel, Motel and/or Short-stay Accommodation rooms/units, notwithstanding that additional rooms/units may be accommodated anywhere on the site, all of which must be subject to integrated common management where, if the development is strata titled, such management excludes direct owner involvement in letting and excludes the ability of owners to opt out of the letting pool;
- (e) Further to the development controls in Schedule 15 Diagrams 1 and 2, building levels above the 3-storey frontage are to be articulated to ameliorate the bulk and scale as part of any development proposal. Notwithstanding other considerations, development applications shall also be assessed by the local government in terms of—
 - (i) Massing: articulation of building volumes above three storeys to reduce monolithic appearance;
 - (ii) Surface: composition of architectural elements and materials, including projecting or recessed walls, balconies and roofs to vary façade treatment; and
 - (iii) Context: respond appropriately to key site aspects, including the Marine Parade foreshore promenade and the approach to the foreshore from the crest of Eric Street.

6.4.3.4. Additional Provisions Applicable to the Seapines site, Lido site and Lot 51 corner Eileen Street and Marine Parade

- (a) Any redevelopment of the Seapines site or Lot 51, on the corner of Eileen Street and Marine Parade, shall incorporate a minimum total of 30 Hotel, Motel and/or Short-stay Accommodation rooms/units, which must be subject to integrated common management where, if the development is strata titled, such management excludes direct owner involvement in letting and excludes the ability of owners to opt out of the letting pool.
- (b) Any individual development proposal over the combined Seapines and Lido sites shall incorporate a minimum total of 45 Hotel, Motel and/or Short-stay Accommodation rooms/units, which must be subject to integrated common management where, if the development is strata titled, such management excludes direct owner involvement in letting and excludes the ability of owners to opt out of the letting pool.

6.4.3.5. Provisions Applicable to the Foreshore Centre Zone

- (a) Consistent with clause 5.12, the first storey (ground floor) of any development in the Foreshore Centre zone shall be used for uses of a commercial nature including, but not limited to, Restaurant, Shop, Small Bar and Hotel uses, but shall not be used for residential purposes. On-site vehicle parking shall be provided in a basement or otherwise shall occupy a limited area of the first storey portion of the site. All commercial frontages to a street must have a minimum depth of 9.0 metres;
- (b) Any storey that may be developed above the first storey in the Foreshore Centre zone may be used for other purposes permissible in Table 1, including Multiple Dwelling, Hotel, Motel, Short-stay Accommodation and Serviced Apartments;
- (c) No vehicular ingress from or egress to Marine Parade is permitted, except in the case of Lot 500, where temporary access directly from Marine Parade may be approved, but only in the event that rear vehicular access is not at that time possible. Such temporary access must be immediately closed and the rear access implemented if rear access becomes available through the redevelopment of adjoining Lots 1 or 3, and in this regard, any redevelopment of Lots 1, 3, or 500 shall grant a 4 metre wide rear cross-easement for vehicular access to each of the other lots, prior to the occupation of any such redevelopment. Any proposed alternative

arrangement that provides access to Lot 500 from either Napier Street or Overton Gardens may also be considered by the local government in lieu of the above requirement;

- (d) Where a rear laneway exists adjacent to a site within the Foreshore Centre zone, all vehicular ingress and egress to the site shall be via the laneway once the site has been redeveloped, and as part of any redevelopment of the site, the laneway shall be upgraded and widened where it abuts the development site so that the total width of the laneway becomes 6 metres. Such widening area shall be ceded to the Crown free of cost from the development site. Setbacks indicated on the Building Control Diagrams are from the post-widened boundary of a development site.
- (e) Development, subdivision and strata subdivision proposals within the Foreshore centre zone shall have due regard to any adopted Detailed Area Plans, Local Planning Policies and Local Planning Policy Design Guidelines that provide more detailed planning and design guidance and implementation measures. Any Detailed Area Plans prepared shall be formulated and adopted in accordance with clause 6.2.7.

PART 7—HERITAGE PROTECTION

7.1. Heritage List

7.1.1. The local government is to establish and maintain a Heritage List to identify those places within the Scheme area which are of cultural heritage significance and worthy of conservation under the provisions of the Scheme, together with a description of each place and the reasons for its entry.

7.1.2. In the preparation of the Heritage List the local government is to—

- (a) have regard to the municipal inventory prepared by the local government under section 45 of the *Heritage of Western Australia Act 1990*; and
- (b) include on the Heritage List such of the entries on the municipal inventory as it considers to be appropriate.

7.1.3. In considering a proposal to include a place on the Heritage List the local government is to—

- (a) notify in writing the owner and occupier of the place and provide them with a copy of the description proposed to be used under clause 7.1.1 and the reasons for the proposed entry;
- (b) invite submissions on the proposal from the owner and occupier of the place within 21 days of the day the notice is served;
- (c) carry out such other consultations as it thinks fit; and
- (d) consider any submissions made and resolve to enter the place on the Heritage List with or without modification or reject the proposal after consideration of the submissions.

7.1.4. Where a place is included on the Heritage List, the local government is to give notice of the inclusion to the Commission, the Heritage Council of Western Australia and to the owner and occupier of the place.

7.1.5. The local government is to keep a copy of the Heritage List with the Scheme documents for public inspection.

7.1.6. The local government may remove or modify the entry of a place on the Heritage List by following the procedures set out in clause 7.1.3.

Note: 1. *The purpose and intent of the heritage provisions are—*

- (a) *to facilitate the conservation of places of heritage value; and*
- (b) *to ensure as far as possible that development occurs with due regard to heritage values.*

2. *“place” is defined in Schedule 1 and may include works, buildings and contents of buildings.*

7.2. Designation of a heritage area

7.2.1. If, in the opinion of the local government, special planning control is needed to conserve and enhance the cultural heritage significance and character of an area, the local government may, by resolution, designate that area as a heritage area.

7.2.2. The local government is to—

- (a) adopt for each heritage area a Local Planning Policy which is to comprise—
 - (i) a map showing the boundaries of the heritage area;
 - (ii) a record of places of heritage significance; and
 - (iii) objectives, incentives and guidelines for the conservation of the heritage area; and
- (b) keep a copy of the Local Planning Policy for any designated heritage area with the Scheme documents for public inspection.

7.2.3. If a local government proposes to designate an area as a heritage area, the local government is to—

- (a) notify in writing each owner of land affected by the proposed designation and provide the owner with a copy of the proposed Local Planning Policy for the heritage area;
- (b) advertise the proposal by—
 - (i) publishing a notice of the proposed designation once a week for two consecutive weeks in a newspaper circulating in the Scheme area;
 - (ii) erecting a sign giving notice of the proposed designation in a prominent location in the area that would be affected by the designation; and

(iii) such other methods as the local government considers appropriate to ensure widespread notice of the proposal; and

(c) carry out such other consultation as the local government considers appropriate.

7.2.4. Notice of a proposal under clause 7.2.3(b) is to specify—

(a) the area subject of the proposed designation;

(b) where the proposed Local Planning Policy which will apply to the proposed heritage area may be inspected; and

(c) in what form and in what period (being not less than 21 days from the day the notice is published or the sign is erected, as the case requires) submissions may be made.

7.2.5. After the expiry of the period within which submissions may be made, the local government is to—

(a) review the proposed designation in the light of any submissions made; and

(b) resolve to adopt the designation with or without modification, or

7.2.6. If the local government resolves to adopt the designation, the local government is to forward a copy of the designation to the Heritage Council of Western Australia, the Commission and each owner of land affected by the designation.

7.2.7. The local government may modify or revoke a designation of a heritage area.

7.2.8. Clauses 7.2.3 to 7.2.6 apply, with any necessary changes, to the amendment of a designation of a heritage area.

7.3. Heritage agreements

The local government 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.

Note: 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. Detailed provisions relating to heritage agreements are set out in the *Heritage of Western Australia Act 1990*.

7.4. Heritage assessment

Despite any existing assessment on record, the local government may require a heritage assessment to be carried out prior to the approval of any development proposed in a heritage area or in respect of a heritage place listed on the Heritage List.

7.5. Variations to Scheme provisions for a heritage place or heritage area

7.5.1. The local government may grant, by way of planning approval, a variation to any site or development standard or requirement, with the exception of any height standard or requirement, specified in the Scheme or the Residential Design Codes if, in the opinion of the local government, the variation is necessary in order to—

(a) conserve a heritage place entered in the Register of Places under the *Heritage of Western Australia Act 1990* or listed in the Heritage List under clause 7.1.1; or

(b) enhance or preserve heritage values in a heritage area designated under clause 7.2.1;

which is the subject of the proposed development.

7.5.2. An application for planning approval requiring the exercise of the discretion under clause 7.5.1 above is to be advertised in accordance with clause 9.4 and the notice of the application is to include such reference to the variation sought to any standard or requirement as the local government thinks fit.

7.5.3. In considering an application for planning approval under this clause, the local government is to have regard to any submissions received in accordance with the advertising of the application under clause 9.4.

7.6. Heritage incentives

In applying the provisions of the Scheme to the operation of the heritage list, including any related Local Planning Policy, the local government shall give consideration to incentives for heritage conservation.

7.7. Right of review

7.7.1. An owner of a place included on the Heritage List may apply to the State Administrative Tribunal for a review of a decision of the local government to—

(a) include the place on the Heritage List;

(b) modify the entry of the place on the Heritage List; or

(c) remove the place from the Heritage List,

in accordance with Part 14 of the Town Planning Act.

7.7.2. An owner of land within an area designated as a heritage area may apply to the State Administrative Tribunal for a review of a decision of the local government to—

(a) designate the area as a heritage area;

(b) modify the designation of the area as a heritage area; or

(c) remove the designation of the area as a heritage area, in accordance with Part 14 of the Town Planning Act.

PART 8—DEVELOPMENT OF LAND

8.1. Requirement for approval to commence development

Subject to clause 8.2, all development on land zoned and reserved under the Scheme requires the prior approval of the local government. A person must not commence or carry out any development without first having applied for and obtained the planning approval of the local government under Part 9.

Note:

1. *The planning approval of the local government is required for both the development of land (subject of this Part) and the use of land (subject of Part 4).*
2. *Development includes the erection, placement and display of any advertisements.*
3. *Approval to commence development may also be required from the Commission under the Metropolitan Region Scheme.*

8.2. Development not requiring planning approval

Except as otherwise provided in the Scheme, for the purposes of the Scheme the following development does not require the planning approval of the local government—

- (a) the carrying out of any building or work which affects only the interior of a building and which does not materially affect the external appearance of the building except where the building 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) included on the Heritage List under clause 7.1 of the Scheme;
- (b) a home office;
- (c) any works which are temporary and in existence for less than 48 hours or such longer time as the local government agrees; and
- (d) any of the exempted classes of advertisements listed in Schedule 5 except in respect of a place included in the Heritage List or in a heritage area.

Note: *Development carried out in accordance with a subdivision approval granted by the Commission is exempt under section 157 of the Town Planning Act.*

8.3. Revoking a planning approval

8.3.1. The local government may, on written application from the owner of land in respect of which planning approval has been granted, revoke the planning approval, prior to the commencement of the use or development the subject of the planning approval.

