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PLANNING AND DEVELOPMENT ACT 2005

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**SHIRE OF TOODYAY**

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**LOCAL PLANNING SCHEME No. 4**



**PLANNING AND DEVELOPMENT ACT 2005**

## APPROVED LOCAL PLANNING SCHEME

*Shire of Toodyay*

## LOCAL PLANNING SCHEME No. 4

Ref: 853/4/28/5

It is hereby notified for public information, in accordance with section 87 of the *Planning and Development Act 2005* that the Minister for Planning and Infrastructure approved the Shire of Toodyay Local Planning Scheme No. 4 on 17 December 2007, the scheme text of which is published as a Schedule annexed hereto.

C. WROTH, Shire President.  
G. MERRICK, Chief Executive Officer.

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[Regs 11(1)(a), 27]

**Preamble**

This Local Planning Scheme of the Shire of Toodyay 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 TOODYAY

**LOCAL PLANNING SCHEME No. 4**

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ADOPTION

**PLANNING AND DEVELOPMENT ACT 2005****SHIRE OF TOODYAY****LOCAL PLANNING SCHEME No. 4**

The Shire of Toodyay under the powers conferred by the *Planning and Development Act 2005* makes the following Local Planning Scheme.

**PART 1—PRELIMINARY****1.1. Citation**

1.1.1. The Shire of Toodyay Scheme No. 4 (“**the Scheme**”) comes into operation on its Gazettal date.

1.1.2. The following Schemes are revoked—

Town Planning Scheme No. 1	Date of Gazettal 20 May 1983
Town Planning Scheme No. 3	Date of Gazettal 8 February 1993

**1.2. Responsible authority**

The Shire of Toodyay is the responsible authority for implementing the Scheme.

**1.3. Scheme area**

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

**1.4. Contents of Scheme**

The Scheme comprises—

- (a) the Scheme Text;
- (b) the Scheme Map (sheets 1-4).

The Scheme is to be read in conjunction with the Local Planning Strategy.

**1.5. Purposes of Scheme**

The purposes of the Scheme are to—

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

**1.6. The aims of the Scheme**

The aims of the Scheme are—

- (a) to provide for the orderly and economic development and optimum use of its land and other resources in the Scheme Area, consistent with the conservation of important natural and man-made features;
- (b) to provide comprehensive planning instrument for the Shire that is clear and explicit but provides flexibility in its application;
- (c) to provide guidance to—
  - (i) the local government in the execution of its planning responsibilities;
  - (ii) public authorities in establishing the likely future needs of the Shire;
  - (iii) the private sector to indicate future development opportunities and planning requirements; and
  - (iv) the community in respect of the manner in which the effects of growth and change are proposed to be managed;

- (d) to provide a rational framework for decisions with regard to land use and that the assessment and classification of land resources on the basis of capability and suitability are an essential facet of the planning process;
- (e) to facilitate the provision of public amenities and community support services consistent with the development and growth of the Shire;
- (f) to ensure that development occurs in a way which preserves existing environmental qualities and minimizes adverse environmental impacts;
- (g) to ensure that existing and future residents enjoy a range of attractive living environments and have access to the widest possible range of services and amenities; and
- (h) to protect and enhance areas within the Shire identified as being of significant environmental value.

### 1.7. Definitions

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

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

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

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

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

### 1.8. Relationship with local laws

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

### 1.9. Relationship with other Schemes

There are no other Schemes of the Shire of Toodyay 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.

*(A Local Planning Strategy has been prepared and endorsed under the Town Planning Regulations 1967).*

### 2.2. Local Planning Policies

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

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

and may amend or add to or rescind the Policy.

### 2.3. Relationship of Local Planning Policies to Scheme

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

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

Note: Local Planning Policies are guidelines used to assist the local government in making decisions under the Scheme. Although Local Planning Policies are not part of the Scheme they must be consistent with, and cannot vary, the intent of the Scheme provisions, including the Residential Design Codes. In considering an application for planning approval, the local government must have due regard to relevant Local Planning Policies as required under clause 10.2.

### 2.4. Procedure for making or amending a Local Planning Policy

2.4.1. If 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 draft Policy; and
  - (iii) in what form and during what period (being not less than 21 days from the day the notice is published) submissions may be made;



- (b) may publish a notice of the proposed Policy in such other manner and carry out such other consultation as the local government considers appropriate.
- 2.4.2. After the expiry of the period within which submissions may be made, the local government is to—
- (a) review the proposed Policy in the light of any submissions made; and
  - (b) resolve to adopt the Policy with or without modification, or not to proceed with the Policy.
- 2.4.3. If the local government resolves to adopt the Policy, the local government is to—
- (a) publish notice of the Policy once in a newspaper circulating in the Scheme area; and
  - (b) if, in the opinion of the local government, the Policy affects the interests of the Commission, forward a copy of the Policy to the Commission.
- 2.4.4. A Policy has effect on publication of a notice under clause 2.4.3(a).
- 2.4.5. A copy of each Local Planning Policy, as amended from time to time, is to be kept and made available for public inspection during business hours at the offices of the local government.
- 2.4.6. Clauses 2.4.1 to 2.4.5, with any necessary changes, apply to the amendment of a Local Planning Policy.

### **2.5. Revocation of Local Planning Policy**

A Local Planning Policy may be revoked by—

- (a) the adoption by a local government of a new Policy under clause 2.4 that is expressed to supersede the existing Local Planning Policy; or
- (b) publication of a notice of revocation by the local government once a week for 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 on the Scheme Map.

### **4.2. Objectives of the zones**

The objectives of the zones are—

- (a) Residential

The objectives of the residential zone are to—

- (i) maintain the predominantly single residential character and amenity of established residential areas;
- (ii) provide the opportunity for medium/high density dwellings in selected locations to ensure a variety of housing is available in the town;
- (iii) allow for closer subdivision in areas where sewer becomes available;
- (iv) provide the opportunity for aged persons housing; and
- (v) provide for the preservation of the historical character of Toodyay

(b) Residential Development

The objectives of the residential development zone are to—

- (i) designate land for future urban development;
- (ii) provide for orderly planning and development of larger areas of land for residential and associated purposes through the preparation of a development plan; and
- (iii) ensure the adequate provision of physical and community infrastructure.

(c) Special Residential

The objectives of the Special Residential zone are to—

- (i) to protect the character of the Avon River environs by maintaining larger lot sizes adjacent to the Avon River;
- (ii) to provide for the choice of larger lots in proximity to the Town Centre zone;
- (iii) to ensure the provision of community services and facilities in the vicinity of Special Residential zone;
- (iv) to encourage innovative housing designs that complement the natural and cultural landscape of the Toodyay locality.

(d) Mixed Business

The objectives of the Mixed Business zone are to—

- (i) provide for commercial, light and service industrial, wholesaling, showrooms and professional services which, by reason of their scale, character and operational land requirements, are not generally appropriate to, or cannot conveniently or economically be accommodated within the Town Centre zone or Industrial zone;
- (ii) provide for development and land uses which will not result in a detrimental impact on the Town Centre zone;
- (iii) promote buildings of a high standard of architectural design complemented by landscaped surrounds.

(e) Town Centre

The objectives of the Town Centre zone are to—

- (i) establish a strong town focus;
- (ii) develop the town centre as the principal place for retail shopping, office and commercial development in the district;
- (iii) provide for expansion of commercial activity to meet future demands;
- (iv) provide for a variety of housing types and tourism related accommodation;
- (v) provide for social, recreational and community facilities;
- (vi) provide for the efficient and safe movement of vehicles and pedestrians; and
- (vii) provide for the preservation of the historical character of Toodyay.

(f) Light Industry

The objectives of the Light Industry zone are to—

- (i) provide for rural, service, light and general industrial activities;
- (ii) provide appropriate buffers between industrial and adjacent land uses to avoid land use conflicts; and
- (iii) avoid conflicting uses from establishing in the industrial area.

(g) Rural

The objectives of the Rural zone are to—

- (i) protect broad-scale agriculture from un-planned breakdown of rural land—
- (ii) subject to (i) above—
  - (a) provide for tourist related activities, including farm stay, bed and breakfast and holiday accommodation; and
  - (b) provide for a range of rural related uses such as intensive agriculture, aquaculture, rural pursuits.

