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PLANNING AND DEVELOPMENT ACT 2005

SHIRE OF WEST ARTHUR

**LOCAL PLANNING
SCHEME No. 2**

PLANNING AND DEVELOPMENT ACT 2005**SHIRE OF WEST ARTHUR****LOCAL PLANNING SCHEME No. 2****Preamble**

This Local Planning Scheme of the Shire of West Arthur consists of this Scheme Text and the Scheme Maps. The Scheme Text should be read with the Local Planning Strategy for the Shire.

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.

PLANNING AND DEVELOPMENT ACT 2005

SHIRE OF WEST ARTHUR

LOCAL PLANNING SCHEME No. 2

The Shire of West Arthur, under the powers conferred by the *Planning and Development Act 2005*, hereby makes the following Local Planning Scheme.

—————
SCHEDULE

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PART 1—PRELIMINARY**1.1 Citation**

1.1.1 The Shire of West Arthur Local Planning Scheme No. 2 (“the Scheme”) comes into operation on its gazettal date.

1.1.2 The Shire of West Arthur Town Planning Scheme No. 1 published in the *Government Gazette* of 17 August, 1990 and all amendments thereto is hereby repealed.

1.2 Responsible Authority

The Shire of West Arthur (“the local government”) is the responsible authority for implementing the Scheme.

1.3 Scheme Area

The Scheme applies to the whole of the land within the local government district of the Shire of West Arthur (“the Scheme Area”).

1.4 Contents of Scheme

The Scheme comprises—

- (a) this Scheme Text;
- (b) the Scheme Map (sheets numbers 1 to 5 inclusive);

The Scheme Text is to be read in conjunction with the Scheme Map.

1.5 Purposes of Scheme

The purpose of the Scheme is to—

- (a) set out the local government’s planning aims and intentions for the Scheme Area;
- (b) set aside land as 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 conservation of areas and places of heritage interest;
- (g) address other matters contained in Schedule 7 of the Planning and Development Act.

1.6 The Aims of the Scheme

The aims of the Scheme are—

- (a) To assist the effective implementation of regional plans and policies including the State Planning Strategy;
- (b) To protect areas of agricultural significance for sustainable production;
- (c) To encourage economic growth in rural areas by facilitating the more intensive and diversified use of rural land in appropriate areas for high value products which are compatible with surrounding farm practices, encouraging processing and value adding industries, and by promoting tourism;
- (d) To provide opportunities for planned, contained and sustainable settlements in locations with access to services and infrastructure;
- (e) To provide for a range of rural lifestyle opportunities and ensuring rural residential development is managed to minimise impacts on rural land uses, to protect and enhance rural landscapes and environmental values, and to ensure good accessibility to services and facilities;
- (f) To protect the natural environment and biodiversity while ensuring appropriate development opportunities realised;
- (g) To promote the sustainable management of natural resources including energy, water, land, minerals, and basic raw materials by preventing land degradation and integrating land and catchment management with land use planning.

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 in the Planning and Development Act, or Schedule 1 of the Scheme, or the Residential Design Codes.

1.7.2 If there is a conflict between the meaning of a word or expression in Schedule 1 or the Residential Design Codes—

- (a) in the case of residential development the definition in the Residential Design Codes prevails; and
- (b) in any other case the definition in Schedule 1 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

There are no other Schemes of the Shire of West Arthur, which apply to the Scheme Area.

PART 2—LOCAL PLANNING POLICY FRAMEWORK

2.1 Scheme Determinations to Conform with 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 a Policy so prepared.

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 determinations 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 a 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 2 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 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;
- (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 draft 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 the 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 a 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 2 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 Local Reserves.

3.2 Regional Reserves

There are no Regional Reserves in the Scheme Area.

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 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 thereon.

4.2 Objectives of the Zones

The Objectives of the Zones are—

- *Residential Zone*
 - to provide for the predominant form of residential development to be single houses.
 - to provide for diversity of lifestyle choice with a range of dwelling types.
 - to achieve a high standard of residential development.
 - to allow for the establishment of non-residential uses which are compatible with the predominant residential use and which will not adversely affect local amenities.
- *Commercial Zone*
 - to ensure the established town centre in Darkan remain the principal place for retail, commercial, civic, and administrative functions in the district
 - to allow for limited commercial development in townsites away from Darkan, to provide services to the local community.
 - to ensure development will not adversely affect local amenities, and will enhance the character of townsites in the district.
 - to provide for the efficient and safe movement of pedestrians and vehicles (including trucks, buses, and caravans).
 - to provide sufficient parking spaces for cars, caravans, and buses, without compromising pedestrian movements.
 - to provide an increased level of public amenities including public toilets, shaded areas, and street furniture.
 - to provide for expansion of commercial activity and community facilities to meet future demands.
- *Industrial Zone*
 - to provide for the needs of industry to support the community.
 - to provide appropriate buffers between industry and adjacent land uses, so as to avoid land use conflicts.
 - to avoid non-industry related uses establishing in the industrial areas which may constrain industrial activities.
- *Rural Residential Zone*
 - to select areas wherein closer subdivision will be permitted to provide for such uses as hobby farms, horse breeding, rural-residential retreats.
 - to make provision for retention of the rural landscape and amenity in a manner consistent with the orderly and proper planning of such areas, achieves a high standard of visual amenity.
 - having regard for the size of the district, the fragile nature of the environment in many places, and the difficulties faced by the local government in providing services away from Darkan, the local government will generally favour Rural-Residential zones be located close to the town and then only where the environmental impacts are manageable.
- *Rural Zone*
 - to ensure the continuation of broad-hectare agriculture as the principal land use in the district, encouraging where appropriate the retention and expansion of agricultural activities.

- to provide for intensive agricultural uses and diversified farming which retain the rural character and amenity of the locality, and which are consistent with land suitability.
- to help protect rural land from land degradation and further loss of biodiversity by—
 - minimising clearing of remnant vegetation
 - encouraging retention and protection of remnant vegetation
 - encouraging development and protection of vegetation corridors
 - encouraging development of sustainable surface and sub-surface drainage works
 - encouraging rehabilitation of salt-affected land
 - encouraging soil conservation through land management measures
 - encouraging identification and protection of wetlands
- to consider non-rural uses where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment.
- to allow for facilities for tourists and travellers, and for recreation uses.
- to have regard to use of adjoining land at the interface of the Rural Zone with other zones to avoid adverse effects on local amenities.