8.4. Unauthorised existing developments

8.4.1. The local government may grant planning approval to a use or development already commenced or carried out regardless of when it was commenced or carried out, if the development conforms to the provisions of the Scheme.

8.4.2. A planning approval granted under clause 8.4.1—

- (a) authorises the continuation of the use or development the subject of the planning approval, from the date of the planning approval;
- (b) does not authorise the use or development before the date of the planning approval; and
- (c) does not prevent the local government from taking any action in respect of the use or development in respect of the period prior to the grant of the planning approval.

Notes:

1. *Applications for approval to an existing development are made under Part 9.*
2. *The approval by the local government of an existing development does not affect the power of the local government to take appropriate action for a breach of the Scheme or the Act in respect of the commencement or carrying out of development without planning approval.*

PART 9—APPLICATIONS FOR PLANNING APPROVAL

9.1. Form of application

9.1.1. An application for approval for one or more of the following—

- (a) a use or commencement of development on a Local Reserve under clause 3.4;
- (b) commencement of a 'P' use which does not comply with all relevant development standards and requirements of the Scheme as referred to in clause 4.3.2;
- (c) commencement of a 'D' use or an 'A' use as referred to in clause 4.3.2;
- (d) commencement of a use not listed in the Zoning Table under clause 4.4.3;
- (e) alteration or extension of a non-conforming use under clause 4.11;
- (f) a change of a non-conforming use under clause 4.11;

- (g) repairs, rebuilding, alterations or additions where there has been destruction of or damage to a non-conforming use under clause 4.13;
- (h) variation of a site or development standard or requirement under clause 5.5;
- (i) commencement of development under clause 8.1;
- (j) continuation of development already commenced or carried out under clause 8.4;
- (k) a subsequent planning approval pursuant to an approval under clause 10.8.1; and
- (l) the erection, placement or display of an advertisement;

is to be made in the form prescribed in Schedule 6 and is to be signed by the owner, and accompanied by such plans and other information as is required under the Scheme.

9.1.2. An application for the erection, placement or display of an advertisement is to be accompanied by the additional information set out in the form prescribed in Schedule 7.

Notes: 1. *Under the provisions of the Metropolitan Region Scheme, an application for planning approval in respect of land which is wholly within a regional reserve is to be referred by the local government to the Commission for determination. No separate determination is made by the local government.*

2. *An application for planning approval in respect of land which is wholly within the management area of the Swan River Trust is to be referred by the local government to the Swan River Trust for determination by the Minister responsible for the Swan River Trust Act 1988.*

3. *An application for planning approval in respect of land which is zoned under the Metropolitan Region Scheme and is—*

- (a) affected by a gazetted notice of resolution made by the Commission under clause 32 of the Metropolitan Region Scheme;*
- (b) within or partly within a planning control area declared by the Commission under section 112 of the Town Planning Act;*
- (c) partly within the management area of the Swan River Trust or which abuts waters that are in that area; or*
- (d) affected by a notice of delegation published in the Gazette by the Commission under section 16 of the Town Planning Act and is not of a type which may be determined by the local government under that notice,*

is to be referred by the local government to the Commission in accordance with the requirements of the Metropolitan Region Scheme and notice of delegation. Separate determinations are made by the local government under the Scheme and the Commission under the Region Scheme.

9.2. Accompanying material

Unless the local government waives any particular requirement, every application for planning approval is, in addition to any requirements specified by the Residential Design Codes, to be accompanied by—

- (a) a plan or plans to a scale of not less than 1:500 showing—
 - (i) the location of the site including street names, lot numbers, north point and the dimensions of the site;
 - (ii) the existing and proposed ground levels over the whole of the land the subject of the application and the location, height and type of all existing structures, and structures and vegetation proposed to be removed;
 - (iii) the existing and proposed use of the site, including proposed hours of operation, and buildings and structures to be erected on the site;
 - (iv) the existing and proposed means of access for pedestrians and vehicles to and from the site;
 - (v) the location, number, dimensions and layout of all car parking spaces intended to be provided;
 - (vi) the location and dimensions of any area proposed to be provided for the loading and unloading of vehicles carrying goods or commodities to and from the site and the means of access to and from those areas;
 - (vii) the location, dimensions and design of any open storage or trade display area and particulars of the manner in which it is proposed to develop the same;
 - (viii) the nature and extent of any open space and landscaping proposed for the site;
- (b) plans, elevations and sections of any building proposed to be erected or altered and of any building it is intended to retain;
- (c) any specialist studies that the local government may require the applicant to undertake in support of the application, such as traffic, heritage, environmental, engineering or urban design studies; and
- (d) any other plan or information that the local government may require to enable the application to be determined, such as overshadowing or overlooking diagrams, materials or finishes, etc.

9.3. Additional material for heritage matters

Where an application relates to a place entered on the Heritage List or within a heritage area, the local government may require an applicant to provide one or more of the following to assist the local government in its determination of the application—

- (a) street elevations drawn to a scale not smaller than 1:100 showing the proposed development and the whole of the existing development on each lot immediately adjoining the land the subject of the application, and drawn as one continuous elevation; and
- (b) a detailed schedule of all finishes, including materials and colours of the proposed development and, unless the local government exempts the applicant from the requirement or any part of it, the finishes of the existing developments on the subject lot and on each lot immediately adjoining the subject lot.

9.4. Advertising of applications

9.4.1. Where an application for planning approval—

- (a) involves an ‘A’ use as referred to in clause 4.3.2;
- (b) involves a use not listed in the Zoning Table; or
- (c) is required by clauses 4.11, 5.5.2, 6.3.2 or 7.5;

the local government is not to grant approval to that application unless notice is given in accordance with clause 9.4.3.

9.4.2. Despite clause 9.4.1, where application is made for a purpose other than a purpose referred to in that clause, the local government may require notice to be given in accordance with clause 9.4.3.

9.4.3. The local government may give notice or may require the applicant to give notice of an application for planning approval in one or more of the following ways—

- (a) notice of the proposed use or development served by registered mail on nearby owners and occupiers who, in the opinion of the local government, are likely to be affected by the granting of planning approval, stating that submissions may be made to the local government by a specified date being not less than 14 days from the day the notice is served;
- (b) notice of the proposed use or development published in a newspaper circulating in the Scheme area stating that submissions may be made to the local government by a specified day being not less than 14 days from the day the notice is published; and
- (c) a sign or signs displaying notice of the proposed use or development to be erected in a conspicuous position on the land for a period of not less than 14 days from the day the notice is erected.

9.4.4. The notice referred to in clause 9.4.3(a) and (b) is to be in the form prescribed in Schedule 8 with such modifications as are considered appropriate by the local government.

9.4.5. Any person may inspect the application for planning approval referred to in the notice and the material accompanying that application at the offices of the local government.

9.4.6. After the expiration of the specified period from the serving of notice of the application for planning approval, the publication of the notice or the erection of a sign or signs, whichever is the later, the local government is to consider and determine the application.

PART 10—PROCEDURE FOR DEALING WITH APPLICATIONS

10.1. Consultation with other authorities

10.1.1. In considering an application for planning approval the local government may consult with any other statutory, public or planning authority it considers appropriate.

10.1.2. In the case of land reserved under the Scheme for the purposes of a public authority, the local government is to consult that authority before making its determination.

10.2. Matters to be considered by local government

10.2.1. In considering an application for planning approval the local government is to have due regard to the following matters—

- (a) the aims and provisions of the Scheme and any other relevant planning schemes operating within the Scheme area (including the Metropolitan Region Scheme);
- (b) the Local Planning Strategy;
- (c) the requirements of orderly and proper planning including any relevant proposed new local planning scheme or amendment, or region scheme or amendment, which has been granted consent for public submissions to be sought;
- (d) any approved statement of planning policy of the Commission;
- (e) any approved environmental protection policy under the *Environmental Protection Act 1986*;
- (f) any relevant policy or strategy of the Commission and any relevant policy adopted by the Government of the State;
- (g) any Local Planning Policy adopted by the local government under clause 2.4, any heritage policy statement for a designated heritage area adopted under clause 7.2.2, and any other plan or guideline adopted by the local government under the Scheme;
- (h) the compatibility of a use or development with its setting;
- (i) the preservation of the amenity of the locality;

- (j) any relevant submissions received on the application; and
- (k) the comments or submissions received from any authority consulted under clause 10.1.

10.2.2. In addition to the matters referred to in clause 10.2.1 above, the local government is to have due regard to such of the following matters as are in the opinion of the local government relevant to the use or development the subject of the application—

- (a) in the case of land reserved under the Scheme, the ultimate purpose intended for the reserve;
- (b) the conservation of any place that has been entered in the Register within the meaning of the *Heritage of Western Australia Act 1990*, or which is included in the Heritage List under clause 7.1, and the effect of the proposal on the character or appearance of a heritage area;
- (c) any social issues that have an effect on the amenity of the locality;
- (d) the cultural significance of any place or area affected by the development;
- (e) the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment;
- (f) whether the land to which the application relates is unsuitable for the proposal by reason of it being, or being likely to be, subject to flooding, tidal inundation, subsidence, landslip, bush fire or any other risk;
- (g) the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal;
- (h) whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles;
- (i) the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;
- (j) whether public transport services are necessary and, if so, whether they are available and adequate for the proposal;
- (k) whether public utility services are available and adequate for the proposal;
- (l) whether adequate provision has been made for access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);
- (m) whether adequate provision has been made for access by disabled persons;
- (n) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;
- (o) whether the proposal is likely to cause soil erosion or land degradation;
- (p) the potential loss of any community service or benefit resulting from the planning approval;
- (q) the suitability, durability, quality and aesthetic appeal of building materials, finishes and colours in relation to the development and locality;
- (r) the effect of the proposal on the maintenance and enhancement of important views to and from public places, including views to the public domain and views of the coastal and inland landscapes, and the need to control the position, height, setback and design of the proposal in the interest of important views to and from public places; and
- (s) any other planning consideration the local government considers relevant.

10.3. Determination of applications

In determining an application for planning approval the local government may—

- (a) grant its approval with or without conditions; or
- (b) refuse to grant its approval.

10.4. Form and date of determination

10.4.1. As soon as practicable after making a determination in relation to the application, the local government is to convey its determination to the applicant in the form prescribed in Schedule 9 and the date of determination is to be the date given in the notice of the local government's determination.

10.4.2. Where the local government refuses an application for planning approval the local government is to give reasons for its refusal.

10.5. Term of planning approval

10.5.1. Where the local government grants planning approval for the development of land—

- (a) the development approved is to be substantially commenced within 2 years, or such other period as specified in the approval, after the date of the determination; and
- (b) the approval lapses if the development has not substantially commenced before the expiration of that period.

10.5.2. A written request may be made to the local government for an extension of the term of planning approval at any time prior to the expiry of the approval period in clause 10.5.1.

10.6. Temporary planning approval

Where the local government grants planning approval, the local government may impose conditions limiting the period of time for which the approval is granted.

Note: A temporary planning approval is where the local government grants approval for a limited period, for example, where the land may be required for some other purpose in the future, and is different to the term of the planning approval which is the period within which the development must commence.