(h) Rural Residential

The objectives for the rural residential zone are to—

- (i) provide for closer settlement for residential use in a rural environment;
- (ii) maintain and enhance the rural character and amenity of the locality;
- (iii) enhance the district's social and economic structure without detrimentally affecting the landscape, environment and existing agricultural activity;
- (iv) ensure the protection and conservation of native vegetation;
- (v) ensure that lot sizes and shapes are rationally related to the topography and state of land development; and
- (vi) have regard for the visual aspect of the site in considering development applications.

## (i) Rural Living

The objectives of the Rural Living zone are to—

- (i) identify areas with convenient access to the Toodyay townsite to take advantage of services provided in the area;
- (ii) to provide for a range of lot sizes between 5 ha to 40 ha, with an average of 15 ha to 20 ha depending on topography and landscape;
- (iii) allow for range of lifestyle opportunities including small rural holdings, rural pursuits; cottage industry and intensive agriculture;
- (v) provide for tourism related accommodation; and
- (vi) ensure the protection and conservation of native vegetation.

**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 uses is determined by cross reference between the list of use classes on the left hand side of the Zoning Table and the list of zones at the top of the Zoning Table.

4.3.2. The symbols used in the cross reference in the Zoning Table have the following meanings—

“P” means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme;

“D” means that the use is not permitted unless the local government has exercised its discretion by granting planning approval;

“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.

**Table 1: Zoning Table**

	Residential	Residential Development	Special Residential	Town Centre	Mixed Business	Light Industry	Rural	Rural Residential	Rural Living
Abattoir	X	X	X	X	X	X	A	X	X
Accommodation for Temporary Workers	D	D	D	X	X	D	D	D	D
Aged/Dependent Persons Dwelling/s or Establishment	D	D	D	D	A	X	X	X	X
Agriculture—Extensive	X	X	X	X	X	X	P	X	d
Agriculture—Intensive	X	X	X	X	X	X	D	A	D
Agroforestry	X	X	X	X	X	X	P	X	A
Amusement Parlour	X	X	X	A	A	D	X	X	X
Ancillary Accommodation	D	D	D	A	A	X	P	D	D
Animal Establishment	X	X	X	X	X	A	D	X	A
Animal Husbandry—Intensive	X	X	X	X	X	X	D	X	X
Apiary	D	D	D	X	X	D	P	D	D
Arts and Crafts Centre	X	X	A	P	D	D	D	A	A
Bed & Breakfast	D	D	D	D	X	X	D	D	D
Betting Agency	X	X	X	D	D	D	X	X	X
Caravan Park	X	X	X	A	A	A	X	X	X
Caretaker's Dwelling	X	X	X	X	X	A	X	X	X
Carpark	X	X	X	D	D	D	X	X	X
Child Care Premises	A	A	A	P	D	X	D	A	A
Cinema/Theatre	X	X	X	P	D	X	X	X	X
Civic Use	A	A	A	P	D	A	A	X	X
Club Premises	X	X	X	P	D	A	X	X	X
Community Purpose	A	D	A	P	D	X	A	A	A
Consulting Rooms	X	X	X	P	D	X	X	X	X
Convenience Store	X	X	X	P	P	D	X	X	X
Corrective Institution	X	X	X	X	X	X	A	X	X
Dam	X	X	A	X	X	X	P	A	D

	Residential	Residential Development	Special Residential	Town Centre	Mixed Business	Light Industry	Rural	Rural Residential	Rural Living
Detention Centre	X	X	X	X	X	X	A	X	X
Display Home Centre	D	D	D	D	D	X	X	D	D
Educational Establishment	A	A	A	D	A	X	A	A	A
Emergency Services	X	X	X	D	D	D	D	X	D
Equestrian Centre	X	X	X	X	X	X	A	X	A
Exhibition Centre	X	X	X	P	P	A	D	D	D
Factory Unit	X	X	X	X	D	P	X	X	X
Family Day Care	A	A	A	P	D	X	D	A	A
Farm Stay/Host Farm	X	X	X	X	X	X	D	X	A
Fast Food Outlet	X	X	X	D	A	X	X	X	X
Fuel Depot	X	X	X	A	D	D	D	X	X
Funeral Parlour	X	X	X	D	D	D	A	X	X
Grouped Dwelling	D	D	X	D	A	X	X	X	X
Holiday Accommodation	X	X	X	D	A	X	A	X	A
Home Business	D	D	D	D	D	X	P	D	D
Home Occupation	P	P	P	D	D	X	P	P	P
Home Office	P	P	P	P	P	X	P	P	P
Home Store	A	A	A	D	D	X	X	X	X
Hospital	X	X	X	A	X	X	X	X	X
Hotel	X	X	X	D	A	X	X	X	X
Industry—Cottage	X	X	D	D	D	D	D	D	D
Industry—Extractive	X	X	X	X	X	X	D	X	X
Industry—General	X	X	X	X	X	D	X	X	X
Industry—Light	X	X	X	X	A	P	X	X	X
Industry—Noxious	X	X	X	X	X	X	X	X	X
Industry—Rural	X	X	X	X	D	D	A	X	A
Industry—Service	X	X	X	D	D	P	X	X	X
Lunch Bar	X	X	X	P	D	D	X	X	X
Market	X	X	X	A	A	X	X	X	X
Medical Centre	X	X	X	D	D	X	X	X	X
Motel	X	X	X	A	A	X	X	X	X
Motor Vehicle, Machinery and/or Marine Repair	X	X	X	X	D	P	X	X	X
Motor Vehicle, Machinery and/or Marine Sales & Hire	X	X	X	A	D	D	X	X	X
Motor Vehicle, Machinery and/or Marine Wrecking	X	X	X	X	A	P	X	X	X
Motor Vehicle Wash	X	X	X	D	D	P	X	X	X
Multiple Dwelling	A	A	X	D	X	X	X	X	X
Night Club	X	X	X	D	A	X	X	X	X
Nursing Home	A	A	A	A	A	X	D	A	A
Office	X	X	X	P	D	X	X	X	X
Park Home Park	X	X	X	A	A	X	A	X	X
Place of Worship	A	D	A	P	D	A	A	A	A
Reception Centre	X	X	X	D	D	X	D	X	X
Recreation—Private	X	X	A	D	D	A	A	X	A
Recreation—Public	D	D	D	D	D	A	D	D	D
Research Centre	X	X	X	D	D	D	D	X	X
Residential Building	D	D	D	D	D	X	X	D	D
Restaurant	X	X	X	P	D	X	X	X	X

	Residential	Residential Development	Special Residential	Town Centre	Mixed Business	Light Industry	Rural	Rural Residential	Rural Living
Roadside Stall	X	X	X	X	X	X	D	X	D
Rural Pursuits	X	X	X	X	X	X	P	A	A
Service Station	X	X	X	A	D	D	A	X	X
Shop	X	A	X	P	D	X	X	X	X
Showroom	X	X	X	A	D	A	X	X	X
Single house	P	P	P	D	D	X	P	P	P
Stables—Commercial	X	X	X	X	X	X	D	X	X
Stables—Private	X	X	X	X	X	X	P	D	A
Stockyard	X	X	X	X	X	X	P	D	D
Storage facility/depot/laydown area	X	X	X	A	D	P	A	X	X
Tavern	X	X	X	A	A	X	X	X	X
Telecommunication Infrastructure	D	D	D	D	D	D	D	D	D
Trade Display	X	X	X	D	D	D	A	X	X
Veterinary Centre	X	X	A	A	A	D	A	A	A
Warehouse	X	X	X	X	D	P	X	X	X
Waste Disposal and Treatment	X	X	X	X	X	A	A	X	X
Winery	X	X	X	X	X	X	D	A	A

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

- the local government has exercised its discretion by granting planning approval;
- 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;
- the change is an extension of a use within the boundary of the lot which does not change the predominant use of the lot; or
- the change is to an incidental use that does not change the predominant use of the land.