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 uses 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 requirements of the Scheme.
- “D” means that the use is not permitted unless the local government has exercised its discretion by granting planning approval.
- “A” means that the use is not permitted unless the local government has exercised its discretion by granting planning approval after giving special notice in accordance with clause 9.4.
- “X” means a use that is not permitted by the Scheme.

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

- (a) the local government has exercised its discretion by granting 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 a 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; and
- (e) despite sub-clause (a) of this clause, a person is not to commence agroforestry on any lot without first having applied for and obtained planning approval under the Scheme.

- Note:
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 to approve 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.

4.4 Interpretation of the Zoning Table

4.4.1 Where a specific use is mentioned in the Zoning Table, it is deemed to be excluded from the general terms used to describe any other use.

4.4.2 If a person proposes to carry out on land any use that is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type or class of activity of any other use the local government may—

- (a) determine that the use is consistent with the objectives of the particular zone and is therefore permitted; or
- (b) determine that the proposed use may be consistent with the objectives of the particular zone and thereafter follow the advertising 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

Despite anything contained in the Zoning Table, the land specified in Schedule 3 may only be used for the specific use or uses that are listed and subject to the conditions set out in Schedule 3 with respect to that land.

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

There are no restricted uses which apply to the Scheme.

4.7 Special Use Zones

4.7.1 Special Use Zones are set out in Schedule 4 and are in addition to the zones in the Zoning Table.

4.7.2 A person must not use any land, or any structure or buildings on land, in a Special Use Zone except for the purpose set out against that land in Schedule 4 and subject to compliance with any conditions set out in Schedule 4 with respect to that land.

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

There are no Special Use Zones which apply to the Scheme.

4.8 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 or building for the purpose for which it was being lawfully used immediately prior to the Gazettal date;
- (b) the carrying out of any development thereon 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: "Land" has the same meaning as in the Planning and Development Act and includes houses, buildings and other works and structures.

4.9 Extensions and Changes to a Non-conforming Use

4.9.1 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 a non-conforming use to another non-conforming use,

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

4.9.2 An application for planning approval under this clause is to be advertised in accordance with clause 9.4.

4.9.3 Where an application is for a change of use from an existing non-conforming use to another non-conforming use, the local government is not to grant its planning approval unless the proposed use is less detrimental to the amenity of the locality than the existing non-conforming use and is, in the opinion of the local government, closer to the intended purpose of the zone.

4.10 Discontinuance of Non-Conforming Use

Where a non-conforming use of any land has been discontinued for a period of 6 months the land must not be used after that period otherwise than in conformity with the provisions of the Scheme.

4.11 Termination of a Non-Conforming Use

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

Note: Sections 190 and 191 of the Planning and Development Act enable 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.

4.12 Destruction of Non-Conforming Use Buildings

When a building used for a non-conforming use is destroyed to 75% or more of its value the buildings is not to be repaired or rebuilt, altered or added to for the purpose of being used for a non-conforming use or in a manner not permitted by the Scheme except with the planning approval of the local government.

**TABLE 1
ZONING TABLE**

USES	RESIDENTIAL	COMMERCIAL	INDUSTRIAL	RURAL RESIDENTIAL	RURAL
1	aged or dependent persons dwelling	D	X	X	X
2	agriculture—extensive	X	X	X	P
3	agriculture—intensive	X	X	X	D
4	agroforestry	X	X	X	P
5	animal establishment	X	X	X	A
6	animal husbandry—intensive	X	X	X	A
7	aquaculture	X	X	D	D
8	caretaker's dwelling	X	D	D	X
9	club premises	X	D	X	X
10	dwelling	P	X	X	P
11	educational establishment	A	X	X	X
12	fuel depot	X	X	P	X
13	holiday accommodation	A	A	X	A
14	home business	D	X	X	D
15	hotel	X	D	X	X
16	industry—extractive	X	X	X	X
17	industry—general	X	X	D	X
18	industry—light	X	X	P	X
19	industry—rural	X	X	D	X
20	motel	X	D	X	X
21	motor vehicle, boat, or caravan sales	X	D	P	X
22	motor vehicle repair	X	A	P	X
23	office	X	P	X	X
24	plantation	X	X	X	X
25	place of worship	D	P	X	A
26	plant nursery	A	X	P	D
27	residential building	D	X	X	D
28	restaurant	X	D	X	X
29	rural pursuit	X	X	X	A
30	service station	X	A	D	X
31	shop	X	D	X	X
32	transport depot	X	X	P	X
33	veterinary centre	X	A	P	D
34	workers accommodation	X	X	X	A

PART 5—GENERAL DEVELOPMENT REQUIREMENTS

5.1 Compliance with Development Standards and Requirements

Any development of land is to comply with the provisions of the Scheme.

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 Planning Code density applicable to land within the Scheme Area is to be determined by reference to the Residential Planning Code 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 Planning Code density, as being contained within the area defined by centre line of those borders.

5.3 Special Application of Residential Design Codes

The Council may permit a variation to the R12.5 density up to a maximum of R20 for development of more than one dwelling on a lot but only where—

- (a) the Council is satisfied that the lot is suitable for long-term effluent disposal;
- (b) the lot is suitably located close to services and facilities; and
- (c) the Council after following the advertising procedures in clause 9.4 is satisfied that there will not be adverse impacts on local amenities.

5.4 Restrictive Covenants

5.4.1 Subject to clause 5.4.2, a restrictive covenant affecting any land in the Scheme Area whereby, or the effect of which is that, the number of dwellings which may be constructed on the land is limited or restricted to less than that permitted by the Scheme, is 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 the development of the land which would, but for the operation of clause 5.4.1, have been prohibited unless the application has been dealt with as an 'A' use and has complied with the advertising requirements of clause 9.4.

5.5 Variations to Site and Development Standards and Requirements

5.5.1 Except for development in respect of which the Residential Design Codes apply, 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, 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 In considering an application for planning approval under this clause, where, in the opinion of local government, the variation is likely to affect any owners or occupiers in the general locality or adjoining the site which is subject of consideration for the variation, the local government is to—

- (a) consult the affected parties by following one or more of the provisions for advertising uses under clause 9.4; and
- (b) have regard to any expressed views prior to making its determination to grant the variation.