10.7. Scope of planning approval

Planning approval may be granted—

- (a) for the use or development for which the approval is sought;
- (b) for that use or development, except for a specified part or aspect of that use or development;
or
- (c) for a specified part or aspect of that use or development.

10.8. Approval subject to later approval of details

10.8.1. Where an application is for a development that includes the carrying out of any building or works, the local government may grant approval subject to matters requiring the subsequent planning approval of the local government. These matters may include the siting, design, external appearance of the buildings, means of access, landscaping, and such other matters as the local government thinks fit.

10.8.2. In respect of an approval requiring subsequent planning approval, the local government may require such further details as it thinks fit prior to considering the application.

10.8.3. Where the local government has granted approval subject to matters requiring the later planning approval of the local government, an application for approval of those matters must be made not later than two years after the date of the determination of the first approval, or such other period as is specified in the approval.

10.9. Deemed refusal

10.9.1. Subject to clause 10.9.2, an application for planning approval is deemed to have been refused if a determination in respect of that application is not conveyed to the applicant by the local government within 60 days of the receipt of the application by the local government, or within such further time as is agreed in writing between the applicant and the local government.

10.9.2. An application for planning approval which is the subject of a notice under clause 9.4 is deemed to be refused where a determination in respect of that application is not conveyed to the applicant by the local government within 90 days of the receipt of the application by the local government, or within such further time as is agreed in writing between the applicant and the local government.

10.9.3. Despite an application for planning approval being deemed to have been refused, the local government may issue a determination in respect of the application at any time after the expiry of the period specified in clause 10.9.1 or 10.9.2, as the case requires, and that determination is as valid and effective from the date of determination as if it had been made before the period expired.

10.10. Reviews of determinations

An applicant aggrieved by a determination of the local government in respect of the exercise of a discretionary power under the Scheme may apply for a review of the decision under Part 14 of the Town Planning Act.

Note: Prior to the enactment of the State Administrative Tribunal Act 2004 applications for review of decisions were called appeals.

PART 11—ENFORCEMENT AND ADMINISTRATION**11.1. Powers of the local government**

11.1.1. The local government in implementing the Scheme has the power to—

- (a) enter into an agreement with any owner, occupier or other person having an interest in land affected by the provisions of the Scheme in respect of any matter pertaining to the Scheme;
- (b) acquire any land or buildings within the Scheme area under the provisions of the Scheme or the Town Planning Act; and
- (c) deal with or dispose of any land which it has acquired under the provisions of the Scheme or the Town Planning Act in accordance with the law and for such purpose may make such agreements with other owners as it considers fit.

11.1.2. An employee of the local government authorised by the local government may, at all reasonable times and with such assistance as may be required, enter any building or land for the purpose of ascertaining whether the provisions of the Scheme are being observed.

11.2. Removal and repair of existing advertisements

11.2.1. Where an existing advertisement at, or at any time after, the Gazettal date, is, in the opinion of the local government, in conflict with the amenity of the locality, the local government may by written notice (giving clear reasons) require the advertiser to remove, relocate, repair, adapt or otherwise modify the advertisement.

11.2.2. Where, in the opinion of the local government, an advertisement has deteriorated to a point where it is in conflict with the aims of the Scheme or it ceases to be effective for the purpose for which it was erected or displayed, the local government may by written notice require the advertiser to—

- (a) repair, repaint or otherwise restore the advertisement to a standard specified by the local government in the notice; or
- (b) remove the advertisement.

11.2.3. For the purpose of clauses 11.2.1 and 11.2.2 any notice is to be served on the advertiser and is to specify—

- (a) the advertisement the subject of the notice;
- (b) full details of the action or alternative courses of action to be taken by the advertiser to comply with the notice; and
- (c) the period, being not less than 60 days from the date of the local government's determination, within which the action specified is to be completed by the advertiser.

11.2.4. A person on whom notice is served under this clause may appeal under Part 14 of the Town Planning Act against the determination of the local government.

11.3. Delegation of functions

11.3.1. The local government may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a committee or the CEO, within the meaning of those expressions under the *Local Government Act 1995*, the exercise of any of its powers or the discharge of any of its duties under the Scheme, other than this power of delegation.

11.3.2. The CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under clause 11.3.1.

11.3.3. The exercise of the power of delegation under clause 11.3.1 requires a decision of an absolute majority as if the power had been exercised under the *Local Government Act 1995*.

11.3.4. Sections 5.45 and 5.46 of the *Local Government Act 1995* and the regulations referred to in section 5.46 apply to a delegation made under this clause as if the delegation were a delegation under Division 4 of Part 5 of that Act.

11.4. Person must comply with provisions of Scheme

A person must not—

- (a) contravene or fail to comply with the provisions of the Scheme;
- (b) use any land or commence or continue to carry out any development within the Scheme area—
 - (i) otherwise than in accordance with the Scheme;
 - (ii) unless all approvals required by the Scheme have been granted and issued;
 - (iii) otherwise than in accordance with any conditions imposed upon the grant and the issue of any approval required by the Scheme; and
 - (iv) otherwise than in accordance with any standards laid down and any requirements prescribed by the Scheme or determined by the local government under the Scheme with respect to that building or that use.

Note: Section 214 of the Town Planning Act provides that a person who acts contrary to the provisions as set out in clause 11.4 above is guilty of an offence and liable for any penalty imposed as set out in the Act.

11.5. Compensation

11.5.1. A person whose land or property is injuriously affected by the making or amendment of the Scheme may make a claim for compensation under section 173 of the Town Planning Act—

- (a) in any case, within 6 months of the date of publication of notice of the approval of the Scheme or the amendment, as the case requires, in accordance with the *Town Planning Regulations 1967*; or
- (b) where the land has been reserved for a public purpose and—
 - (i) an application made under the Scheme for approval to carry out development on the land is refused; or
 - (ii) an application made under the Scheme for approval to carry out development on the land is granted subject to conditions that have the effect of permitting the land to be used or developed for no purpose other than a public purpose;

not later than 6 months after the application is refused or the permission granted.

11.5.2. A person whose land or property is injuriously affected by the making of a Scheme may not claim compensation for that injurious affection more than once under clause 11.5.1.

Note: A claim for compensation under section 173 of the Town Planning Act may be made in the Form No. 7 in Appendix A of the Town Planning Regulations 1967.

11.6. Purchase or taking of land

11.6.1. If, where compensation for injurious affection is claimed under the Town Planning Act, the local government elects to purchase or take the land compulsorily the local government is to give written notice of that election to the claimant within 3 months of the claim for compensation being made.

11.6.2. The local government may deal with or dispose of land acquired by it for the purpose of a Local Reserve upon such terms and conditions as it thinks fit, but the land must be used, and preserved, for a use compatible with the purpose for which it is reserved.

Note: Sections 190 and 191 of the Town Planning Act empowers the local government to purchase or compulsorily acquire land comprised in a scheme.

11.7. Notice for removal of certain buildings

11.7.1. Under section 214 (6) of the Town Planning Act, up to 60 days written notice is prescribed as the notice to be given for the removal of a building or other work referred to in that subsection.

11.7.2. The local government may recover expenses under section 215 (2) of the Town Planning Act in a court of competent jurisdiction.

Schedules

Schedule 1—Dictionary of defined words and expressions—

1. General definitions
2. Land use definitions

Schedule 2—Additional uses

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Schedule 15—Building Design Controls for Special Control Area 2

Note: At the Gazettal date Schedules 3 and 4 do not apply to the Scheme.

Schedule 1—Dictionary of defined words and expressions

[clause 1.7]

1. General definitions

In the Scheme—

“**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 purposes of, advertisement, announcement or direction, and includes any hoarding or similar structure used, or adapted for use, for the display of advertisements. The term includes any airborne device anchored to any land or building and any vehicle or trailer or other similar object placed or located so as to serve the purpose of advertising;

“**amenity**” means all those factors which combine to form the character of an area and include the present and likely future amenity;

“**building envelope**” means an area of land within a lot marked on a plan approved by the responsible authority within which all buildings and effluent disposal facilities on the lot must be contained;

“**building height**” means the maximum vertical distance between any point of natural ground level and the uppermost part of the building directly above that point (roof ridge, parapet, or wall), excluding minor projections above that point.

“**Commission**” means the Western Australian Planning Commission established by section 7 of the Town Planning Act;

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

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

“**development**” has the same meaning given to the term in the Town Planning Act.

“**floor area**” has the same meaning as in the *Building Code of Australia 1996* published by the Australian Building Codes Board;

- “**frontage**”, when used in relation to a building that is used for—
- (a) residential purposes, has the same meaning as in the Residential Design Codes; and
 - (b) purposes other than residential purposes, means the road alignment at the front of a lot and, if a lot abuts 2 or more roads, the one to which the building or proposed building faces;
- “**Gazettal date**”, in relation to a Scheme, means the date on which the Scheme is published in the *Gazette* under section 87(3) of the Town Planning Act;
- “**gross floor area (gfa)**” means in relation to a building, the area of each floor, measured over the enclosing walls and includes the portion of any party walls forming part of the building.
- “**incidental use**” means a use of premises which is ancillary and subordinate to the predominant use;
- “**land**” has the same meaning given to the term in the Town Planning Act.
- “**local government**” means the Town of Cottesloe.
- “**Local Planning Strategy**” means the Local Planning Strategy in respect of the Scheme, as endorsed by the Commission under regulation 12B of the *Town Planning Regulations 1967* and amended from time to time;
- “**lot**” has the same meaning as in the Town Planning Act but does not include a strata or survey strata lot;
- “**minerals**” has the same meaning as in the *Mining Act 1978*;
- “**net lettable area (nla)**” means the area of all floors within the internal finished surfaces of permanent walls but excludes the following areas—
- (a) all stairs, toilets, cleaner’s cupboards, lift shafts and motor rooms, escalators, tea rooms and plant rooms, and other service areas;
 - (b) lobbies between lifts facing other lifts serving the same floor;
 - (c) areas set aside as public space or thoroughfares and not for the exclusive use of occupiers of the floor or building;
 - (d) areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building;
- “**non-conforming use**” has the same meaning as it has in the Town Planning Act;
- “**owner**”, in relation to any land, includes the Crown and every person who jointly or severally whether at law or in equity—
- (a) is entitled to the land for an estate in fee simple in possession;
 - (b) is a person to whom the Crown has lawfully contracted to grant the fee simple of that land;
 - (c) is a lessor or licensee from the Crown; or
 - (d) is entitled to receive or is in receipt of, or if the land were let to a tenant, would be entitled to receive, the rents and profits from the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise;
- “**place**”, in Part 7 (Heritage Protection) has the same meaning as it has in the *Heritage of Western Australia Act 1990*;
- “**plot ratio**”, in the case of residential dwellings has the same meaning as in the Residential Design Codes;
- “**plot ratio**”, in the case of non-residential development, means the ratio of the gross total of the areas of all floors to the area of land within the site boundaries, and in calculating the gross total of the areas of all floors the areas shall be measured over any walls, provided that lobbies, corridors, hallways, lift shafts, stairways, toilets, bath, shower or change rooms, laundries, plant or meter rooms, cellars, storerooms without windows, external wall thicknesses, and the gross floor area of any floor space used for the parking of wheeled vehicles, including access to and from that space within the building, shall not be included;
- “**precinct**” means a definable area where particular planning policies, guidelines or standards apply;
- “**predominant use**” means the primary use of premises to which all other uses carried out on the premises are subordinate, incidental or ancillary;
- “**premises**” means land or buildings;
- “**Region Scheme—Metropolitan**” means the Metropolitan Region Scheme within the meaning of the Town Planning Act;
- “**Residential Design Codes**” means the Residential Design Codes, as amended from time to time, published in the *Government Gazette* as a Statement of Planning Policy under Section 26 of the Town Planning Act;
- “**retail**” means the sale or hire of goods or services to the public;
- “**storey**” means that part of a building between the top of any floor and the top of the floor next above, or if there is no floor above, between the top of the floor and the ceiling above it; but does not include any undercroft space designed or used for a lift shaft, stairway, meter room, bathroom, shower room, laundry, water closet, other sanitary compartment, cellar, corridor, hallway, lobby, the parking of vehicles, storeroom without windows or workshop appurtenant to a car parking area, where that floor-to-floor or floor to-ceiling-space as defined herein is not

higher than 1 metre above the footpath level measured at the centre of the land along the boundary to which the space has frontage, or where that floor-to-floor or floor to-ceiling-space as defined herein is below the level of the natural ground level measured at the centre of the site as determined by the local government.