Note:

- 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.
- The local government will not refuse a “P” use because of the unsuitability of the use for the zone but may impose conditions on the use of the land to comply with any relevant development standards or requirements of the Scheme, and may refuse or impose conditions on any development of the land.
- In considering a “D” or “A” use, the local government will have regard to the matters set out in clause 10.2.
- 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, class or genus of activity of any other use category the local government may—

- determine that the use is consistent with the objectives of the particular zone and is therefore permitted;
- determine that the 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
- 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.

#### 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.

#### 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 for the purpose for which it was being lawfully used immediately prior to the Gazettal date;
- (b) the carrying out of any development on that land for which, immediately prior to the Gazettal date, an approval or approvals, lawfully required to authorize 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, or by the payment of compensation to the owner or occupier or to both the owner and occupier of that land, and may enter into an agreement with the owner for that purpose.

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

#### 4.12. Destruction of non-conforming use buildings

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

### 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 with the provisions of those Codes.

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

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

### 5.3. Special application of Residential Design Codes

There are no exclusions or variations to the Residential Design Codes which apply to the Scheme.

### 5.4. Restrictive covenants

5.4.1. Subject to clause 5.4.2, a restrictive covenant affecting any land in the Scheme area by which, or the effect of which is that, the number of residential dwellings which may be constructed on the land is limited or restricted to less than 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 all of 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 the local government, the variation is likely to affect any owners or occupiers in the general locality or adjoining the site which is the 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 an adverse effect upon the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.

### 5.6. Environmental conditions

5.6.1. Environmental conditions to which the Scheme 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 EP Act; and
- (b) make the statements available for public inspection at the offices of the local government.

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

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

### 5.7. Development plans

5.7.1. The local government may prepare, or require the preparation of a development plan, prior to considering subdivision or development proposals in any zone.

5.7.2. Notwithstanding the requirements of this Scheme, all development is to comply with the requirements of endorsed development plans.

5.7.3. The local government may permit any minor departure or alteration to a development plan if the local government is satisfied that the proposed departure or alteration will not have a significant impact on the overall layout of the development plan and does not alter the interface with land adjoining the development plan area.

5.7.4. Any departure or alteration to a development plan that does not comply with Clause 5.7.3 may be permitted by the local government, subject to the approval of the Commission, if it is satisfied that the proposed departure or alteration will not prejudice the progressive subdivision and development of the area.

5.7.5. A proposed development plan may to the extent that it does not conflict with the Scheme, impose a classification on the land included in it by reference to reserves, zones of the Residential Design Codes, and where the proposed development plan becomes a development plan, the local government is to have due regard to such reserves, zones or Residential Design Codes when recommending subdivision or approving development of land within. In the absence of an endorsed development plan the symbols in the zoning table will apply.

#### 5.7.6. Advertising of development plans

The local government may, within 30 days of receiving the development plan, require that it be advertised, in accordance with Clause 9.4.

#### 5.7.7. Adoption of development plans

Following adoption of the development plan, with or without modifications, the local government shall request the WAPC to endorse development plans as the basis for approval of subdivision application within areas covered by the plans.

#### 5.7.8. Appeal

The proponent of a development plan, required by this Scheme, may appeal in accordance with Part IV of the Act—

- (a) The failure of the local government to make a determination on the content and requirement of a development plan (or an amendment to a development plan) within 120 days of receiving a request for direction.
- (b) A decision of the local government not to endorse a development plan (or amendment to a development plan).
- (c) Condition of approval of the development plan (or alterations to a development plan).

### 5.8. Development in the town centre zone

5.8.1. Council may prepare a Local Planning Policy and/or Plan for all or part of the Town Centre Zone where development and uses will accord with the Policy and/or Plan provisions in addition to relevant scheme provisions.

5.8.2. In the absence of strategic or policy statements or a development plan for land within the Town Centre zone, the local government, when considering a planning application, shall take into account other matters it considers relevant to the proposal including floor space limitations, setbacks from boundaries, height of structures and preservation of areas or buildings of architectural or historical interest and the development of land abutting the same.

5.8.3. The density of residential development in the Town Centre zone shall be R10/R50. Council will only permit development to occur at the R50 density coding if the land can be connected to reticulated sewer services.

5.8.4. All development within the Town Centre zone must make appropriate provisions for car parking, having regard to the requirements of Councils car parking policy.

5.8.5. For mixed use development comprising of residential and non-residential uses, the provisions of Part 4.2 of the Residential Design Codes will apply to the residential components of the development, and the provisions of this Scheme to the non-residential component of the development.

### 5.9. Development in the light industry zone

5.9.1. In considering planning applications within the Light Industry zone, the local government shall have regard for the—

- (a) compatibility of the proposed uses with other surrounding uses;
- (b) potential impact of the proposal on the efficient and effective operations of existing and planned industry, infrastructure or public purposes; and,
- (c) risks, hazards, health and amenity associated with the proposed use being located in proximity to existing and planned industry, infrastructure or public purpose or any other use.

5.9.2. When considering applications for planning approval in the Light Industry zone the local government shall not permit development to be set back less than five metres from the front boundary or buildings to cover more than sixty percent of the lot and shall have regard for any other minimum development standard contained in the Scheme.

5.9.3. Notwithstanding any provision of the Building Code of Australia the local government may, if it considers the proposal appropriate, approve buildings which abut one side boundary, provided vehicular access to the rear of the lot is maintained.

5.9.4. Where a use in the Light Industry zone is defined as a Prescribed Premises in the Regulations to the *Environmental Protection Act 1987* (as amended) or an Offensive Trade under the *Health Act 1911* (as amended), the local government shall advertise the proposal as set out in Clause 9.4 and may notify the Environmental Protection Authority and/or the Health Department for comment or advice before considering the matter in the light of such comment or advice.

5.9.5. In the Light Industry zone—

- (a) provision shall be made for the off-street parking of motor vehicles during normal business hours in all developments in an industrial area or of an industrial nature; and
- (b) parking areas shall be designed to enable all vehicles to return to the street in forward gear.

5.9.6. In the Light Industry zone—

- (a) no land or buildings shall be developed unless provision is made for an area clear of the street for the purpose of loading and unloading goods or materials;
- (b) the local government will seek to ensure that the majority of servicing vehicles will be able to leave and enter the street in forward gear; and
- (c) access-ways shall not be less than 4.5 metres wide but in exceptional circumstances the local government may permit an access way of lesser width but not less than 3.0 metres and then only when one way system can be established.



### 5.10. Factory unit development

Land in the Light Industry and Mixed Business zones may be used for a Factory Unit development, provided that—

- (a) there is no more than one occupancy for each factory unit;
- (b) no industrial unit is used for machinery or automotive wrecking or for the sale of motor vehicles or caravans;
- (c) factory units shall be separated from each other by an internal wall or walls constructed of brick, stone or concrete in accordance with the Building Code of Australia and shall not be altered, moved or removed without the consent of the local government; and
- (d) the factory unit complies with local governments' policy for factory units as amended from time to time.

### 5.11. Development in the rural residential and rural living zones

5.11.1. The local government will only support subdivision for rural residential or rural living where the land has been appropriately identified in the Local Planning Strategy and zoned in the Local Planning Scheme and has been approved by Council.

5.11.2. In addition to Scheme provisions affecting rural residential or rural living development, the provisions outlined in Schedule 11 apply to the rural residential and rural living areas so identified.

5.11.3. Restriction on the type and scale of any agriculture land uses or rural pursuits which vary from Scheme will be specified in Schedule 11.

5.11.4. While local government requires land management controls and environment require requirements, where they vary from scheme provisions they will be specified in Schedule 11.

5.11.5. A development plan prepared as a requirement under Clause 5.7 for rural residential or rural living proposals shall include—

- (a) identification of building envelopes;
- (b) tree preservation areas and areas of remnant vegetation;
- (c) location of watercourses, drainage lines and areas of inundation; and
- (d) an assessment of bushfire risk based on the guidelines contained in the "Planning for Bushfire Protection".