5.5.3 The power conferred by this clause may only be exercised if the local government is satisfied that—

- (a) approval of the proposed development would be appropriate having regard to the criteria set out in clause 10.2; and
- (b) the non-compliance will not have any adverse effect upon the occupiers or users of the development or the inhabitants of the locality or upon the likely future development of the locality.

5.6 Environmental Conditions

5.6.1 Environmental conditions to which the Scheme is, or amendments to the Scheme are, 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 1985*; and
- (b) make the statements available for public inspection at the offices of the local government.

There are no environmental conditions imposed by the Minister for Environment which apply to the Scheme.

5.7 Development of Lots Abutting Unconstructed Roads

Despite anything elsewhere in the Scheme planning approval is required for development of land abutting an unconstructed road or a lot which does not have frontage to a constructed road. In considering such an application the local government is to either—

- (a) refuse the application until the road has been constructed or access by means of a constructed road is provided as the case may be;
- (b) grant the application subject to a condition requiring the applicant to pay a sum of money in or towards payment of the cost or estimated cost of construction of the road or part thereof and any conditions it thinks fit to impose; or
- (c) require such other arrangements are made for permanent access as are to the satisfaction of the local government.

5.8 Parking Requirements

A person is not to develop or use any land or erect use or adapt any building unless parking spaces as specified by the local government are provided and such spaces are constructed and maintained in accordance with the requirements of the local government.

5.9 On-site Effluent Disposal

The local government may require that on-site effluent disposal systems are in accordance with the requirements of the Environmental Protection Authority and the Department of Health.

5.10 Transported Buildings

5.10.1 A person is not to transport a building and place it on land in a gazetted townsite in the Scheme Area and use it as a dwelling unless planning approval has been granted by the local government. The local government is not to grant planning approval if the land is within a Heritage Area designated in accordance with clause 7.2.

5.10.2 The local government must only grant planning approval in accordance with clause 5.10.1 if the transported building—

- (a) complies with the provisions of the Scheme, the Residential Design Codes, and any Local Laws applicable both to the transported building and the land on which it is to be situated; and
- (b) is, in the opinion of the local government, in a satisfactory condition and will not detrimentally affect the amenity of the locality.

5.10.3 The planning approval which may be granted by the local government in accordance with clause 5.10.2 may include a condition requiring the applicant to enter into an agreement with, and provide a bond to, the local government. Such an agreement and bond is to provide a surety for completion of the building to a standard acceptable to the local government within such time as may be specified by the local government.

5.11 Caretaker's Dwellings

The provisions of this clause apply for all caretaker's dwellings in the commercial and Industrial zones—

- (a) a caretaker's dwelling is not to be developed and/or occupied on a lot unless that lot has been developed and is being used in accordance with the Scheme;
- (b) only one caretaker's dwelling is to be permitted on a lot; for the purposes of this clause "lot" excludes a strata lot or survey-strata lot created under the *Strata Titles Act 1985*;
- (c) a caravan or park home is not to be permitted as a caretaker's dwelling for either permanent or temporary occupation;
- (d) a caretaker's dwelling is to be screened and/or fenced from the street frontage of the lot to the satisfaction of the local government and wherever possible is to be sited at the rear of other buildings on the lot;
- (e) a caretaker's dwelling is to contain 1 bedroom only within a total floor area that does not exceed 100 m² measured from the external face of walls;
- (f) open verandahs may be permitted but must not be enclosed by any means unless the total floor area remains within the 100 m² referred to in paragraph (e).

5.12 Use of Setback Areas

5.12.1 A person is not to use the land between a street alignment and the distance that buildings are required to be setback from such street alignment for any purpose other than one or more of the following—

- (a) a means of access;
- (b) the daily parking of vehicles;
- (c) the loading and unloading of vehicles;
- (d) landscaping which only in the Commercial Zone and then only with the specific approval of local government may include an awning, pergola, or similar structure and when in front of a fast food outlet or restaurant may provide for alfresco dining.

5.12.2 The setback area is not to be used for the parking of vehicles which are being wrecked or repaired, nor for the stacking or storage of fuel, raw materials, products or by-products, or waste of manufacture.

5.13 Home Business

5.13.1 An approval to conduct a home business is issued to a specific occupier of a particular parcel of land. It is not to be transferred or assigned to any other person and is not to be transferred from the land in respect of which it was granted. Should there be a change of the occupier of the land in respect of which a home business approval is issued the approval is cancelled.

5.13.2 If, in the opinion of the local government, a home business is causing a nuisance or annoyance to owners or occupiers of land in the locality the local government may—

- (a) revoke the approval; or
- (b) require the occupier of the land in respect of which the home business approval is issued to implement those measures specified by the local government and which in the opinion of the local government will remove the nuisance or annoyance.

5.14 Residential Zone

5.14.1 Site Requirements

In accordance with the Residential Design Codes.

5.14.2 Parking of Commercial Vehicles in the Residential Zone

- (a) no more than 2 commercial vehicles are to be parked on a lot in the Residential Zone, provided that—
 - (i) only one vehicle may exceed 10 tonnes gross weight;
 - (ii) the vehicles are parked on a lot containing only a single house;

- (iii) the vehicles form an essential part of the occupation of an occupant of the dwelling;
 - (iv) no vehicle exceeds either 2.7 metres in height or 15 metres in length;
 - (v) any vehicles exceeding 8 metres in length are screened from view from outside the lot;
 - (vi) no vehicle is brought to or taken from the lot between the hours of 10.00 pm and 6.30 am;
 - (vii) major repairs to either of the vehicles are not undertaken on the lot; and
 - (viii) any minor repairs, servicing or cleaning of either of the vehicles are carried out in areas which are screened from view from outside the lot.
- (b) despite paragraph (a) of this clause, the approval of the local government is required for the parking of a commercial vehicle exceeding 10 tonnes gross weight on a lot in the Residential Zone;
- (c) an approval of the local government granted under paragraph (b) of this clause—
- (i) is personal to the person to whom it is granted;
 - (ii) is not capable of being transferred or assigned to any other person; and
 - (iii) does not run with the land in respect of which it was granted;
- (d) a person to whom an approval has been granted under paragraph (b) of this clause is not to park or cause to be parked such vehicle on a lot in the Residential Zone other than on the lot in respect of which the approval was granted;
- (e) if a vehicle has been parked with the approval of the local government under paragraph (b) of this clause and if in the opinion of the local government such vehicle is causing a nuisance or annoyance to neighbours or to owners or occupiers of land in the neighbourhood, the local government may rescind the approval granted by it and after such rescission, a person must not park a commercial vehicle exceeding 10 tonnes gross weight upon the land subject of a resolution for rescission, unless approval to do so is subsequently granted by the local government.