“**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;

“**Town Planning Act**” means the *Planning and Development Act 2005*;

“**wall height**” means the vertical distance between—

- (a) any point of natural ground level; and
- (b) the level of the roof or the top of a parapet from that point in accordance with Figures 1, 2, 3 or 4 in Schedule 11.

“**wholesale**” means the sale of goods or materials to be sold by others;

“**zone**” means a portion of the Scheme area shown on the map by distinctive colouring, patterns, symbols, hatching or edging for the purpose of indicating the restrictions imposed by the Scheme on the use and development of land, but does not include a reserve or special control area.

2. Land use definitions

In the Scheme—

“**amusement parlour**” means premises open to the public, where the predominant use is for amusement by means of amusement machines and where there are more than 2 amusement machines operating within the premises;

“**bed and breakfast**” means a dwelling, used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence on a short-term commercial basis and includes the provision of breakfast;

“**betting agency**” means an office or totalisator agency established under the *Racing and Wagering Western Australia Act 2003*;

“**caretaker’s dwelling**” means a dwelling on the same site as a building, operation, or plant, and occupied by a supervisor of that building, operation or plant;

“**carpark**” means premises used primarily for parking vehicles whether open to the public or not but does not include any part of a public road used for parking or for a taxi rank, or any premises in which cars are displayed for sale;

“**child care premises**” has the same meaning as in the *Child Care Services (Child Care) Regulations 2006*;

“**cinema/theatre**” means premises where the public may view a motion picture or theatrical production;

“**civic use**” means premises used by a government department, an instrumentality of the Crown, or the local government, for administrative, recreational or other purposes;

“**club premises**” means premises used by a legally constituted club or association or other body of persons united by a common interest;

“**community purpose**” means the use of premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organizations involved in activities for community benefit;

“**consulting rooms**” means premises used by no more than 2 health consultants for the investigation or treatment of human injuries or ailments and for general outpatient care;

“**convenience store**” means premises—

- (a) used for the retail sale of convenience goods commonly sold in supermarkets, delicatessens or newsagents, or the retail sale of petrol and those convenience goods;
- (b) operated during hours which include, but may extend beyond, normal trading hours;
- (c) which provide associated parking; and
- (d) the floor area of which does not exceed 300 square metres net lettable area;

“**corrective institution**” means premises used to hold and reform persons committed to it by a court, such as a prison or other type of detention facility;

“**dry cleaning premises**” means land and buildings used for the cleaning of garments and other fabrics by chemical processes.

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

“**educational establishment**” means premises used for the purposes of education and includes a school, tertiary institution, business college, academy or other educational centre;

“**exhibition centre**” means premises used for the display, or display and sale, of materials of an artistic, cultural or historical nature, and includes a museum or art gallery;

“**family day care**” means premises used to provide family day care within the meaning of the *Child Care Services (Child Care) Regulations 2006*;

“**fast food outlet**” means premises used for the preparation, sale and serving of food to customers in a form ready to be eaten without further preparation, primarily off the premises, but does not include a lunch bar;

“**fuel depot**” means premises used for the storage and sale in bulk of solid or liquid or gaseous fuel, but does not include a service station and specifically excludes the sale by retail into a vehicle for final use of such fuel from the premises;

“**funeral parlour**” means premises used to prepare and store bodies for burial or cremation;

“**garden centre**” means land and buildings used for the sale and display of garden products, including garden ornaments, plants, seeds, domestic garden implements and motorised implements and the display but not manufacture of prefabricated garden buildings.

“**grouped dwelling**” has the same meaning given to the term in the Residential Design Codes.

“**home business**” means a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which—

- (a) does not employ more than 2 people not members of the occupier’s household;
- (b) will not cause injury to or adversely affect the amenity of the neighbourhood;
- (c) does not occupy an area greater than 50 square metres;
- (d) does not involve the retail sale, display or hire of goods of any nature;
- (e) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and
- (f) does not involve the use of an essential service of greater capacity than normally required in the zone;

“**home occupation**” means an occupation carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which—

- (a) does not employ any person not a member of the occupier’s household;
- (b) will not cause injury to or adversely affect the amenity of the neighbourhood;
- (c) does not occupy an area greater than 20 square metres;
- (d) does not display a sign exceeding 0.2 square metres;
- (e) does not involve the retail sale, display or hire of goods of any nature;
- (f) in relation to vehicles and parking, does not result in the requirement for a greater number of parking facilities than normally required for a single dwelling or an increase in traffic volume in the neighbourhood, does not involve the presence, use or calling of a vehicle more than 2 tonnes tare weight, and does not include provision for the fuelling, repair or maintenance of motor vehicles; and
- (g) does not involve the use of an essential service of greater capacity than normally required in the zone;

“**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 or customers 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;

“**home store**” means any shop with a net lettable area not exceeding 100 square metres attached to a dwelling and which is operated by a person resident in the dwelling;

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

“**hotel**” means premises providing accommodation the subject of a hotel licence under the *Liquor Control Act 1988*, and may include a betting agency on those premises, but does not include a tavern or motel;

“**industry**” means premises used for the manufacture, dismantling, processing, assembly, treating, testing, servicing, maintenance or repairing of goods, products, articles, materials or substances and includes premises on the same land used for—

- (a) the storage of goods;
- (b) the work of administration or accounting;
- (c) the selling of goods by wholesale or retail; or
- (d) (the provision of amenities for employees, incidental to any of those industrial operations;

“**industry—cottage**” means a trade or light industry producing arts and crafts goods which does not fall within the definition of a home occupation and which—

- (a) does not cause injury to or adversely affect the amenity of the neighbourhood;
- (b) where operated in a residential zone, does not employ any person other than a member of the occupier’s household;
- (c) is conducted in an out-building which is compatible with the principal uses to which land in the zone in which it is located may be put;
- (d) does not occupy an area in excess of 50 square metres; and
- (e) does not display a sign exceeding 0.2 square metres in area;

- “industry—extractive”** means an industry which involves the extraction, quarrying or removal of sand, gravel, clay, hard rock, stone or similar material from the land and includes the treatment and storage of those materials, or the manufacture of products from those materials on, or adjacent to, the land from which the materials are extracted, but does not include industry—mining;
- “industry—general”** means an industry other than a cottage, extractive, light, mining, rural or service industry;
- “industry—light”** means an industry—
- (a) in which the processes carried on, the machinery used, and the goods and commodities carried to and from the premises do not cause any injury to or adversely affect the amenity of the locality;
 - (b) the establishment or conduct of which does not, or will not, impose an undue load on any existing or proposed service for the supply or provision of essential services;
- “industry—noxious”** means an industry in which the processes involved constitute an offensive trade within the meaning of the *Health Act* (as amended), but does not include a fish shop, dry cleaning premises, marine collectors yard, laundromat, piggery or poultry farm.
- “industry—service”** means—
- (a) an industry—light carried out from premises which may have a retail shop front and from which goods manufactured on the premises may be sold; or
 - (b) premises having a retail shop front and used as a depot for receiving goods to be serviced;
- “marina”** means premises at which berths or pens, and fuelling, servicing, repairing, storage (including storage on land) and other facilities for boats are provided, with or without the sale of boating gear and equipment, and includes all jetties, piers, embankments, quays and moorings and all offices and storerooms used in connection with the marina;
- “marine filling station”** means premises used for the storage and supply of liquid fuels and lubricants for marine craft;
- “market”** means premises used for the display and sale of goods from stalls by independent vendors;
- “medical centre”** means premises, other than a hospital, used by one or more health consultant(s) for the investigation or treatment of human injuries or ailments and for general outpatient care (including preventative care, diagnosis, medical and surgical treatment, and counselling);
- “motel”** means premises 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 may comprise premises licensed under the *Liquor Control Act 1988*;
- “motor vehicle, boat or caravan sales”** means premises used to sell or hire motor vehicles, boats or caravans;
- “motor vehicle repair”** means premises used for or in connection with—
- (a) electrical and mechanical repairs, or overhauls, to vehicles; or
 - (b) repairs to tyres, but does not include premises used for recapping or retreading of tyres, panel beating, spray painting or chassis reshaping;
- “multiple dwelling”** has the same meaning given to the term in the Residential Design Codes.
- “night club”** means premises—
- (a) used for entertainment with or without eating facilities; and
 - (b) licensed under the *Liquor Control Act 1988*;
- “office”** means premises used for administration, clerical, technical, professional or other like business activities;
- “place of worship”** means premises used for religious activities such as a church, chapel, mosque, synagogue or temple;
- “reception centre”** means premises used for functions on formal or ceremonial occasions but not for unhosted use for general entertainment purposes;
- “recreation—private”** means premises used for indoor or outdoor leisure, recreation or sport which are not usually open to the public without charge;
- “residential building”** has the same meaning as in the Residential Design Codes;
- “restaurant”** means premises where the predominant use is the sale and consumption of food and drinks on the premises and where seating is provided for patrons, and includes a restaurant licensed under the *Liquor Control Act 1988*;
- “restricted premises”** means premises used 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 under the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*;
 - (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;

“**service station**” means premises used for—

- (a) the retail sale of petroleum products, motor vehicle accessories and goods of an incidental/convenience retail nature; and
- (b) the carrying out of greasing, tyre repairs and minor mechanical repairs to motor vehicles,

but does not include premises used for a transport depot, panel beating, spray painting, major repairs or wrecking;

“**serviced apartment**” means an apartment in a building/s or part thereof where such apartments provide for self-contained accommodation for short-stay guests, where integrated reception and recreation facilities may be provided, and where occupation by any person is limited to a maximum of three months in any 12 month period.