#### 5.11.6. Sewerage

Where connection to reticulated sewer is not available to a lot in a rural residential and rural living zones, domestic sewerage shall be disposed of by means of alternative effluent disposal system to the satisfaction of the local government and the Health Department of Western Australia.

#### 5.11.7. Potable water supply

- (a) In considering residential development within the Rural Residential and Rural Living zones, the local government will require evidence of the availability of a potable water supply either from a reticulated system, an underground bore or a rainwater storage system.
- (b) Where the supply of potable water is by rainwater storage only, such rainwater storage system shall be directly connected to an adequate catchment.
- (c) In lieu of the erection of a rainwater storage tank, local government may accept the submission of a receipted account or signed contract to supply and install a suitable water tank prior to the issue of a building license for a proposed dwelling to ensure the availability of an adequate water supply.
- (d) Local government will not support the subdivision of land in the Rural Residential or Rural Living Zones unless the applicant can provide evidence that an adequate supply of water can be provided to each of the proposed lots.

#### 5.11.8. Building Envelopes

- (a) Where building envelope are defined all buildings shall be confined to the area of the building envelope as set out on the development plan adopted by the local government.
- (b) The local government may permit the location of a building to be within the setback area or outside a building envelope when compliance with the prescribed set backs or building envelope will locate the building on a skyline or necessitate unnecessary and undesirable earthworks or clearance of vegetation.

#### 5.11.9. Tree preservation/remnant vegetation protection

- (a) The local government may require tree preservation areas to be identified on the plan of subdivision so as to—
  - (i) protect and preserve areas of landscape significance, ridge lines, and stream lines;
  - (ii) protect areas of land management importance including areas of actual or potential erosion or land degradation;
  - (iii) generally provide for visual screening of buildings and development; and
  - (iv) protect recognised vegetation corridor.
- (b) Within areas designated as a natural vegetation preservation and/or remnant vegetation areas, no indigenous trees or vegetation may be felled or removed except for—
  - (i) trees which are dead, diseased or dangerous;
  - (ii) establishment of a firebreak required under a regulation or bylaw;
  - (iii) access to a building site;

- (iv) an area up to two metres in width for the purpose of a fence line;
  - (v) vegetation being removed or disturbed as part of a verge/native tree replanting programme carried out with local government's knowledge and consent.
- (c) Nothing in Clause 5.11.9 (b) (iv) shall be construed to mean that any person can clear a portion of a road reserve.
  - (d) In considering granting planning consent for a building, local government may where it considers an area to be deficient in tree cover, or additional tree cover to be desirable in the interests of landscape protection or enhancement, require tree planting located so as to provide adequate visual screening of the building.

#### 5.11.10. Livestock management

With the intention of preventing overstocking or other practices detrimental to the amenity of the zone and to prevent land degradation and nutrient export, any application for the keeping of livestock will have regard to advice from the relevant State Government departments including in relation to recommended stocking rates and protection of environmental attributes (such as native vegetation, watercourses, wetlands, ground and surface water quality and landform).

### 5.12. Height and appearance of buildings

5.12.1. Within the Scheme Area no building shall be constructed in excess of 2 storeys or 8 metres overall, whichever is the greater, above natural mean ground level.

5.12.2. Notwithstanding the provisions of Clause 5.12.1, after following the procedures set out in Clause 9.4, the local government may grant approval for the construction of a building higher than the maximum specified. Before granting its approval the local government shall satisfy itself that the proposed building—

- (a) will be in harmony with buildings within the locality;
- (b) will not be detrimental to the amenity or character of the locality or to the town or district in general; and,
- (c) will not affect the development potential of adjoining lots by affecting design, aspect, outlook, views and privacy.

### 5.13. Landscaping

5.13.1. In all zones except the Rural zone there will be a landscaping requirement for all developments.

5.13.2. The landscaping requirement referred to in sub-clause 5.13.1 means an open area designed, developed and maintained as a landscaped garden and pedestrian area. At the discretion of the local government it may include natural bushland, swimming pools, areas under covered ways or a children's playground. In Rural Residential and Rural Living zones it may include landscaped buffers along lot boundaries and road frontages.

5.13.3. All applications for Planning Approval, except those for residential development involving two dwellings or less shall indicate the landscaping elements of the proposal and in particular a plan showing—

- (a) the percentage of the site devoted to landscaping;
- (b) the areas subject to landscaping works;
- (c) the percentage and condition of remnant vegetation to be retained;
- (d) location and species of plants, including shade trees planted within and adjacent to carparking areas at the rate of 1 tree per 2 car bays;
- (e) other materials imported, arranged and/or constructed on the site;
- (f) areas to be irrigated and the systems to be used; and
- (g) the proposed staging, if any, and timing of the works.

5.13.4. Local government may require modifications or additions to the landscaping work proposed by any planning application.

### 5.14. Additional dwellings

In all zones, only one dwelling house shall be permitted on each lot or location except in the Rural zone, the local government may, at its discretion, approve the erection of more than one building provided that it is satisfied that—

- (a) the additional dwelling(s) are required to provide accommodation for an agricultural or horticultural worker;
- (b) the lot has an area of not less than 40 hectares;
- (c) the total number of dwelling houses on the lot will not exceed 2;
- (d) where the second dwelling is to be used for a purpose other than a rural worker's dwelling, the local government must be satisfied that the second dwelling is to be used solely for the purpose of the principal place of residence of an owner or immediate past owner of the land who has been actively engaged for a significant period of time in the day to day management and operation of a substantial rural pursuit on the land and that the balance of the land is to be retained in rural production.

### 5.15. Setback distances

5.15.1. Setbacks in the Residential, Special Residential and Town Centre zones will be in accordance with the Residential Design Codes.

5.15.2. In the Town Centre zone and the Light Industry zones, no person shall use the setback area between the building line and the 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) loading and unloading of vehicles;
- (d) trade display only with the consent of the local government; and,
- (e) landscaping.

5.15.3. Setback areas shall not be used for the storing of vehicles which are being repaired or wrecked, the storage of materials, products, by-products or wastes, or the storage of fuel, except in underground tanks.

5.15.4. In the Rural, Rural Residential and Rural-Living zones—

- (a) No building shall be located closer to a boundary than 30 metres except in the Rural zone, where the setback distance shall be a minimum of 50 metres unless the proposed building is within full view of a main or district road as designated in the Scheme, in which case the setback shall be a minimum of 100 metres.
- (b) No person shall use the land between the building setback line and the road for any purpose other than a means of access, landscaping or a rural activity permitted in the zone;
- (c) Notwithstanding anything contained in the sub-clauses above, the local government may permit a building to be located within the setback area when—
  - (i) in the opinion of the local government, a physical obstruction precludes compliance with this clause;
  - (ii) the location of the building within the setback area will not adversely effect the amenity of an adjoining owner or the area generally;
  - (iii) for the reason of topography or lot configuration, the prescribed setback cannot be adhered to or would be unnecessarily disadvantageous.
- (d) Where it is necessary to locate a rain water tank within the setback area when seeking the highest point on the property, the local government will require that the side of the tank is made to blend with the environment by painting within 6 months of erection in an acceptable colour or by the use of a suitable material during construction.

5.15.5. The minimum front setback to any new development on a road proposed to be widened under this Scheme shall be the minimum setback as if the proposed widening had taken place.

5.15.6. Where lots have more than one street frontage the following setbacks shall apply—

- (a) In all zones, other than the Residential zone, where a lot has a frontage to more than one street, the local government may determine which street frontage shall be regarded as the front for the purpose of the setback prescribed in the Scheme.
- (b) With the exception of State/Regional and District roads, the local government may, at its discretion, permit the setback to the secondary street to be reduced to half the specified setback.
- (c) In the Residential zone the provisions of the Residential Design Codes prevail.