5.15 Commercial Zone

5.15.1 Site Requirements

At the discretion of the local government.

5.15.2 Development Requirements

- (a) development is not to exceed 2 storeys in height except where the local government considers that particular circumstances may warrant an exception being made and provided the objectives for the zone are not compromised;
- (b) in considering an application for planning approval for a proposed development (including additions and alterations to existing development) the local government is to have regard to the following—
 - (i) the colour and texture of external building materials; the local government may require the building facade and side walls to a building depth of 3 metres to be constructed in masonry;
 - (ii) building size, height, bulk, roof pitch;
 - (iii) setback and location of the building on its lot;
 - (iv) architectural style and design details of the building;
 - (v) function of the building;
 - (vi) relationship to surrounding development;
 - (vii) access to loading and unloading of vehicles; and
 - (viii) other characteristics considered by the local government to be relevant;
- (c) landscaping is to be provided to complement the appearance of the proposed development and its setting;
- (d) the layout of car parking is to have regard for traffic circulation in existing parking areas and be integrated with any existing and adjoining parking area.

5.16 Industrial Zone

5.16.1 Site Requirements

- (a) the minimum lot size should be 2,500 square metres to provide for building envelope, on-site effluent disposal, landscaping, and manoeuvring area for all vehicles to enter and leave the lot in a forward gear;
- (b) the minimum building setbacks are to be—
 - Front : 7.5m
 - Rear : 7.5m
 - Side : 5.0m on one side.
- (c) the first 5 metres of the front setback on any lot are to be landscaped to the satisfaction of the local government. Where a lot has frontage to two streets the local government may vary the landscaping requirement only where the setback is reduced in which case the whole of the setback so reduced is to be landscaped to the satisfaction of the local government;

5.16.2 Development Requirements

- (a) in addition to other requirements of the Scheme an application for planning approval for an industry is to demonstrate compliance with the separation distance from dwellings in accordance with guidelines of the Environmental Protection Authority;
- (b) in determining an application for planning approval for an industry the local government may impose conditions to control industrial liquid, solid or gaseous wastes in accordance with Environmental Protection Authority guidelines and advice from the Department of Environment;
- (c) where a proposed industry would generate industrial liquid, solid, or gaseous wastes such wastes are to be treated and disposed of in accordance with Department of Environment advice/guidelines.

5.17 Rural-Residential Zone

5.17.1 Site Requirements: The minimum building setbacks are to be—

- Front : 30.0m
Rear : 10.0m
Side : 10.0m

5.17.2 General Provisions—

The provisions for controlling subdivision and development in specific Rural-Residential Zones are set out in Schedule 11 and future subdivisions are to generally accord with the plan of subdivision for the specified area certified by the Chief Executive Officer and approved by the Commission and such plan of subdivision is to show the minimum lot size for subdivision.

5.17.3 Development Requirements—

Development in a Rural-Residential Zone is to comply with the requirements of the following—

- (a) planning approval is required for all development including a single house and such application is to be made in accordance with the provisions of the Scheme;
- (b) not more than 1 dwelling per lot is to be erected but the local government may, at its discretion, approve ancillary accommodation;
- (c) in order to conserve the rural environment or features of natural beauty all trees are to be retained unless their removal is authorised by the local government;
- (d) in order to enhance the rural amenity of the land in areas the local government considers deficient in tree cover it may require as a condition of any planning approval the planting of such trees and/or groups of trees and species as specified by the local government.
- (e) a person who keeps an animal or animals or who uses any land for the exercise or training of an animal or animals is to be responsible for appropriate measures to prevent noise, odour, or dust pollution or soil erosion to the satisfaction of the local government. With the intention of preventing overstocking, erosion and any other practice detrimental to the amenity of a Rural-Residential Zone, the local government may take any action which in the opinion of the local government is necessary to reduce or eliminate adverse effects on the environment caused wholly or partly by the stocking of animals and any costs incurred by the local government in taking such action are to be recoverable by the local government from the landowner; and
- (f) the local government may require provision to be made for bush fire control in accordance with a Local Planning Policy.

5.17.4 Development Standards

So as to achieve a high standard of development within a Rural-Residential Zone, and to minimise the visual impacts of development the local government will have regard to the following—

- (a) the colour and texture of external building materials;
- (b) building size, height, bulk, roof pitch;
- (c) setback and location of the building on its lot;
- (d) architectural style and design details of the building;
- (e) relationship to surrounding development; and
- (f) other characteristics considered by the local government to be relevant.

5.18 Rural Zone

5.18.1 Site Requirements: The minimum building setbacks are to be—

- Front : 20.0m
Rear : 20.0m
Side : 10.0m

5.18.2 Development of Agroforestry and Plantations

- (a) Applications for the development of agroforestry and plantations are to be determined by the local government having regard to—
 - (i) The Code of Practice for Timber Plantations in Western Australia 1997 as amended from time to time (“Code of Practice”).
 - (ii) Submission of a plantation management plan in accordance with the protocol in the Code of Practice.

- (iii) The need to encourage the commercial production of trees which is of significance to the national, regional and local economy.
 - (iv) The benefits of agroforestry and plantations in addressing land degradation including soil erosion and salinity.
 - (v) The role of agroforestry and plantations in protecting water quality and preventing adverse effects on groundwater recharge.
 - (vi) The location of the land in relation to land zoned for residential, industrial, commercial uses.
 - (vii) The suitability of the current and future road systems.
- (b) In determining applications for agroforestry and plantations the local government may impose conditions relating to the following matters—
- (i) The application of fire management measures and the provision of internal and boundary firebreaks and water supplies in accordance with the Guidelines for Plantation Fire Protection 1998 (Bush Fire Service of WA/CALM).
 - (ii) Compliance with the Code of Practice.