“**short-stay accommodation**” means a building/s or part thereof, or group of buildings forming a complex or part thereof, designed for the accommodation of short-term guests, which provides on-site facilities for the convenience of the guests and for the management of the accommodation, and where occupation by any person is limited to a maximum of three months in any 12 month period and which excludes those accommodation uses more specifically defined elsewhere.

“**shop**” means premises used to sell goods by retail, hire goods, or provide services of a personal nature (including a hairdresser or beauty therapist) but does not include a showroom or fast food outlet;

“**showroom**” means premises used to display, sell by wholesale or retail, or hire, automotive parts and accessories, camping equipment, electrical light fittings, equestrian supplies, floor coverings, furnishings, furniture, household appliances, party supplies, swimming pools or goods of a bulky nature;

“**single house**” has the same meaning given to the term in the Residential Design Codes.

“**small bar**” means premises licensed as a small bar under the *Liquor Control Act 1988* and used to sell liquor for consumption on the premises, but not including the sale of packaged liquor; and with the number of persons who may be on the premises limited to a maximum of 120.

“**storage**” means premises used for the storage of goods, equipment, plant or materials;

“**tavern**” means premises licensed as a tavern under the *Liquor Control Act 1988* and used to sell liquor for consumption on the premises;

“**telecommunications infrastructure**” means land used to accommodate any part of the infrastructure of a telecommunications network and includes any line, equipment, apparatus, tower, antenna, tunnel, duct, hole, pit or other structure used, or for use in or in connection with, a telecommunications network;

“**trade display**” means premises used for the display of trade goods and equipment for the purpose of advertisement;

“**veterinary centre**” means premises used to diagnose animal diseases or disorders, to surgically or medically treat animals, or for the prevention of animal diseases or disorders;

“**veterinary hospital**” means a building used in connection with the treatment of animals and includes the accommodation of sick animals.

“**warehouse**” means premises used to store or display goods and may include sale by wholesale.

Schedule 2—Additional uses

[clause 4.5]

| No. | Description of land | Additional use | Conditions |
|-----|---------------------|----------------|---|
| A1 | 37 John Street | Café | <p>1. Hours of operation Monday to Sunday 7:00am to 7:00pm.</p> <p>2. Size of premises Floor area for commercial use shall not exceed 275m² without the prior approval of the local government.</p> <p>3. Number of patrons No more than 50 patrons shall be provided for within the building, and 30 patrons within the outdoor eating area, without the prior approval of the local government.</p> <p>4. Amenity The use of the premises shall be carried out without undue adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p> |

| No. | Description of land | Additional use | Conditions |
|-----|--------------------------|----------------|---|
| A2 | 303 & 305 Marmion Street | Shop | <p>1. Hours of operation Shop— Monday to Sunday 6:00am to 10:00pm. Outdoor Eating Area— Monday to Saturday 7:00am to 7:00pm.</p> <p>2. Size of premises Floor area for commercial use shall not exceed 120m² without the prior approval of the local government.</p> <p>3. Permitted number of tables and chairs No more than 9 tables and 12 chairs shall be provided or permitted in the eating area without the prior approval of the local government.</p> <p>4. Amenity The use of the premises shall be carried out without undue adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p> |
| A3 | 16 North Street | Shop | <p>1. Hours of operation Monday to Sunday 8:00am to 9:00pm.</p> <p>2. Size of premises Floor area for commercial use shall not exceed 70 m² without the prior approval of the local government.</p> <p>3. Amenity The use of the premises shall be carried out without undue adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p> |
| A4 | 84 Forrest Street | Shop | <p>1. Hours of operation Monday to Sunday 8:00am to 6:00pm.</p> <p>2. Size of premises Floor area for commercial use shall not exceed 40m² without the prior approval of the local government.</p> <p>3. Amenity The use of the premises shall be carried out without undue adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p> |
| A5 | 259 Curtin Avenue | Office | <p>1. Hours of operation Monday to Friday 9:00am to 5:00pm.</p> <p>2. Size of premises Floor area for commercial use shall not exceed 187m² without the prior approval of the local government.</p> <p>3. Permitted Number of employees The number of persons involved in the operation of the business on these premises to be restricted to 4 persons.</p> <p>4. Amenity The use of the premises shall be carried out without adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p> |

| No. | Description of land | Additional use | Conditions |
|-----|----------------------|-----------------|---|
| A6 | 24 Railway Street | Shop and Office | <p>1. Size of premises Floor area for commercial use shall not exceed 265m² without the prior approval of the local government.</p> <p>2. Loading facility</p> <p>(a) Deliveries to the Liquor store are to be carried out in the loading bay located off Burt St.</p> <p>(b) The loading bay and service area shall be kept free of any plant equipment, storage of goods or rubbish.</p> <p>3. Amenity The use of the premises shall be carried out without adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p> |
| A7 | 441 Stirling Highway | Office | <p>1. Size of premises Floor area for office use shall not exceed 1050m² without the prior approval of the local government.</p> <p>2. Amenity The use of the premises shall be carried out without adverse impacts on the amenity of the locality and shall include appropriate preventative measures accordingly.</p> |

Schedule 3—Restricted uses

[clause 4.6]

| No. | Description of land | Special use | Conditions |
|-----|---|-------------|------------|
| | <i>At the Gazettal date there are no Restricted Use Zones in the Scheme area.</i> | | |

Schedule 4—Special use zones

[clause 4.7]

| No. | Description of land | Special use | Conditions |
|-----|--|-------------|------------|
| | <i>At the Gazettal date there are no Special Use Zones in the Scheme area.</i> | | |

Schedule 5—Exempted advertisements

[clause 8.2(d)]

| Land use or development | Exempted sign | Maximum size |
|---|--|--|
| Single House | One professional name-plate as appropriate. | 0.2m ² |
| Home Occupation | One advertisement describing the nature of the home occupation. | 0.2m ² |
| Places of Worship, Meeting Halls and Places of Public Assembly | One advertisement detailing the function and/or the activities of the institution concerned. | 0.2m ² |
| Cinemas or Theatres | Two signs (illuminated or non-illuminated) detailing the entertainment being presented from time to time at the venue upon which the signs are displayed. | Each advertisement sign not to exceed 5m ² . |
| Shops, Showrooms and other uses appropriate to a commercial area. | All advertisements affixed to the building below the top of the awning or, in the absence of an awning, below a line measured at 5 metres from the ground floor level of the building. | In accordance with the Local Law or Local Planning Policy on Advertisements. |
| Industrial or Warehouse Premises | A maximum of four advertisements applied to or affixed to the walls of the building but not including signs which project above the eaves or the ridge of the roof of the building, and excluding signs projecting from a building whether or not those signs are connected to a pole, wall or other building. A maximum of two free-standing advertisement signs not exceeding 5 metres in height above ground level. | Total area of any such advertisements, shall not exceed 15m ² . Maximum permissible total area shall not exceed 10m ² and individual advertisement signs shall not exceed 6m ² . |
| Recreation—private | All signs provided that, in each case, the advertisement is not visible from outside the complex or facility concerned either from other private land or from public places and streets. | N/A |
| Public Places and Reserves | (a) Advertisement signs (illuminated and non-illuminated) relating to the functions of government, a public authority or the local government excluding those of a promotional nature constructed or exhibited by, or on behalf of any such body, and (b) Advertisement signs (illuminated and non-illuminated) required for the management or control of traffic on any public road, car park, cycleway, railway or waterway where such advertisement has been constructed or exhibited by or at the direction of a Government department, public authority or the local government, and (c) Advertisement signs (illuminated and non-illuminated) required to be exhibited by or pursuant to any statute or regulation or the like made pursuant to powers contained within a Statute provided that any such advertisement is constructed and/or exhibited strictly in accordance with the requirements specified therein. | N/A N/A N/A |
| Railway, road or other government land reserves | Advertisement signs exhibited on such land provided that each such advertisement is directed only at persons at or upon a railway station. | No sign shall exceed 2m ² in area. |
| Advertisements Within buildings | All advertisements placed or displayed within buildings which cannot ordinarily be seen by a person outside of those buildings. | N/A |

| Land use or development | Exempted sign | Maximum size |
|--|---|-------------------|
| All classes of buildings other than single dwelling (includes other types of dwellings or residential buildings) | One advertisement sign containing the name, number and address of the building, the purpose for which the building is used or the name and address of the managing agent thereof. | 0.2m ² |

Schedule 6—Form of application for planning approval

[clause 9.1.1]

Application for planning approval

Owner details

Name:

Address—

Phone:

(work):

(home):

(mobile):

Fax:

E-mail:

Contact person:

Signature:

Date:

Signature:

Date:

The signature of the owner(s) is required on all applications. This application will not proceed without that signature.

Applicant details

Name:

Address—

Phone:

(work):

(home):

(mobile):

Fax:

E-mail:

Contact person for correspondence:

Signature:

Date:

Property details

Lot No:

House/Street No:

Location No:

Diagram or Plan No:

Certificate of Title Vol. No:

Folio:

Diagram or Plan No:

Certificate of Title Vol. No:

Folio:

Title encumbrances (e.g. easements, restrictive covenants):

Street name:

Suburb:

Nearest street intersection:

Existing building/land use:

Description of proposed development and/or use:

Nature of any existing buildings and/or use:

Approximate cost of proposed development:

Estimated time of completion:

OFFICE USE ONLY

Acceptance Officer's initials:

Date received:

Local government reference no:

Schedule 7—Additional information for advertisements

[clause 9.1.2]

Note: to be completed in addition to the Application for Planning Approval form

1. Description of property upon which advertisement is to be displayed including full details of its proposed position within that property:

2. Details of proposed sign—

(a) Type of structure on which advertisement is to be erected (i.e. freestanding, wall mounted, other):.....

(b) Height: Width: Depth:

(c) Colours to be used:

(d) Height above ground level—

• (to top of advertisement):.....

• (to underside):

(e) Materials to be used:

Illuminated: Yes/ No

If yes, state whether steady, moving, flashing, alternating, digital, animated or scintillating and state intensity of light source:

3. Period of time for which advertisement is required:

4. Details of signs (if any) to be removed if this application is approved—

Note: This application should be supported by a photograph or photographs of the premises showing superimposed thereon the proposed position for the advertisement and those advertisements to be removed detailed in 4 above.

Signature of advertiser(s):

(if different from land owners)

Date:

Schedule 8—Notice of public advertisement of planning proposal

[clause 9.4.4]

Town Planning Act

Town of Cottesloe

NOTICE OF PUBLIC ADVERTISEMENT OF PLANNING PROPOSAL

The local government has received an application to use and/or develop land for the following purpose and public comments are invited.

Lot No.: Street: Suburb:

Proposal:.....

Details of the proposal are available for inspection at the local government office. Comments on the proposal may be submitted to the local government in writing on or before the day of

Signed: Dated:

For and on behalf of the Town of Cottesloe.

Schedule 9—Notice of determination on application for planning approval

[clause 10.4.1]

Town Planning Act

Town of Cottesloe

DETERMINATION ON APPLICATION FOR PLANNING APPROVAL

Location:

Lot:

Vol. No.:

Application date:

Plan/Diagram:

Folio No.:

Received on:

Description of proposed development:

The application for planning approval is:

granted subject to the following conditions:

refused for the following reason(s):

Conditions/reasons for refusal:

Note 1: If the development the subject of this approval is not substantially commenced within a period of 2 years, or such other period as specified in the approval after the date of the determination, the approval shall lapse and be of no further effect.