#### **5.16. Parking of Commercial Vehicles in the Residential Zone**

5.16.1. Unless prior planning approval has been granted by the local government, no person shall, within a Residential zone—

- (a) park or allow to remain stationary for more than 4 hours consecutively—
  - (i) more than one commercial or industrial vehicle on a particular lot;
  - (ii) a commercial or industrial vehicle, boat trailer, boat, caravan, or recreational vehicle unless it is parked in a domestic garage or outbuilding, or such vehicle is parked entirely on the lot in a position which is not unduly obtrusive;
  - (iii) any vehicle which, due to size or load, is not capable of being completely parked within a domestic garage or outbuilding having a maximum floor area of 45 square metres in which no horizontal dimension is more than 15 metres;
  - (iv) a vehicle which, together with its load, exceeds 3 metres in height or longer or wider than permitted on roads without requiring special warning signs, unless the vehicle is being used in connection with building or construction works.
- (b) build, repair, paint, service, or renovate any marine vessel, caravan, commercial or industrial vehicle in front of the building line.

#### **5.17. Car parking requirements**

5.17.1. Unless otherwise provided in the Scheme, all development must make appropriate provisions for car parking, having regard to the requirements of Councils Car Parking Policy.

5.17.2. Where a proposed use is not specifically defined and cannot be associated with a defined use, the local government will establish the requirement for the use dependent on the number of vehicles likely to be attracted to the development and the maintenance of desirable safety standards and the amenity of the area.

5.17.3. Premises with more than one use will have the parking requirements added in proportion to the uses occupying the site unless common usage of the parking occurs when the local government may agree to an adjustment to the total need.

5.17.4. In the Light Industry zone—

- (a) provision shall be made for the off-street parking of motor vehicles during normal business hours in all developments in an industrial area or of an industrial nature;
- (b) parking areas shall be designed to enable all vehicles to return to the street in forward gear;
- (c) parking areas located between the building setback and the street alignment shall be constructed, paved, kerbed, drained, marked out and landscaped and maintained to the satisfaction of the local government;

5.17.5. Where the parking or loading and unloading facility is provided on a lot or lots separate from the lot upon which the development or redevelopment is to occur, the local government will require to be satisfied that the land so allocated will be permanently retained for the purpose by either amalgamation of the lots set aside for parking with the lots being developed or by agreement with local government that the land used for parking or loading or unloading will not be sold separately.

5.17.6. In all zones parking areas located between the building setback and the street alignment shall be constructed, paved, kerbed, drained, marked out, landscaped and maintained to the satisfaction of the local government.

5.17.7. In all zones, the Scheme provisions for parking, loading and unloading, access and landscaped areas, complete with drainage, signs and markings shall be provided at the time of development or at such time as may be agreed in writing between the local government and the developer. All such areas and facilities shall be maintained to the satisfaction of the local government

#### **5.18. Sealed areas**

Outdoor displays, industrial hire services, storage facilities, depots, laydown areas and any other open area shall be sealed, paved or landscaped to the satisfaction of local government and maintained in good condition.

#### **5.19. Traffic entrances and major roads**

5.19.1. The local government may require separate vehicular entrances and exits to lots or may require such access to be placed in positions nominated by it, if it considers it to be necessary to avoid or reduce traffic hazards.

5.19.2. The local government may refuse to permit more than one vehicle entrance or exit to or from any lot.

5.19.3. Direct access for vehicles from a Main or Major Road to a lot will not be permitted where access is available from a street at the side or rear of the property or from a right of way.

5.19.4. Where vehicular access from a lot adjoining a Main or Major Road is available only from that road, parking, servicing, circulation within that lot and access to and from the Road shall be designed and constructed to allow unhindered movement within the lot to enable vehicles to enter and leave the site in forward gear.

5.19.5. The local government will require the forming, sealing and draining of any unpaved right of way or street servicing a development for which planning approval is given at the cost of the developer in proportion to the extent of the use of the right of way or street by the development in respect to other users as assessed by the local government.

#### **5.20. Lots without frontage to a gazetted road**

Planning approval will not be granted by the local government for the construction of a dwelling house on a lot, which does not have frontage to a constructed and Gazetted Road, unless arrangements have been made for legal access to the satisfaction of local government.

#### **5.21. Transportable or relocated structures**

5.21.1. The local government may approve the erection or placement of a transportable or prefabricated building on a lot or location providing that the design of the building is to the satisfaction of the local government by reason of such matters as the roof pitch, window size, external cladding materials and other such factors that affect the appearance of the building and that the building will not, in the opinion of the local government, adversely affect the amenity of other properties in the vicinity.

5.21.2. The local government may approve a transportable or relocated dwelling to be placed on a lot and used as a dwelling provided that, in the opinion of the local government, such building is in a satisfactory condition or can be upgraded to a suitable standard and will not affect the amenity of the area.

5.21.3. Where any material containing asbestos fibres remains in or on the house, whether cement asbestos roofing or cladding or for insulation or for any other purpose, such material shall be removed prior to the building being transported within or into the Shire.

#### **5.22. Motor vehicle and machinery wrecking and/or storage**

5.22.1. For the purpose of this clause, the term “vehicle” shall include motor vehicle, machinery or anything that can reasonably be included under those terms.

5.22.2. No person shall occupy or use or permit to be occupied or used, land in any Light Industry zone or any other zone for the purpose of wrecking and/or storage of vehicles except in accordance with the provisions of this Scheme and the following standards—

- (a) the area of land actually used for the purpose of wrecking and/or storage of vehicles shall not exceed 2000 square metres; and,
- (b) no more than 40 vehicles may be stored on the land in neat rows and not in any manner greater than 2 metres in height.

5.22.3. Should the local government grant planning approval to the use and development of land for the purpose of vehicle wrecking, such approval shall be subject to the following conditions—

- (a) all vehicle bodies and excess scrap from the wrecking process shall be removed and disposed of in a manner and at intervals satisfactory to the local government;
- (b) all parts or materials or components shall be stored in buildings and yard areas;
- (c) all buildings and yard areas shall be kept in a good state of repair and shall be clean and tidy at all times to the satisfaction of the local government;
- (d) all yard areas where vehicle wrecking occurs shall be enclosed by a fence to the design and satisfaction of the local government and shall be not less than 1.8 metres in height;
- (e) no vehicle or portion of a vehicle shall be destroyed or otherwise disposed of by fire or any other means of combustion;
- (f) all practicable means shall be used to minimise any smell from the operation of the business;
- (g) where appropriate a landscape buffer or other appropriate visual screen be provided.

### 5.23. Flood prone land

Local government may refer applications for subdivision and development approval affecting flood prone land to the Department of Water and shall pay due regard to any advice received on such applications.

## 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 Maps—

- (a) Avon River Valley
- (b) Toodyay Bypass

6.1.2. In respect of a special control area shown on a Scheme Map, the provisions applying to the special control area apply in addition to the provisions applying to any underlying zone or reserve and any general provisions of the Scheme.

### 6.2. Avon River Valley Special Control Area

The Avon River Valley Special Control Area is delineated on the Scheme Map

#### 6.2.1. Purpose

The purpose of the Avon River Valley Special Control Area is to promote the objectives of the Avon Arc Sub-Regional Strategy (January 2001) by identifying areas within the Avon Arc of high landscape value and by conserving and enhancing the significant values and features that exist within this landscape area.

#### 6.2.2. Application Requirements

Planning approval is required to construct or extend a dwelling or any other building within this special control area.

#### 6.2.3. Relevant Considerations

6.2.3.1. To preserve and enhance the status of this area as a major scenic and recreation resource the local government will—

- (a) encourage the retention and enhancement of the vegetation cover;
- (b) encourage rural uses to continue in a manner consistent with good land management practice and the enhancement of the environment;
- (c) exercise controls over the subdivision and development of land so that the siting and design of buildings or works will enhance the visual character of the area;
- (d) acquire, where appropriate, foreshore land to protect critical areas of landscape or recreational value and to ensure public access; and,
- (e) permit appropriate uses of a recreational or tourist nature subject to adequate controls on the level of activity and siting of such uses.