5.18.3 General Development Requirements

In considering an application for planning approval the local government will have due regard for the following, in addition to the provisions of the Scheme—

- (a) any sensitive or incompatible uses which may require buffer separation from the proposed use;
- (b) evidence of a sustainable water supply that does not rely on catchment outside the lot, or damming of a stream that will impact on the water availability for another lot or lots;
- (c) soil conditions, slope, soil type, rock, potential for water logging, foundation stability, and how the application has addressed these site characteristics; and
- (d) whether effluent disposal systems can be set back 100 metres (conventional septic system) or 50 metres (alternative system) from any stream. (The buffer distances may be reduced depending on the size and nature of the stream and the soil types).

5.18.4 Subdivision

When making recommendations to the Commission on applications for subdivision the local government will have regard to the relevant policies of the Commission and the following—

(a) Subdivision for Intensive Agriculture

The local government will support subdivision in the Rural Zone where one or more of the proposed lots are for an existing or proposed intensive agriculture use and the application demonstrates that—

- (i) any intensive agriculture lot would be a minimum size of 80 hectares unless the Department of Agriculture advises that a lesser lot size is adequate for a long term sustainable intensive agriculture use;
- (ii) the land has high land capability for the use and all lots have a sustainable water supply for domestic, fire management, agricultural, and environmental needs;
- (iii) the use would not result in adverse impacts on the environment (e.g. waterways or native flora and fauna) or cause conflict with existing agricultural uses on adjoining lots;
- (iv) the balance lot would be usable in the long term as a viable broad acre agricultural enterprise without the need for clearing of remnant vegetation; and
- (v) the intensive agriculture use has been approved by the local government under the Scheme.

(b) Subdivision for Homestead Lots

The local government will support subdivision of land in the Rural Zone to create “homestead lots” as defined and consistent with Commission Policy where the application demonstrates the lots would—

- (i) generally be in the range of 5 to 10 hectares;
- (ii) be connected to electricity and telecommunications;
- (iii) be provided with an adequate water supply for domestic purposes, land management, and fire fighting; and
- (iv) front a constructed public road.

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—

- Wellington Reservoir Catchment Special Control Area.

6.1.2 In respect of the Special Control Areas shown on the Scheme Map, the provisions of the Special Control Area apply in addition to the provisions of the underlying zone(s), reserve(s), and any general provisions of the Scheme.

6.2 Wellington Reservoir Catchment Special Control Area

6.2.1 Purposes

- (a) To avoid development of land that could cause surface water pollution.
- (b) To maintain or restore water quality to potable levels.

6.2.2 Application Requirements

Despite the provisions of clause 8.2, planning approval is required for all development including a single house.

6.2.3 Relevant Considerations

The Department of Environment administers by-laws to regulate land use and development within a proclaimed area; within the Wellington Reservoir Catchment native vegetation may only be cleared under the conditions of a license issued by the Department of Environment.

6.2.4 Referral of Applications

All applications for planning approval are to be referred to the Department of Environment and the local government is to have due regard to recommendations/advice received from the Department of Environment when determining applications.

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 List such of those entries on the Inventory 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. A “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, declare that area to be 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 and guidelines for the conservation of the Heritage Area;

and 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 2 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 not to proceed with the designation.

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 in so far 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 Australian 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.

Where desirable to—

- (a) facilitate the conservation of 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 declared under clause 7.2.1,

the local government may vary any site or development requirement specified in the Scheme or the Residential Design Codes, by following the procedures set out in clause 5.5.2.

PART 8—DEVELOPMENT OF LAND

8.1 Requirement for Approval to Commence Development

Subject to clause 8.2, all development on land zoned or 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.

8.2 Permitted Development

Except as otherwise provided in the Scheme, for the purpose 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 registered in the Register of 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 in the Heritage List under clause 7.1 of the Scheme.
- (b) the erection on a lot of a single house, including any extension, ancillary outbuildings and swimming pools, except where the proposal—
- (i) necessitates the exercise of a discretion by the local government under the Scheme to vary the provisions of the Residential Design Codes;
 - (ii) the development will be located in a heritage area designated under the Scheme; or
 - (iii) is for development of a lot abutting an unconstructed road or a lot which does not have frontage to a constructed road.
- (c) the demolition of any building or structure except where the building or structure is—
- (i) located in a place that has been entered in the Register of 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*;
 - (iii) included in the Heritage List under clause 7.1 of the Scheme; or
 - (iv) the development will be located in a heritage area designated under the Scheme.
- (d) a home office;
- (e) any works which are temporary and in existence for less than 48 hours or such longer time as the local government agrees; and
- (f) 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 Planning and Development Act.

8.3 Amending or Revoking a Planning Approval

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

8.4.2 Development which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except the granting of planning approval and the continuation of the development unlawfully commenced is taken to be lawful upon the grant of planning approval.

- Note: 1. Application 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 Planning and Development 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 4.4.2(b);
- (e) alteration or extension of a non-conforming use under clause 4.9;
- (f) a change of a non-conforming use under clause 4.9;
- (g) continuation of a non-conforming use under clause 4.12;
- (h) variation of a site or development requirements under clause 5.5;
- (i) commencement of development under clause 8.1;
- (j) continuation of a 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, subject to clause 9.1.2, 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.

9.2 Accompanying Material

Unless the local government waives any particular requirement every application for planning approval is 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 number(s), north point and the dimensions of the site;
 - (ii) the existing and proposed ground levels over the whole of the land 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 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 those areas; and
 - (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 reasonably require to enable the application to be determined.

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;
- (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 each lot immediately adjoining the subject lot.

9.4 Advertising of Applications

9.4.1 Where an application is made for planning approval to commence a use or commence or carry out development which involves a use which is—

- (a) an “A” use under clause 4.3.2; or
- (b) a use not listed in the Zoning Table;

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 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 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 date being not less than 14 days from the day the notice is published;
- (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 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 Consultations 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