Note 2: Where an approval has so lapsed, no development shall be carried out without the further approval of the local government having first been sought and obtained.

Note 3: If an applicant is aggrieved by this determination there is a right of appeal under Part 14 of the *Town Planning Act*. An appeal must be lodged within 28 days of the determination.

Signed:

Dated—

.....
for and on behalf of the Town of Cottesloe.

Schedule 10—Environmental conditions

[clause 5.6.1]

| Scheme or Amendment No. | Gazettal Date | Environmental conditions |
|-------------------------|--|--------------------------|
| | <p><i>Note: at the Gazettal date there are no Environmental conditions that apply to the Scheme.</i></p> | |

Schedule 11—Wall Height

[clause 5.7.1]

In Figures 1 to 4 the level for the purpose of the definition of Wall Height at paragraph (b) in clause 5.7.1 is indicated by an X.

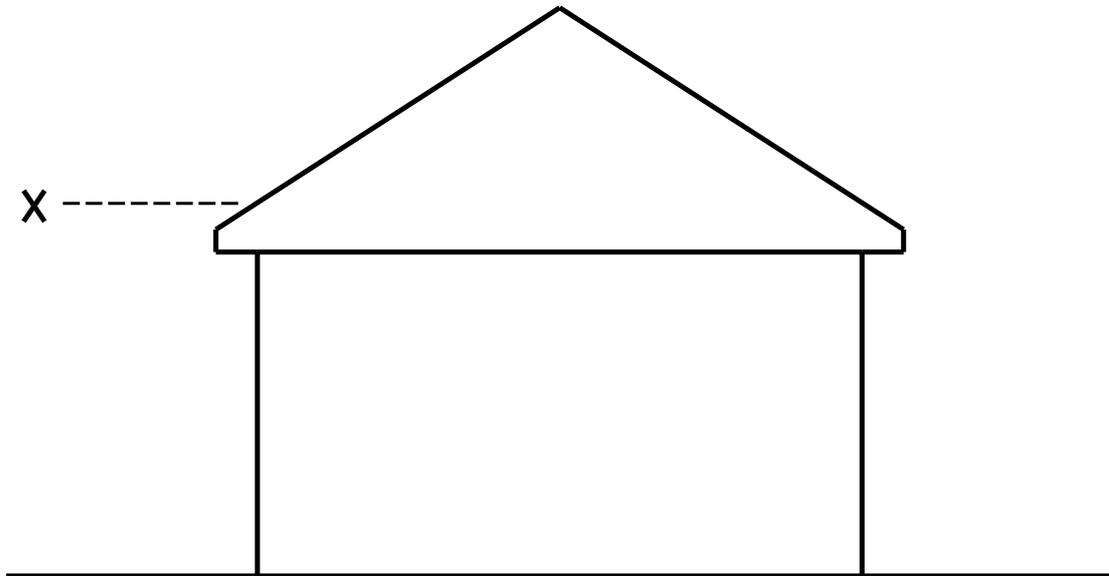


Figure 1 — Pitched Roof



Figure 2 — Parapet Wall

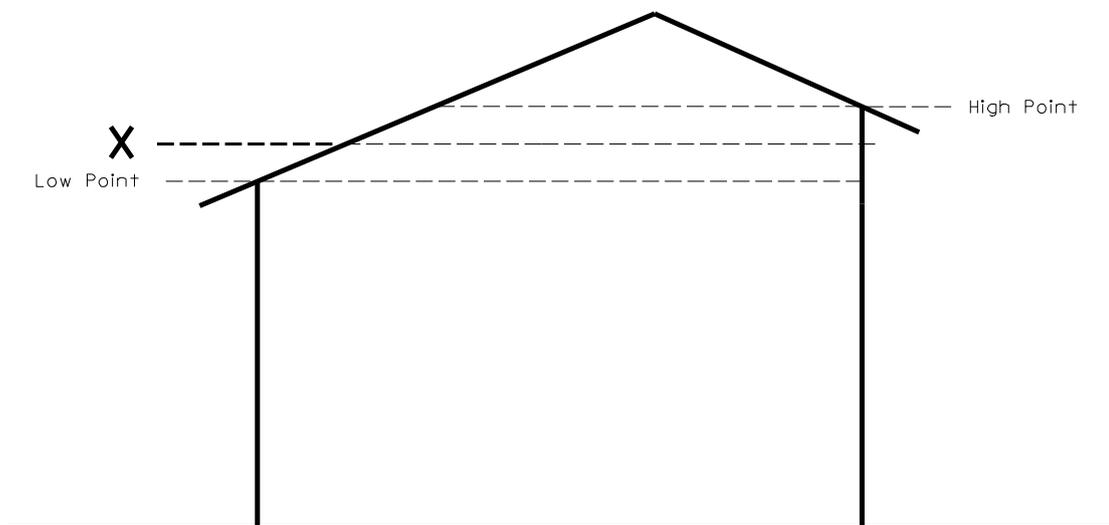


Figure 3 — Skillion or Hipped Roof

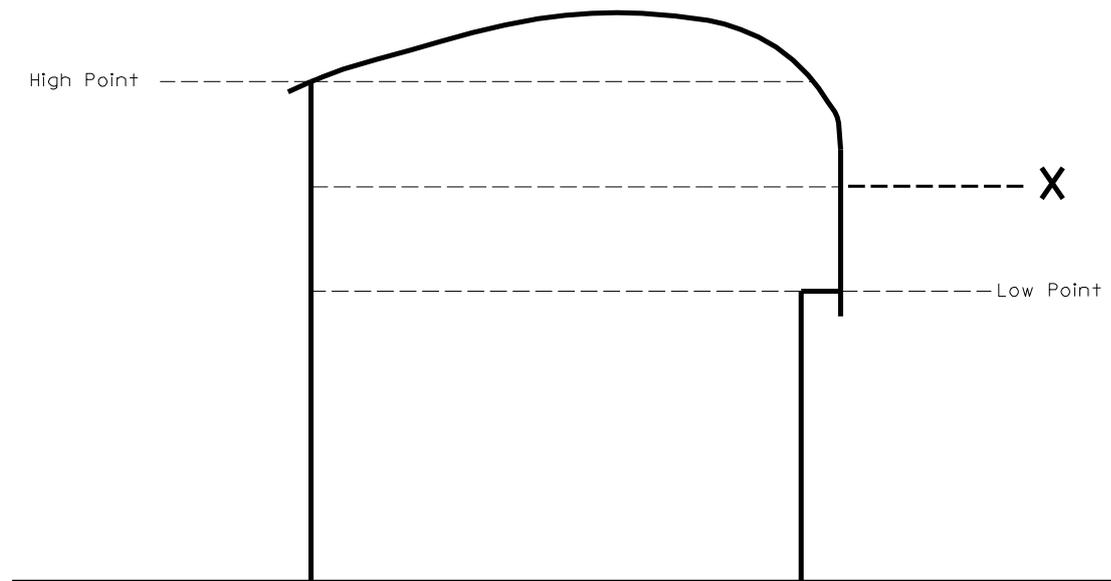


Figure 4 — Curved Roof

Where a skillion, hipped, curved or irregular shape roof occurs (Figures 3 and 4) the level shall be measured to the median height between the lowest and the highest points of the wall.

Wall height shall be measured to the plate height of the wall (i.e. top of the wall as constructed, upon which the roof structure sits), whether or not there are eaves and whether or not the eaves are open or enclosed.

Schedule 12—Special Provisions

[clause 4.15.]

| No. | Description of land | Land use | Special Provisions |
|-----|--------------------------------------|---|---|
| 1 | No. 14 (Lots 50 & 51) Edward Street. | Residential or other purposes as permitted in the Residential zone. | Retention and restoration of the main church building and that building being used for purposes consistent with the Residential zone. |
| 2 | Lots 10 and 120 Clive Road. | Residential or other purposes as permitted in the Residential zone. | <ol style="list-style-type: none"> 1. The maximum number of dwellings permitted shall be 14 (representing a built density of R42). 2. The dwellings shall comply with the height controls of the Scheme. 3. The development shall be in accordance with the concept plans numbered A01 to A05 (all Revision E), subject to any modification in a development approval by the local government. |

Schedule 13—Variations to site and development standards and requirements

[clause 5.5.4.]

Pursuant to clause 5.5.4(a) of the Scheme the discretion provided in clause 5.5.1 to vary any non-residential development standard or requirement prescribed under the Scheme is subject to the exclusions, limitations, maximums or other provisions set out in this Schedule.

1. Residential development

As set out in clause 5.5.1, the discretion provided in clause 5.5.1 does not apply to any residential development. To avoid any uncertainty, if the discretion provided in clause 5.5.1 is applied to any form of residential development, then subject to clause 5.3, the discretion may only be exercised to the extent permitted by, and in accordance with, the provisions of the Residential Design Codes dealing with the type of development standard or requirement sought to be varied.

2. Matters provided for as part of the Land Use definitions (Part 2 of Schedule 1)

Matters provided for as part of the Land Use definitions contained in Part 2 of Schedule 1 are not development standards or requirements for the purpose of the discretion provided in clause 5.5.1. To avoid any uncertainty, if matters provided for as part of the Land Use definitions contained in Part 2 of Schedule 1 are treated as development standards or requirements, those matters are excluded from the operation of the discretion provided for in clause 5.5.1.

3. Height (clause 5.7, Table 2)

3.1 To avoid any uncertainty, the provisions of clause 5.7 are excluded from the operation of the discretion provided in clause 5.5.1.

3.2 To avoid any uncertainty, for residential development in the Residential Zone, the maximum height set out in Table 2 may only be varied in accordance with clause 5.7.4, and the provisions of clause 5.7.4 are excluded from the operation of the discretion provided in clause 5.5.1.

3.3 To avoid any uncertainty, the maximum height provisions set out in Table 2 for development in the zones listed are excluded from the operation of the discretion in clause 5.5.1.

4. Plot ratio (Table 2)

4.1 Subject only to the following, a provision of Table 2 referring to plot ratio may be varied to allow an increase in plot ratio of up to 20% of the ratio set out in Table 2.

4.2 The plot ratio provisions set out in Table 2 for development in the Local Centre Zone are excluded from the operation of the discretion in clause 5.5.1.

4.3 Where the provisions of Table 2 require plot ratio to be in accordance with the Residential Design Codes, subject to clause 5.3 of the Scheme, the discretion provided in clause 5.5.1 may only be exercised to the extent permitted by, and in accordance with, the provisions of the Residential Design Codes dealing with the plot ratio.

5. Site coverage (Table 2)

5.1 Subject to the following, the provisions of Table 2 referring to site cover are excluded from the operation of the discretion in clause 5.5.1.

5.2 The site cover provisions in Table 2 for non-residential development in the Residential Zone may be varied to allow a site cover of up to 60%.

5.3 Where the provisions of Table 2 require site cover to be in accordance with the Residential Design Codes, subject to clause 5.3 of the Scheme, the discretion provided in clause 5.5.1 may only be exercised to the extent permitted by, and in accordance with, the provisions of the Residential Design Codes dealing with site cover.