6.2.3.2. The local government in considering planning proposals on land identified on the Scheme Map as being within the special control area will consider the following before making a determination—

- (a) the effects of the proposal on catchment management and the measures to be taken to mitigate such effects;
- (b) whether the proposed development will materially and seriously effect any wetland or native flora, native wildlife refuge or habitat, especially when such is rare, endangered or a priority species;
- (c) whether the proposed development will effect any identified site of known Aboriginal importance;
- (d) the effects of the development to the natural environment including—
  - (i) effects of clearing for development, especially for roads and services; and,
  - (ii) habitat disturbance;

- (e) the actions to be taken to ameliorate any adverse effects the development may have on the environment which shall include but not be limited to—
- (i) landscaping and tree planting on road verges and boundaries;
  - (ii) provision of habitat corridors;
  - (iii) fencing of areas of environmental value; and,
  - (iv) the removal from the site of all waste materials resulting from land clearing and the levelling and planting of all earth works and spoil heaps; and,
- (f) whether the proposed development is compatible with the existing rural and scenic character of the Shire of Toodyay.

6.2.3.3. Where development within the special control area is likely to substantially detract from the visual amenity of the district, taking into account the cumulative visual effect of that development and other development that may be anticipated in the locality and in the area generally, local government may—

- (a) refuse to grant its approval to the development, or
- (b) grant planning approval subject to conditions regarding size, siting or materials to be used.

6.2.3.4. A person shall not fill, clear, drain, excavate or otherwise alter by earthworks, any land within the special control area or on any such land, construct any dam, building or levee for any purpose or restrict or partially or totally divert the natural flow of water or natural stormwater runoff or cause any storm water or other water or any other liquid from any source to flow into any creek, watercourse, lake or wetland without the written approval of the local government.

6.2.3.5. A person shall not without the approval of local government, ringbark, cut down, lop, top, prune, injure or destroy by any other means a tree on any land to which this clause applies unless—

- the tree is less than one metre high and has a girth of less than 15 millimetres at a height of 400 millimetres from the ground;
- the tree is dying, dead or has become dangerous;
- the tree is not a protected native plant;
- the tree is not located within 20 metres of a watercourse, or
- it is for the purpose of agricultural activities such as the clearing of fence lines and firebreaks and the removal of re-growth under the age of 2 years.

6.2.3.6. In considering any application for approval to clear land pursuant to sub-clause 6.2.3.5, the local government will take into account the possible effects on the landscape of the area, the possibility of erosion or other ecological consequences and may, at its discretion, refer the application to the Department of Environment and Conservation, the Conservation Commission of Western Australia or any other Government Department or Authority with a request for advice or, where considered appropriate, with a recommendation that the area concerned, or any part thereof, be considered for acquisition as National Park or Public Use Reserve.

6.2.3.7. The local government may require the preparation of a statement of environmental impacts, which shall accompany a planning application for any land subject to this clause to enable the local government to fully consider the possible environmental effects of the proposal.

6.2.3.8. Without limiting the power of the local government to grant approval, the local government may grant approval to develop land to which this clause applies where it is satisfied that—

- (a) the characteristics of the land are different from the general characteristics on which the classification of the land was based; and,
- (b) there are no other reasonable or practicable alternatives in the circumstances.

#### 6.2.4. Referral of applications for planning approval

The local government may refer any rezoning request or development application to any relevant agency for comment.

### 6.3 Toodyay Bypass Special Control Area

#### 6.3.1 Purpose

The purpose of the Toodyay Bypass Special Control Area is to protect future residential development from traffic noise impacts associated with the Bypass.

#### 6.3.2. Relevant considerations

In considering rezoning, development or subdivision applications, the local government will have regard to the potential impact of the Bypass on future residential amenity.

#### 6.3.3. Application requirements

The local government will require an assessment of traffic noise levels from the Toodyay Bypass to be undertaken and suitable noise mitigation measures to be investigated and proposed as part of rezoning, development and subdivision 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 Heritage List such of the entries on the municipal inventory as it considers to be appropriate.

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

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

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

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

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

Note:

1. The purpose and intent of the heritage provisions are—
  - (a) to facilitate the conservation of places of heritage value; and
  - (b) to ensure as far as possible that development occurs with due regard to heritage values.
2. 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, designate that area as a heritage area.

7.2.2. The local government is to—

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

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

- (a) notify in writing each owner of land affected by the proposed designation and provide the owner with a copy of the proposed Local Planning Policy for the heritage area;
- (b) advertise the proposal by—
  - (i) publishing a notice of the proposed designation once a week for 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 insofar as the interest of that owner or occupier permits.

Note:

1. A heritage agreement may include a covenant intended to run with the land relating to the development or use of the land or any part of the land.
2. Detailed provisions relating to heritage agreements are set out in the *Heritage of Western Australia Act 1990*.

### 7.4. Heritage assessment

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

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

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 designated 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 and reserved under the Scheme requires the prior approval of the local government. A person must not commence or carry out any development without first having applied for and obtained the planning approval of the local government under Part 9.

Note:

1. The planning approval of the local government is required for both the development of land (subject of this Part) and the use of land (subject of Part 4).
2. Development includes the erection, placement and display of any advertisements.

### 8.2. Permitted development

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

- (a) the carrying out of any building or work which affects only the interior of a building and which does not materially affect the external appearance of the building except where the building is—
  - (i) located in a place that has been entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*;
  - (ii) the subject of an order under Part 6 of the *Heritage of Western Australia Act 1990*; or
  - (iii) included on the Heritage List under clause 7.1 of the Scheme;
- (b) the erection on a lot of a single house including any extension, ancillary outbuildings and swimming pools, except where—
  - (i) the proposal requires the exercise of a discretion by the local government under the Scheme to vary the provisions of the Residential Design Codes; or
  - (ii) the development will be located in a heritage area designated under the Scheme;
  - (iii) the development is located in a special control area as described under Part 6;
  - (iv) in the Rural Residential and Rural Living Zone, where the proposed development is not in accordance with the designated building envelope contained in an endorsed development plan.
  - (v) a relocated building is proposed.
- (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 on the Heritage List under clause 7.1 of the Scheme; or
  - (iv) located within 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;



- (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; and
- (g) The carrying out of a Rural Pursuit in the Rural Residential and Rural Living zones that—
  - (i) is not used for trade or commercial purposes; and
  - (ii) complies with the recommended stocking rates and environmental protection requirements of the relevant State Government departments.

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. Unauthorized existing developments

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

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

## PART 9—APPLICATIONS FOR PLANNING APPROVAL

### 9.1. Form of application

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

- (a) a use or commencement of development on a Local Reserve under clause 3.4;
- (b) commencement of a “P” use which does not comply with all relevant development standards and requirements of the Scheme as referred to in clause 4.3.3;
- (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 requirement under clause 5.5;
- (i) commencement of development under clause 8.1;
- (j) continuation of development already commenced or carried out under clause 8.4;
- (k) a subsequent planning approval pursuant to an approval under clause 10.8.1; and
- (l) the erection, placement or display of an advertisement,

is, 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 numbers, north point and the dimensions of the site;
  - (ii) the existing and proposed ground levels over the whole of the land the subject of the application and the location, height and type of all existing structures, and structures and vegetation proposed to be removed;
  - (iii) the existing and proposed use of the site, including proposed hours of operation, and buildings and structures to be erected on the site;
  - (iv) the existing and proposed means of access for pedestrians and vehicles to and from the site;
  - (v) the location, number, dimensions and layout of all car parking spaces intended to be provided;
  - (vi) the location and dimensions of any area proposed to be provided for the loading and unloading of vehicles carrying goods or commodities to and from the site and the means of access to and from those areas;

- (vii) the location, dimensions and design of any open storage or trade display area and particulars of the manner in which it is proposed to develop the same; 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 local government may require the applicant to undertake in support of the application such as traffic, heritage, environmental, engineering or urban design studies; and
- (d) any other plan or information that the local government may require to enable the application to be determined.

### **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 on 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 as referred to in 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 day 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 are considered appropriate by the local government.

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

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

## **PART 10—PROCEDURE FOR DEALING WITH APPLICATIONS**

### **10.1. Consultation with other authorities**

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

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

### **10.2. Matters to be considered by local government**

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 schemes operating within the Scheme area;
- (b) the requirements of orderly and proper planning including any relevant proposed new local planning scheme or amendment, or region scheme or amendment, which has been granted consent for public submissions to be sought;
- (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, 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 within the meaning of the *Heritage of Western Australia Act 1990*, or which is included in the Heritage List under clause 7.1, and the effect of the proposal on the character or appearance of a heritage area;
- (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 the application relates is unsuitable for the proposal by reason of it being, or being likely to be, subject to flooding, tidal inundation, subsidence, landslip, bush fire or any other risk;
- (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 submissions 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.