The local government in considering an application for planning approval 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) the aims and provisions of the Scheme and any other relevant local planning scheme(s) operating within the Scheme Area;
- (b) the requirements of orderly and proper planning including any relevant proposed new local planning scheme or amendment which has been granted consent for public submissions to be sought;
- (c) any approved Statement of Planning Policy of the Commission;
- (d) any approved Environmental Protection Policy under the *Environmental Protection Act 1986*;
- (e) any relevant policy or strategy of the Commission and any relevant policy adopted by the Government of the State;
- (f) any Local Planning Policy adopted by the local government under clause 2.4 of the Scheme, 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;
- (g) in the case of land reserved under the Scheme, the ultimate purpose intended for the reserve;
- (h) the conservation of any place that has been entered in the Register of Places under 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;
- (i) the compatibility of a use or development with its setting;
- (j) any social issues that have an effect on the amenity of the locality;
- (k) the cultural significance of any place or area affected by the development;
- (l) 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;
- (m) whether the land to which that 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;
- (n) the preservation of the amenity of the locality;
- (o) 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;
- (p) 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;
- (q) 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;
- (r) whether public transport services are necessary and, if so, whether they are available and adequate for the proposal;
- (s) whether public utility services are available and adequate for the proposal;
- (t) whether adequate provision has been made for access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);
- (u) whether adequate provision has been made for access by disabled persons;
- (v) 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;
- (w) whether the proposal is likely to cause soil erosion or land degradation;
- (x) the potential loss of any community service or benefit resulting from the planning approval;
- (y) any relevant submission received on the application;
- (z) the comments or submissions received from any authority consulted under clause 10.1.1;
- (za) any other planning consideration the local government considers relevant; and
- (zb) potential impacts of noise, dust light, risk and other pollutants on surrounding land uses.

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 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 2 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 agreed in writing between the applicant and the local government.

10.9.2 An application for planning approval which is 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 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 Right of Review

An applicant aggrieved by a determination of the local government in respect of the exercise of a discretionary power under the Scheme may make application for review under Part 14 of the Planning and Development Act.

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 matters pertaining to the Scheme;
- (b) acquire any land or buildings within the Scheme Area under the provisions of the Scheme or the Planning and Development Act; and
- (c) deal with or dispose of any land which it has acquired under the Scheme or the Planning and Development 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 existing advertisements at, or at any time after the coming into force of the Scheme 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 make application for review under Part 14 of the Planning and Development 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

11.4.1 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 218 of the Planning and Development Act provides that a person who—

- (a) contravenes or fails to comply with the provisions of a local planning scheme; or
- (b) commences or continues to carry out any development which is required to comply with a local planning scheme otherwise than in accordance with that scheme or otherwise than in accordance with any condition imposed with respect to the development by the responsible authority pursuant to its powers under that scheme,

is guilty of an offence.

Penalty: \$50,000, and a daily penalty of \$5,000.

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 Planning and Development 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 Planning and Development 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 Planning and Development 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 Planning and Development Act empower 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 of the Planning and Development Act, 28 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 214 of the Planning and Development Act in a Court of competent jurisdiction.

Schedule 1 DEFINITIONS

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;

“**agricultural trade lot**” means a rural lot created for the purpose of agricultural production or for trade and amalgamation with other rural property; dwellings and other residential uses are generally not permitted.

“**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;

“**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*;

“**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 of the Planning and Development Act;

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

- (a) residential purposes, has the same meaning as in the Residential Design Codes; or
- (b) purposes other than residential purposes, means the maximum vertical distance between the ground level and the finished roof height directly above;

“**incidental use**” means a use of premises which is ancillary and subordinate to the predominant use;

“**local government**” means the Shire of West Arthur;

“**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 Planning and Development 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 section 172 of the Planning and Development 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*;

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

“**plot ratio**”, in the case of residential dwellings has the same meaning as in the Residential Design Codes;

“**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**” means a region planning scheme made under the Planning and Development Act;

“**Residential Design Codes**” means the Residential Design Codes in Appendix 2 to the Western Australian Planning Commission Statement of Planning Policy No. 3.1, as amended from time to time;

“**retail**” means the sale or hire of goods or services to the public;

“**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;

“**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—

“**agriculture—extensive**” means premises used for the raising of stock or crops but does not include agriculture—intensive or animal husbandry—intensive;

“**agriculture—intensive**” means premises used for trade or commercial purposes, including outbuildings and earthworks, associated with the following —

- (a) the production of grapes, vegetables, flowers, exotic or native plants, or fruit or nuts;

(b) the establishment and operation of fruit nurseries; or

(c) the development of land for irrigated fodder production or irrigated pasture (including turf farms);

“**agroforestry**” means land used commercially for tree production and agriculture where trees are planted in blocks of more than one hectare;

“**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;

“**animal establishment**” means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include animal husbandry—intensive or veterinary centre;

“**animal husbandry—intensive**” means premises used for keeping, rearing or fattening of pigs, poultry (for either egg or meat production), rabbits (for either meat or fur production) and other livestock in feedlots;

“**aquaculture**” means the keeping, breeding, hatching, or culturing of fish;

“**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*;

“**caravan park**” has the same meaning as in the *Caravan Parks and Camping Grounds Act 1995*;

“**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;

“**car park**” 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 *Children and Community 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;

“**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 *Children and Community Services (Family Day 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;

“**holiday accommodation**” means premises used for accommodation and recreation for holiday purposes but does not include a hotel or a motel;

“**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, except that for land in the Rural Zone under the Scheme the local government may permit an area up to 200 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, except that for land in the Rural Zone under the Scheme the local government may permit the presence and use of up to 3 vehicles of 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 Licensing 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
- (c) 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—mining” means land used commercially to extract minerals from the land;

“industry—rural” means—

- (a) an industry handling, treating, processing or packing rural products; or
- (b) a workshop servicing plant or equipment used for rural purposes;

“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;

“lunch bar” means premises or part of premises used for the sale of takeaway food (in a form ready to be consumed without further preparation) within industrial or commercial areas;

“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 Licensing 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;

“motor vehicle wash” means premises where the primary use is the washing of motor vehicles;

“night club” means premises—

- (a) used for entertainment with or without eating facilities; and
- (b) licensed under the *Liquor Licensing Act 1988*;

“office” means premises used for administration, clerical, technical, professional or other like business activities;

“park home park” has the same meaning as in the *Caravan Parks and Camping Grounds Regulations 1997*;

“place of worship” means premises used for religious activities such as a church, chapel, mosque, synagogue or temple;

“plantation” has the same meaning as in the *Code of Practice for Timber Plantations in Western Australia* (1997) published by the Department of Conservation and Land Management and the Australian Forest Growers;

“plant nursery” means premises used for the propagation, rearing and sale of plants and the storage and sale of products associated with horticultural and garden décor.