6. Boundary setbacks (Table 2)

Where the provisions of Table 2 require boundary setbacks to be in accordance with the Residential Design Codes, subject to clause 5.3 of the Scheme, the discretion provided in clause 5.5.1 may only be exercised to the extent permitted by, and in accordance with, the provisions of the Residential Design Codes dealing with boundary setbacks.

7. Parking (clause 5.8, Table 3 Vehicle Parking Requirements)

7.1 Subject to the following, the parking requirements set out in Table 3 may be varied, so as to reduce the number of parking spaces required in respect of a particular development by up to 20% of the number of parking spaces that would otherwise be required by the application of the provisions of Table 3, subject to the provision of a traffic impact assessment, to the satisfaction of the Council, addressing the matters referred to in clause 5.5.4(c).

7.2 Where Table 3 requires parking spaces to be provided in accordance with the Residential Design Codes, subject to clause 5.3 of the Scheme, the discretion provided in clause 5.5.1 may only be exercised to the extent permitted by, and in accordance with, the provisions of the Residential Design Codes dealing with parking.

7.3 The provisions of Table 3 that require the number of parking spaces to be determined by the local government are excluded from the operation of the discretion provided in clause 5.5.1.

8. Filling of Land And Height of Retaining Walls (Clause 5.10)

The provisions of clause 5.10 are excluded from the operation of the discretion provided for in clause 5.5.1.

9. Local Centre zone—Mixed-use development (clause 5.11)

The provisions of clause 5.11 are excluded from the operation of the discretion provided for in clause 5.5.1.

Schedule 14—Development Zone Provisions

[clause 6.2.]

Pursuant to clauses 6.2.3.2 and 6.2.3.4 of the Scheme the development provisions for the Development Zones are contained in this Schedule 14.

| Development Zone | Provisions |
|--|--|
| <p>'A'—Lots bound by Marine Parade, Eric, Gadsdon and Eileen Streets—Ocean Beach Hotel site (with the exception of Lots 101, 102 & 103 Eileen Street).</p> | <ul style="list-style-type: none"> • This Development zone is also subject to Special Control Area 2 and associated provisions—refer clause 6.4 and Schedule 15. • Comprehensive planning for the area shall be undertaken through the preparation and approval of a Structure Plan, in accordance with clause 6.2, to provide the basis for subdivision, strata subdivision and development. • Land uses shown on the adopted Structure Plan shall apply in accordance with clause 6.2.8 and clause 6.4, and where there is any inconsistency clause 6.4 and Schedule 15 shall prevail. • The Structure Plan will provide for the ground floor being limited to non-residential uses as provided for in clause 6.4 and Schedule 15, recognising the Council's aim of maintaining the socially 'active' nature of the area, with the exception of those areas where it is permitted on Diagram 8 of Schedule 15. |
| <p>'B'—Lot 34, rear 253 Marmion Street (Council former depot site).</p> | <ul style="list-style-type: none"> • Comprehensive planning for the area shall be undertaken through the preparation and approval of a Structure Plan, in accordance with Clause 6.2, to guide subdivision and development. • Land uses shown on the Structure Plan shall apply in accordance with Clause 6.2.8. • The Structure Plan will provide for residential development comprising a range of dwelling types, sizes and densities to take full advantage of the opportunity for more intense urban infill on this unique site. • The Structure Plan will include consideration of— <ol style="list-style-type: none"> (a) the potential for aged persons housing and local open space; and (b) all modes of access, circulation and parking having regard to the functioning, character and amenity of the site and surrounding locality. |
| <p>'C'—Lot 87 (No. 40) Marine Parade (Wearne Hostel site).</p> | <ul style="list-style-type: none"> • Comprehensive planning for the area shall be undertaken through the preparation and approval of a Structure Plan, in accordance with Clause 6.2, to guide subdivision and development. • Land uses shown on the Structure Plan shall apply in accordance with Clause 6.2.8. • The Structure Plan will apply to the entire site and will provide for additional residential development comprising a range of dwelling types, sizes and densities to take full advantage of the opportunity for more intense urban infill on this site, particularly with regard to its close proximity to regional public transport routes. The structure plan may also provide for additional aged care dwellings and any associated ancillary buildings that may be required. • The Structure Plan will have regard for, and if possible integrate with, the Structure Plan for Area 'D'. |
| <p>'D'—Reserve 23147, No 53 Curtin Avenue, corner of Warton and Gibney Streets (WA Institute for Deaf Education).</p> | <ul style="list-style-type: none"> • Comprehensive planning for the area shall be undertaken through the preparation and approval of a Structure Plan, in accordance with clause 6.2, to guide subdivision and development. • Land uses shown on the Structure Plan shall apply in accordance with clause 6.2.8. • The Structure Plan will apply to the entire site and will provide for additional residential development comprising a range of dwelling types, sizes and densities to take full advantage of the opportunity for more intense urban infill on this site, particularly with regard to its close proximity to regional public transport routes. • The Structure Plan will have regard for, and if possible, integrate with, the Structure Plan for Area 'C'. |

| | |
|--|--|
| <p>'E'—Crown Reserves 3399, 3438, 25367, 33606, 33607, 30397, bounded by Curtin Avenue and railway line.</p> | <ul style="list-style-type: none"> • Comprehensive planning for the area shall be undertaken through the preparation and approval of a Structure Plan, in accordance with Clause 6.2, to guide subdivision and development. • Land uses shown on the Structure Plan shall apply in accordance with Clause 6.2.8. • The Structure Plan will apply to the entire site and will provide for additional residential development comprising a range of dwelling types, sizes and densities to take full advantage of the opportunity for more intense urban infill on this site, particularly with regard to its close proximity to regional public transport routes and the potential for integration with the nearby Town Centre zone on the eastern side of the railway line. |
|--|--|

Schedule 15—Building Design Controls for Special Control Area 2

[clause 6.4]

1. Pursuant to clause 6.4 of the Scheme, Building Design Control Diagrams for Special Control Area 2—Cottesloe Beach Hotel, Ocean Beach Hotel and Foreshore Centre zone are contained in this Schedule.

2. As required by clause 6.4, development (including changes of use), subdivision and strata subdivision applications for land within Special Control Area 2 shall comply with the following Building Design Control Diagrams (as applicable to a particular proposal).

3. In these Diagrams, the following shall apply—

(a) The Diagrams define the maximum outer extent that development shall extend to on a site. Building Height (unless otherwise dimensioned on a Diagram) shall be determined as follows—

2 storeys—maximum building height shall be 9 metres

3 storeys—maximum building height shall be 12 metres

4 storeys—maximum building height shall be 17 metres

5 storeys—maximum building height shall be 21 metres

Where additional storeys are permitted above 5 storeys, those storeys can be of any individual height, subject to the building remaining within the maximum height limit as indicated in storeys and metres. Uninhabited roof spaces or roof articulation above the uppermost level of the uppermost storey must be incorporated within the maximum building height.

(b) “Building Height” and “Storey” are as defined in clause 5.7.1. The remainder of clause 5.7 shall not apply to development that is subject to Special Control Area 2.

(c) All requirements specified on the Diagrams shall be complied with in any development, use, subdivision or strata subdivision of any land that is subject to Special Control Area 2.

Schedule 15 - Building Control Diagrams for Special Control Area 2 [Clause 6.4]

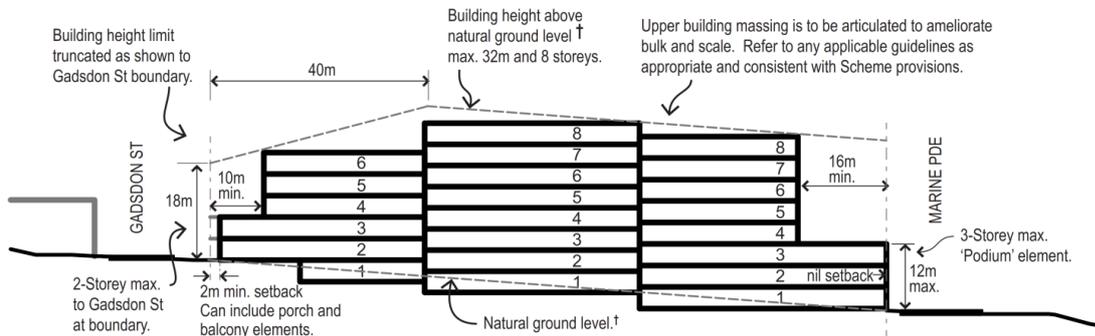


Diagram 1. East-West section through Ocean Beach Hotel site (Development Zone A)

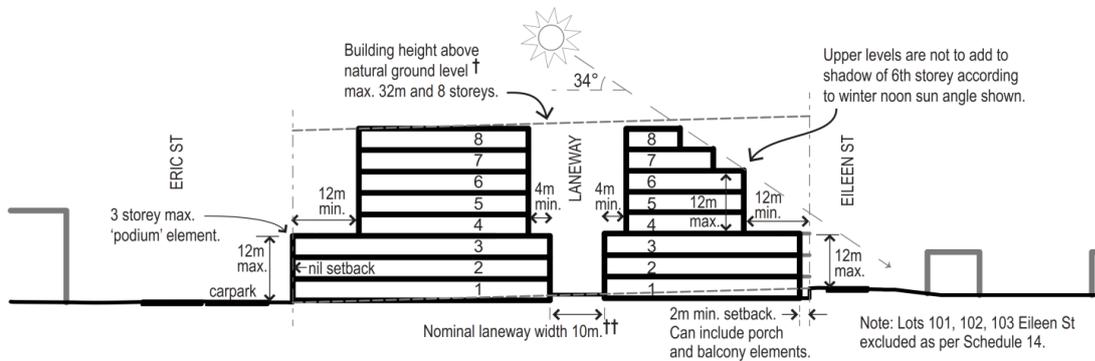


Diagram 2. North-South section through Ocean Beach Hotel site (Development Zone A)

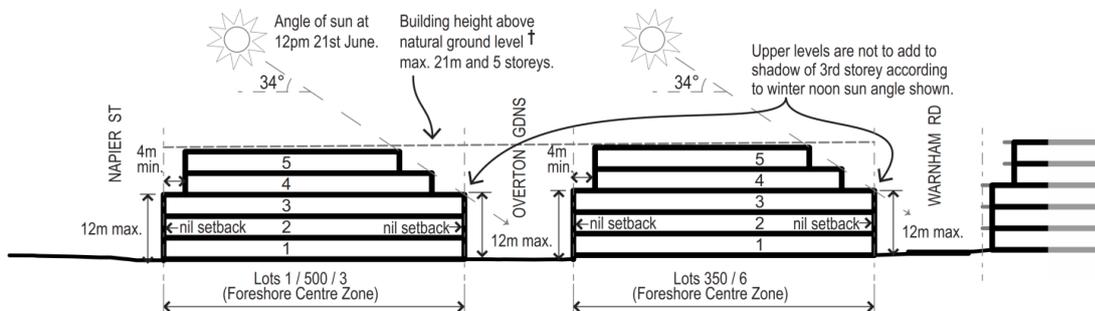


Diagram 3. North-South section through Foreshore Centre Zone

Note: Diagrams 1-2 show indicative terracing of building volumes and ground levels for site gradient. Development proposals can be modified as appropriate within the parameters annotated on the diagram and/or others that may apply to the site/development consistent with the Scheme.