### 10.3. Determination of applications

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

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

### 10.4. Form and date of determination

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

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

### 10.5. Term of planning approval

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

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

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

### 10.6. Temporary planning approval

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

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

### 10.7. Scope of planning approval

Planning approval may be granted—

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

### 10.8. Approval subject to later approval of details

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

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

10.8.3. Where the local government has granted approval subject to matters requiring the later planning approval of the local government, an application for approval of those matters must be made not later than 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 is agreed in writing between the applicant and the local government.

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

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

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

### 11.2. Removal and repair of existing advertisements

11.2.1. Where an existing advertisement at, or at any time after, the 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

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

### 11.7. Notice for removal of certain buildings

11.7.1. Under section 214 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*

### DICTIONARY OF DEFINED WORDS AND EXPRESSIONS

[cl. 1.7]

#### 1. General definitions

In the Scheme—

“**advertisement**” means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and includes any hoarding or similar structure used, or adapted for use, for the display of advertisements. The term includes any airborne device anchored to any land or building and any vehicle or trailer or other similar object placed or located so as to serve the purpose of advertising;

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

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

“**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 Toodyay;

“**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;
- “**Residential Design Codes**” means the Residential Design Codes in Appendix 2 to the Western Australian Planning Commission Statement of Planning Policy No. 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—

- “**abattoir**” means a building or place used for the slaughter of animals, whether or not animal by-products are processed, manufactured or distributed, and includes a knackery;
- “**accommodation for temporary workers**” means dwellings intended for the temporary accommodation of transient workers and may be designed to allow transition to another use or may be designed as a permanent facility for transient workers and includes a contractor’s camp and dongas;
- “**aged or dependent persons dwelling or establishment**” means a dwelling designed for the accommodation of aged or dependent persons as defined in the Residential Design Codes;
- “**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 plant or fruit nurseries;
  - (c) the development of land for irrigated fodder production or irrigated pasture (including turf farms); or
  - (d) aquaculture;
- “**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;
- “**ancillary accommodation**” means self contained living accommodation on the same site as a single house that may be attached or detached from the single house and occupied by members of the same family as the occupiers of the main dwelling;
- “**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;
- “**apiary**” means land and buildings used for the keeping of the domestic honeybee;
- “**aquaculture**” means the farming of aquatic organisms, including fish, molluscs, crustaceans and aquatic plants. It includes the breeding, hatching, rearing and cultivation for sale of all aquatic organisms;
- “**arts and crafts centre**” means land or buildings used to create, display and/or sell works of art and craft;
- “**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 *Totalisator Agency Board Betting Act 1960*;
- “**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;
- “**carpark**” means premises used primarily for parking vehicles whether open to the public or not but does not include any part of a public road used for parking or for a taxi rank, or any premises in which cars are displayed for sale;
- “**child care premises**” has the same meaning as in the *Child Care Services (Child Care) Regulations 2006*;
- “**cinema/theatre**” means premises where the public may view a motion picture or theatrical production;
- “**civic use**” means premises used by a government department, an instrumentality of the Crown, or the local government, for administrative, recreational or other purposes;
- “**club premises**” means premises used by a legally constituted club or association or other body of persons united by a common interest;
- “**community purpose**” means the use of premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organizations involved in activities for community benefit;
- “**consulting rooms**” means premises used by no more than 2 health consultants for the investigation or treatment of human injuries or ailments and for general outpatient care;
- “**convenience store**” means premises—
- (a) used for the retail sale of convenience goods commonly sold in supermarkets, delicatessens or newsagents, or the retail sale of petrol and those convenience goods;
  - (b) operated during hours which include, but may extend beyond, normal trading hours;
  - (c) which provide associated parking; and
  - (d) the floor area of which does not exceed 300 square metres net lettable area;
- “**corrective institution**” means premises used to hold and reform persons committed to it by a court, such as a prison or other type of detention facility;
- “**detention centre**” means land or buildings used for the confinement or detention in custody of young offenders against the law with a view to their rehabilitation;
- “**display home centre**” means dwelling/s intended to be open for public inspection as an example of the dwelling design;
- “**educational establishment**” means premises used for the purposes of education and includes a school, tertiary institution, business college, academy or other educational centre;
- “**emergency services**” means land or buildings used to store and maintain emergency vehicles and equipment, co-ordinate response to emergency events and may include training facilities and caretaker’s dwellings;
- “**equestrian centre**” means any land or buildings used for the showing, competition or training of horses and includes a riding school;
- “**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;
- “**factory unit**” means a building or structure, or a group of buildings or structures on one lot, in which are carried on two or more separate industries or storage areas not owned or managed by the same person, or in which provision is made for the carrying on of two or more separate industries or storage areas not owned or managed by the same person;
- “**family day care**” means premises used to provide family day care within the meaning of the *Child Care Services (Family Day Care) Regulations 2006*;
- “**farm stay/host farm**” means the use of an existing farm building for the temporary or short stay accommodation for up to 16 persons;
- “**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;
- “**grouped dwelling**” means a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above another, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata lot with common property;
- “**holiday accommodation**” means any land and/or buildings used predominantly by travellers and holiday-makers and designed to take advantage of a tourist attraction or other locational consideration for tourism reasons including camping areas, areas for two or more movable dwellings, chalet parks and serviced apartments or any combination thereof but excluding Bed/Breakfast facilities, hotel and 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;
- (d) does not involve the retail sale, display or hire of goods of any nature;
- (e) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and
- (f) does not involve the use of an essential service of greater capacity than normally required in the zone;

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

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

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

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

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

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

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

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

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

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

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

**“industry—extractive”** means an industry which involves the extraction, quarrying or removal of sand, gravel, clay, hard rock, stone or similar material from the land and includes the treatment and storage of those materials, or the manufacture of products from those materials on, or adjacent to, the land from which the materials are extracted, but does not include industry—mining;

**“industry—general”** means an industry other than a cottage, extractive, light, mining, rural or service industry;

**“industry—light”** means an industry—

- (a) in which the processes carried on, the machinery used, and the goods and commodities carried to and from the premises do not cause any injury to or adversely affect the amenity of the locality;
- (b) the establishment or conduct of which does not, or will not, impose an undue load on any existing or proposed service for the supply or provision of essential services;

**“industry—mining”** means land used commercially to extract minerals from the land;

“**industry—noxious**” means an industry in which the processes involved constitute an offensive trade within the meaning of the *Health Act 1911* (as amended), but does not include a fish shop, dry cleaning premise, marine collectors yard, Laundromat, piggery or poultry farm;

“**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 Control Act 1988*;

“**motor vehicle, machinery and/or marine repair**” means land or buildings used for the mechanical or body repair and overhaul of motor vehicles, motor cycles, caravans, marine vessels and machinery, including tyre repair, retreading, panel beating, spray painting, chassis reshaping or hull scouring;

“**motor vehicle, machinery and/or marine sales and hire**” means land and buildings used for the display, sale and/or hire of motor vehicles, motorcycles, caravans, marine vessels and machinery including storage, cleaning and minor repairs;

“**motor vehicle, machinery and/or marine wrecking**” means land or buildings used for the storage, breaking up or dismantling of motor vehicles, motor cycles, caravans and marine vessels and includes the sale of second hand motor vehicle and marine accessories and spare parts;

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

“**movable dwelling**” means a caravan defined under the *Caravan Parks and Camping Grounds Act 1995*, park home or other dwelling constructed and maintained on its own chassis and wheels and capable of mobility at all times, although it may be stabilised by jacks, provided with skirtings or designed and constructed to permit independent occupancy for dwelling purposes;

“**multiple dwelling**” means a dwelling in a group of more than one where any part of a dwelling is vertically above part of any other but does not include a Grouped Dwelling;