“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 Licensing 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;

“rural pursuit” means any premises used for—

- (a) the rearing or agistment of animals;
- (b) the stabling, agistment or training of horses;

(c) the growing of trees, plants, shrubs or flowers for replanting in domestic, commercial or industrial gardens; or

(d) the sale of produce grown solely on the lot,

but does not include agriculture—extensive or agriculture—intensive;

“**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;

“**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;

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

“**tavern**” means premises licensed as a tavern under the *Liquor Licensing 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;

“**transport depot**” means premises used for the garaging of motor vehicles used or intended to be used for carrying goods or persons for hire or reward or for any consideration, or for the transfer of goods or persons from one such motor vehicle to another such motor vehicle and includes maintenance, management and repair of the vehicles used, but not of other vehicles, and may include overnight accommodation on-site for the transport workers;

“**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;

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

“**winery**” means premises used for the production of viticultural produce and may include sale of the produce;

“**workers accommodation**” means premises used for accommodation by a person or persons and the spouse and dependents of that person or persons engaged in agriculture, intensive agriculture, animal husbandry, piggeries or poultry farm on the same land and the term is to include both permanent dwellings and temporary accommodation for seasonal workers.

Schedule 2

ADDITIONAL USES

No.	DESCRIPTION OF LAND	ADDITIONAL USE	CONDITIONS
1	Pt Williams Loc 12898 and Pt Williams Loc 13158	Tannery	<p>(a) A person must not develop or modify an existing development without first obtaining planning approval under the Scheme.</p> <p>(b) A person conducting the additional use permitted on this land is to maintain and comply with at all times a current license to operate the use from the Environmental Protection Authority.</p> <p>(c) In giving consideration to granting planning approval under the Scheme the local government will address and may impose conditions in respect of:</p> <p style="margin-left: 20px;">(i) the maximum size of the tannery;</p> <p style="margin-left: 20px;">(ii) the use of tree planting, chrome liquor recycling and other options to minimise the amount and impacts of salt generated by the tannery process;</p>

No.	DESCRIPTION OF LAND	ADDITIONAL USE	CONDITIONS
			(iii) the investigation of and regular reporting on alternative beneficial uses of tannery effluent; (iv) the elimination of potential for malodours from the waste disposal system; (v) the supply of regular reports to the local government on the monitoring of the tannery; and (vi) such other conditions as the local government thinks fit.
2	Lot 7 Growden Place and Coalfields Road, Darkan	Engineering works	(a) A person must not develop or modify an existing development without first obtaining planning approval under the Scheme. (b) In giving consideration to granting planning approval under the Scheme the local government will address and may impose conditions in respect of: <ul style="list-style-type: none"> (i) landscaping and other treatments as appropriate to minimise the visual impacts of the Additional Use from Coalfields Road; (ii) such other conditions as the local government thinks fit.

Schedule 3
RESTRICTED USES

No.	DESCRIPTION OF LAND	RESTRICTED USE	CONDITIONS

Schedule 4
SPECIAL USE ZONES

No.	DESCRIPTION OF LAND	SPECIAL USE	CONDITIONS

Schedule 5
EXEMPTED ADVERTISEMENTS

LAND USE AND/OR DEVELOPMENT	EXEMPTED SIGN TYPE AND NUMBER (includes the change of posters or poster signs and applies to non-illuminated signs unless otherwise stated)	MAXIMUM AREA
Dwellings	One professional nameplate as appropriate.	0.2m ²
Home Business or Home Occupation	One advertisement describing the nature of the home business or 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

LAND USE AND/OR DEVELOPMENT	EXEMPTED SIGN TYPE AND NUMBER (includes the change of posters or poster signs and applies to non-illuminated signs unless otherwise stated)	MAXIMUM AREA
Cinemas, Theatres and Drive-In 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 Shopping 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 subject to compliance with the requirements of the Signs Hoarding and Bill Posting Local Laws.	Not Applicable
Industrial and Warehouse Premises	<p>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 and excluding signs which are connected to a pole, wall, or other building.</p> <p>A maximum of two freestanding advertisement signs not exceeding 5 metres in height above ground level.</p>	<p>Total area of such advertisements are not to exceed 15m²</p> <p>Maximum permissible total area is not to exceed 10m² and individual advertisement signs are not to exceed 6m².</p>
Showroom, racecourses, major racing tracks, sports stadia, major sporting grounds and complexes	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.	Not Applicable
Public Places and Reserves	<p>(a) Advertisement signs (illuminated and non-illuminated) relating to the functions of Government, a public authority or local government excluding those of a promotional nature constructed or exhibited by, or on behalf of any such body, and</p> <p>(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</p> <p>(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.</p>	<p>Not Applicable</p> <p>Not Applicable</p> <p>Not Applicable</p>
Railway Property and Reserves	Advertisement signs exhibited on such land provided that each such advertisement is directed only at persons at or upon railway station.	No sign is to 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.	Not Applicable
All classes of buildings other than single family dwellings	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

TEMPORARY SIGNS	EXEMPTED SIGN TYPE AND NUMBER (All non-illuminated unless otherwise stated)	MAXIMUM AREA
<p>Building Construction Sites (advertisement signs displayed only for the duration of the construction) as follows:</p> <p>(a) Dwellings</p> <p>(b) Multiple dwellings, shops, commercial and industrial properties</p> <p>(c) Large development or redevelopment projects involving shopping centres, office or other buildings exceeding three (3) storeys in height</p>	<p>One advertisement per street frontage containing details of the project and the contractors undertaking the construction work.</p> <p>One sign as for (a) above.</p> <p>One sign as for (a) above</p> <p>One additional sign showing the name of the project builder.</p>	<p>2m²</p> <p>5m²</p> <p>10m²</p> <p>5m²</p>
<p>Sales of goods or livestock</p>	<p>One sign per lot displayed for a period not exceeding 3 months advertising the sale of goods or livestock upon any land or within any building upon which the sign is exhibited provided that the land is not normally used for that purpose</p>	<p>2m²</p>
<p>Property transactions</p> <p>Advertisement signs displayed for the duration of the period over which property transactions are offered and negotiated as follows:</p> <p>(a) Dwellings</p> <p>(b) Multiple dwellings, shops, commercial and industrial properties</p> <p>(c) Large properties comprised of shopping centres, buildings in excess of four (4) storeys and rural properties in excess of five (5) hectares.</p>	<p>One sign per street frontage for each property relating to the Sale, leasing or impending auction of the property at or upon which the sign is or the signs are displayed.</p> <p>One sign as for (a) above.</p> <p>One sign as for (a) above</p>	<p>Each sign is not to exceed an area of 2m²</p> <p>Each sign is not to exceed an area of 5m²</p> <p>Each sign is not to exceed an area of 10m²</p>
<p>Display Homes</p> <p>Advertisement signs displayed for the period over which homes are on display for public inspection</p>	<p>(a) One sign for each dwelling on display.</p> <p>(b) In addition to (a) above one sign for each group of dwellings displayed by a single project builder giving details of the project building company and details of the range of dwellings on display.</p>	<p>2m²</p> <p>5m²</p>