† For the purposes of Schedule 15, Natural Ground Level (NGL) is the surface interpolated between the existing ground levels at site boundaries.

†† The location, width, tenure and access of the laneway is to be addressed in the Structure Plan (Clause 6.2).

Schedule 15 - Building Control Diagrams for Special Control Area 2 [Clause 6.4]

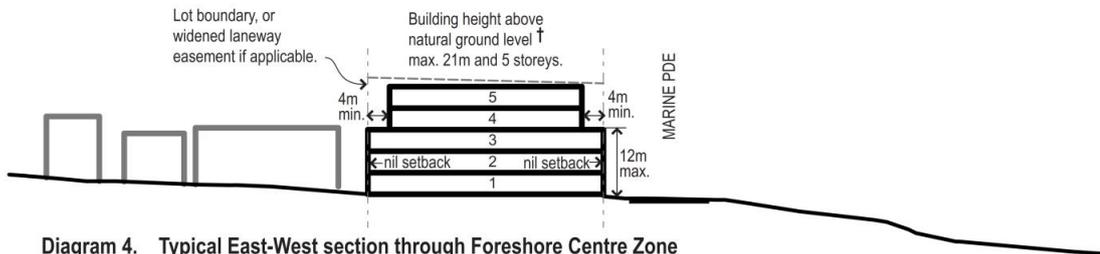


Diagram 4. Typical East-West section through Foreshore Centre Zone

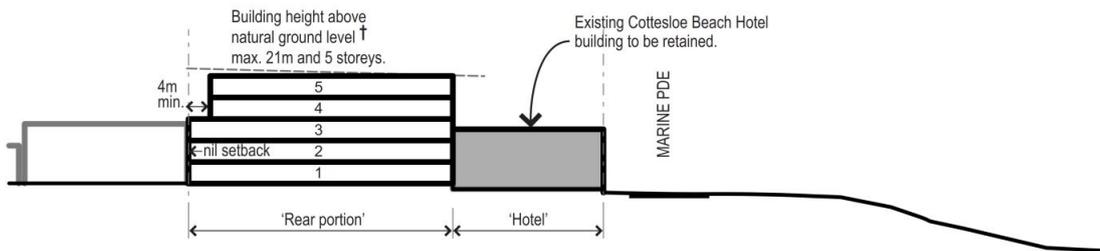


Diagram 5. East-West section through Cottesloe Beach Hotel site

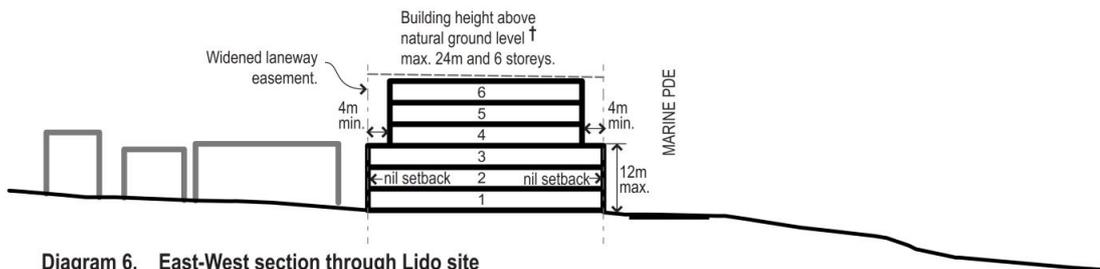


Diagram 6. East-West section through Lido site

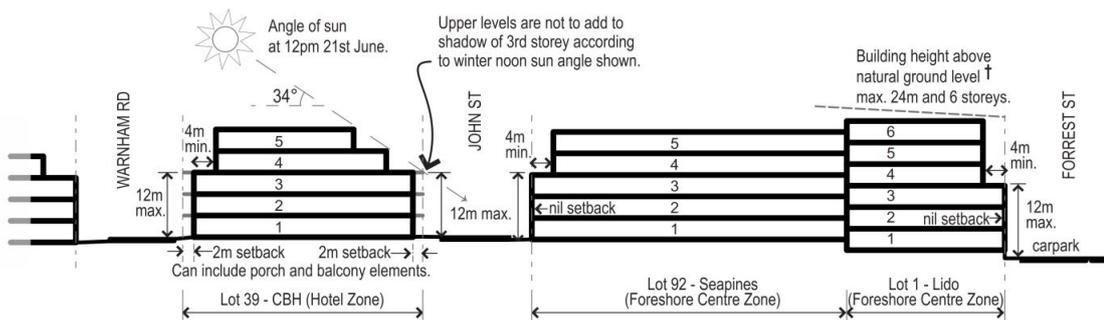


Diagram 7. North-South section through Cottesloe Beach Hotel / Seapines / Lido sites

Schedule 15 - Building Control Diagrams for Special Control Area 2 [Clause 6.4]

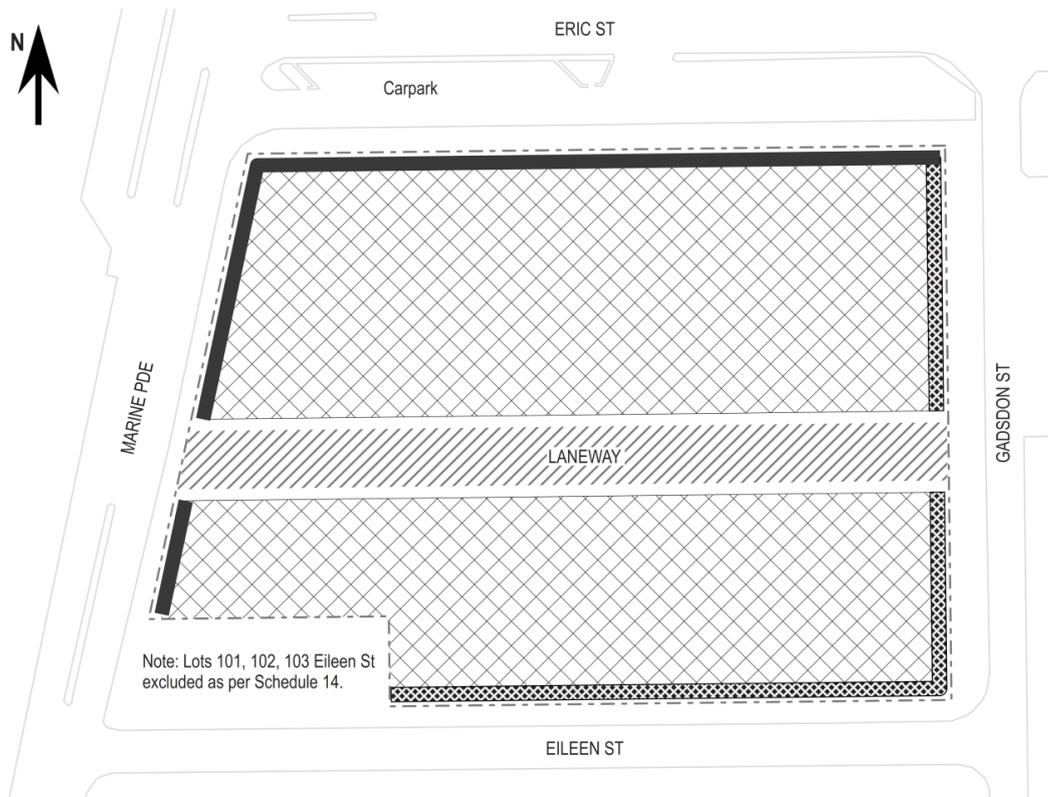


Diagram 8. Building Design Controls Plan of Ocean Beach Hotel site (Development Zone A)

-  Development area.
-  Active public frontage at street.
-  Residential frontage.
-  Laneway - location, width, tenure and access to be addressed in the Structure Plan (Clause 6.2).

Schedule 15 - Building Control Diagrams for Special Control Area 2 [Clause 6.4]

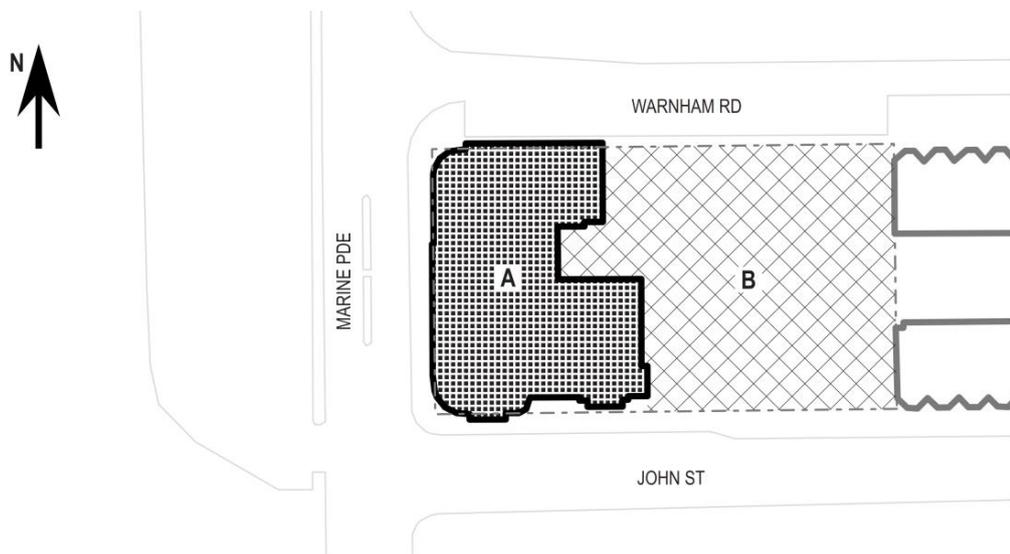


Diagram 9. Building Design Controls Plan of Cottesloe Beach Hotel (CBH) site



'Hotel' - short-stay accommodation and hotel uses only. Heritage elements of CBH to be retained to Heritage Council of WA satisfaction.



'Rear Portion' - short-stay accommodation, serviced apartments and multiple dwellings permissible.

Note: A minimum total of 50 hotel / short-stay rooms to be provided in areas A and B.

Adoption—

Adopted by Resolution of the Council of the Town of Cottesloe at the Special Meeting of the Council held on the 21st day of February 2006.

Final Approval—

Adopted for final approval by Resolution of the Council of the Town of Cottesloe at the Special Meeting of the Council held on the 27th day of May 2009, and the seal of the Municipality was pursuant to that Resolution hereunto affixed in the presence of—

J. M. DAWKINS, Mayor.
C. ASKEW, Chief Executive Officer.

Recommended/Submitted for final approval by the Western Australian Planning Commission.

ANDREW TREVOR, Delegated under S.16 of the PD Act 2005.

Dated 4 July 2014.

Final approval granted.

JOHN DAY, Minister for Planning.

Dated 22 July 2014.