Schedule 6

FORM OF APPLICATION FOR PLANNING APPROVAL

OWNER DETAILS:

Name.....
 Address..... Post Code.....
 Phone (work).....(home)..... Fax..... E-Mail.....
 Contact Person.....
 Signature Date.....
 Signature Date.....

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

APPLICANT DETAILS:

Name.....
 Address..... Post Code.....
 Phone (work).....(home)..... 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 No. Folio
 Diagram or Plan No. Certificate of Title 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

(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 the 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 landowners)

Date:

Schedule 8

Planning and Development Act 2005

Shire of West Arthur

LOCAL PLANNING SCHEME No. 2

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

CHIEF EXECUTIVE OFFICER

DATE

Schedule 9

Planning and Development Act 2005

Shire of West Arthur

LOCAL PLANNING SCHEME No. 2

NOTICE OF DETERMINATION ON APPLICATION FOR PLANNING APPROVAL

LOCATION:

LOT: PLAN/DIAGRAM:

VOL: No: FOLIO No:

Application Date:..... 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 is to lapse and be of no further effect.

Note 2: Where an approval has so lapsed, no development is to 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 review pursuant to the provisions of Part 14 of the *Planning and Development Act 2005*. An application for review must be lodged within 28 days of the local government's determination.

.....
CHIEF EXECUTIVE OFFICER

.....
DATE

Schedule 10

ENVIRONMENTAL CONDITIONS

SCHEME OR AMENDMENT No.	GAZETTAL DATE	ENVIRONMENTAL CONDITIONS

Schedule 11

RURAL-RESIDENTIAL ZONE

No.	DESCRIPTION OF LAND	REQUIREMENTS
1	Lots 134-146, and 274 Coalfields Road, Perry Street, Fleay Street, and Stewart Street; Lots 158-161, 168-180 and portions of closed roads, Johnston Street, Farrell Street, Hibble Street, Moodiarrup Road, and Perry Street; Lots 163-167 Moodiarrup Road, Johnston Drive, and Burrowes Street; Darkan	<p>(a) The local government will not recommend to the Commission support for further subdivision, but this does not preclude the local government recommending to the Commission support for a rationalisation of lot boundaries provided no additional lots are created and the resultant lot sizes and shapes are to the satisfaction of the local government. The minimum lot size should be no less than 2.0 hectares.</p> <p>(b) Despite any other provisions of the Scheme the front setback to Coalfields Road is to be not less than 30.0 metres.</p> <p>(c) Dwellings and all ancillary buildings are to be constructed of non-reflective material (with the exception of glazed areas) and comprise either timber, stone, rammed earth, brick or steel construction and be of colour(s) and textures which are essentially natural and earthy. All such materials are to be to the satisfaction of the local government and compatible with the rural character of the locality.</p>
2	Lot 3 Darkan—Quindanning Road, Darkan.	<p>(a) Subdivision is to be generally in accordance with the Subdivision Guide Plan adopted by the Commission and endorsed by the Chief Executive Officer. The minimum lot size should be no less than 2.0 hectares.</p> <p>(b) Despite any other provisions of the Scheme the front setback to Darkan-Quindanning Road is to be not less than 50.0 metres.</p> <p>(c) All development is to be contained outside the "Development Exclusion Area" shown on the Subdivision Guide Plan attached to the Land Capability and Environmental Management Report.</p>

No.	DESCRIPTION OF LAND	REQUIREMENTS
		(d) Dwellings and all ancillary buildings are to be constructed of non-reflective material (with the exception of glazed areas) and comprise either timber, stone, rammed earth, brick or steel construction and be of colour(s) and textures which essentially natural and earthy. All such materials are to be to the satisfaction of the local government and compatible with the rural character of the locality.
3	Lots 17-22, and 27 Varis Road, Lots 24 and 25 Coalfields Road, and Lots 30 and 31 Hill street, Bowelling	The local government will not recommend to the Commission support for further subdivision, but this does not preclude the local government recommending to the Commission support for a rationalisation of lot boundaries provided no additional lots are created and the resultant lot sizes and shapes are to the satisfaction of the local government. The minimum lot size should be no less than 2.0 hectares.
4	Lots 35 and 38 Horley Street, Lot 36 Thompson Street, and Lots 39, 40, and 42 unnamed road, Duranillin	The local government will not recommend to the Commission support for further subdivision, but this does not preclude the local government recommending to the Commission support for a rationalisation of lot boundaries provided no additional lots are created and the resultant lot sizes and shapes are to the satisfaction of the local government. The minimum lot size should be no less than 2.0 hectares.

ADOPTION

Adopted by Resolution of the local government of the Shire of West Arthur at the meeting of the local government held on the 17th day of October 2002.

I. G. WOODRUFF, President.
N. C. WASMANN, Chief Executive Officer.

FINAL APPROVAL

Adopted by Resolution of the local government of the Shire of West Arthur at the meeting of the local government held on the 27th day of April 2006 and pursuant to that Resolution the Seal of the Municipality was hereunto affixed in the presence of—

I. G. WOODRUFF, President.
N. C. WASMANN, Chief Executive Officer.

The Scheme Text is to be read in conjunction with the approved maps of the Scheme described in clause 1.4 of the Scheme and to which formal approval was given by the Minister for Planning on the date shown below.

RECOMMENDED/SUBMITTED FOR FINAL APPROVAL

By the Western Australian Planning Commission.

P. WOODWARD, Delegated Under S. 16 of
Planning and Development Act 2005.

Date: 15/11/2006.

Final Approval Granted by Minister for Planning and Infrastructure.

ALANNAH MacTIERNAN, Minister for Planning and Infrastructure.

Date: 20/11/2006.