“**night club**” means premises—

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

“**Nursing Home**” means premises in which persons who do not require constant medical attention are received as patients and lodged for the purposes of medical supervision and nursing care;

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

“**park home park**” means the use of land for the parking of park homes for the purpose of providing permanent accommodation, together with ancillary facilities;

“**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;

“**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;

“**recreation—public**” means the use of land for parks, gardens, playgrounds, sports arena or for recreation which are normally open to the public without charge but does not include a racecourse, a showground or golf course;

“**relocated dwelling**” means a residential dwelling which has previously been constructed and occupied (whether in the district or elsewhere) which is capable of being transferred and reconstructed for use as a residential dwelling;

- “research centre”** means a laboratory or other place where scientific or technological development or research is undertaken;
- “residential building”** has the same meaning as in the Residential Design Codes;
- “restaurant”** means premises where the predominant use is the sale and consumption of food and drinks on the premises and where seating is provided for patrons, and includes a restaurant licensed under the *Liquor Control Act 1988*;
- “restricted premises”** means premises used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of—
- (a) publications that are classified as restricted under the *Classification (Publications, Film 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;
- “roadside stall”** means a place or temporary structure used for the retail sale of produce grown or manufactured on the land on which the roadside stall is sited;
- “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;
- “single house”** means a dwelling standing wholly on its own green title or survey-strata lot together with any easement over adjoining land for support of a wall or for access or services and excludes dwellings on titles with areas held in common property;
- “stables—commercial”** means buildings and land used for the breeding, training exercising or agistment of horses for commercial gain;
- “stables—private”** means land and buildings where horses are kept, bred, trained or agisted for private or hobby purposes and not for commercial gain, but may include limited facilities for access by the general public for riding lessons but not gymkhanas.
- “stock yard”** means any land, building or other structure used for holding and/or sale of livestock.
- “storage facility/depot/laydown area”** means any land, buildings or other structures used for the storage and transfer of goods including salvaged items, the assembling of prefabricated components of products and includes milk, transport and fuel depots, salvage yards and landscape suppliers.
- “transportable structure”** means a building or structure which has been prefabricated at another location and transported either whole or in parts to the intended location;
- “tavern”** means premises licensed as a tavern under the *Liquor Control Act 1988* and used to sell liquor for consumption on the premises;
- “telecommunications infrastructure”** means land used to accommodate any part of the infrastructure of a telecommunications network and includes any line, equipment, apparatus, tower, antenna, tunnel, duct, hole, pit or other structure used, or for use in or in connection with, a telecommunications network;
- “trade display”** means premises used for the display of trade goods and equipment for the purpose of advertisement;
- “veterinary centre”** means premises used to diagnose animal diseases or disorders, to surgically or medically treat animals, or for the prevention of animal diseases or disorders;
- “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.

**Schedule 2**  
**ADDITIONAL USES**

[cl. 4.5]

No.	Description of land	Additional use	Conditions
1	14 Morangup Road,	Garden Centre Plant Nursery Shop	(a) Development shall be in accordance with site plans approved by local government and will require the issue of planning consent. (b) Car Parking requirement will be determined by local government as a condition of planning consent, taking into account the number of spaces estimated to be necessary. (c) The additional use of shop shall not exceed a maximum gross leaseable area of 100m <sup>2</sup> .
2	Lot 36 Toodyay Bindi-Bindi Road, Beejording	Dog kennels	
3	Lot 7 Avon Loc 1953 Morangup Road Toodyay	Dumping of tyres	(a) Tyre dumping only permitted in an area approved and defined on a plan adopted by local government. (b) Subject to environmental clearance and monitoring. (c) A memorial shall be placed on the Certificate of Title advising successors in title to the land that part of the land has been used for tyre disposal.
4	Lot 47 Clarkson St West Toodyay	Theme Park (Private Recreation Shop)	(a) Development to be in accordance with plans approved by local government. (b) Use of a shop will be restricted to the sale of craft goods and souvenirs. (c) The size of the shop to be no larger than 100m <sup>2</sup> ; and (d) Landscaping and a vegetation buffer to be established in accordance with plans approved by local government.

**Schedule 3**  
**RESTRICTED USES**

[cl. 4.6]

No.	Description of land	Restricted use	Conditions

**Schedule 4**  
**SPECIAL USE ZONES**

[cl. 4.7.1]

No.	Description of land	Special use	Conditions
1	Lot 4 Sandplain Road, Toodyay	Health care resort, including residential buildings, conference facilities, dwelling and other buildings and uses approved by local government as being consistent with the primary intent of the zone.	Site development subject to local government Planning Approval in accordance with approved site plans and any conditions imposed under Planning Approval, including controls on building design and construction and landscaping.
2	Pt. Avon Loc 27620	Private Recreation and Caravan Park	Development for a Caravan Park shall comply in all respects with the provisions of the Caravan and Camping Act.
3	Lot 89 Church Gully Road	Abattoir	

No.	Description of land	Special use	Conditions
4	Avon Location 27443 Toodyay Road	Trout farm/fish out and associated facilities, restaurant, picnic area and holiday resort.	In accordance with a concept plan approved by local government with all required septic tanks, leach drains or other such installations for on site disposal of sewerage effluent or wastes not being constructed closer than thirty (30) metres from a watercourse or stream and not within land subject to flooding.
5	Lots 111-115, 117 & 118 Clackline Toodyay Road	1 Emu farm, tannery and workshop showroom. Art & Craft Gallery, eating facility, and accommodation units. 2 Rural Use.	Tannery use subject to approval of the EPA.
6	Lots 340, 341, Avon Loc 1677 Tannahill Tourism and Holiday Complex.	Uses permitted subject to local government approval— 1. Rural Pursuit 2. Equestrian Centre 3. Holiday Accommodation 4. Restaurant 5. Private recreation 6. Seminary facilities 7. Wildlife Park	Uses subject to conformity with an approved site development plan, and prior to determination of development applications for the abovementioned uses, local government shall consider the following issues— (a) Provision of a suitable water supply for fire fighting purposes; (b) Provision of a low fuel area in the vicinity of buildings or areas requiring protection from fire; (c) Provision of a strategic firebreak on the subject land; (d) Provision of a Foreshore Management Deed of Agreement covering an area of approximately 15 metres in width from the top of the bank either side of the Phillips Brook; (e) The disposal of domestic sewerage and any related requirements of the Health Department of WA.
7	Pt Avon Loc V, Northam Toodyay Road	Toodyay Baptist Church for Religious Purposes, Church Dwelling and ancillary uses.	In accordance with the Concept Plan approved by local government.
8	Avon Locations 71, 217, 1069 and 399 Wattening Springs Road, Toodyay	Uses permitted subject to local government approval— 1. 24 Hour tourist getaway 2. Caretaker's Dwelling	Uses subject to conformity with an approved site development plan, and prior to determination of development applications for the abovementioned uses, local government shall consider the following issues— (a) The construction of two large pergola structures only; (b) The use of compost toilets in accordance with relevant Health Regulations; (c) Any swimming pool/spa being constructed in accordance with

No.	Description of land	Special use	Conditions
			<p>relevant Health Regulations;</p> <p>(d) Shower and washing facilities being constructed in accordance with relevant Health requirements with wastewater being relocated to a suitable disposal area away from water surfaces to address potential environmental impacts;</p> <p>(e) A maximum of forty (40) people being accommodated on site at any one time excluding staff;</p> <p>(f) Accommodation facilities to be relocatable to minimise impact to the environment;</p> <p>(g) Any dwelling to be constructed on site to be located on the higher ground in order to prevent adverse environmental impacts on the existing water courses;</p> <p>(h) A singular vehicle entry only from Wattening Springs Road;</p> <p>(i) No private client vehicles to be allowed on site with the exception of authorised bus transportation of clients;</p> <p>(j) Walkways to be constructed to minimise potential adverse impacts to the environment;</p> <p>(k) No motor cycles to be allowed on site with the exception of agricultural or maintenance vehicles;</p> <p>(l) Agricultural stock to be located so as to minimise potential impacts on the environment and existing water courses;</p> <p>(m) Perennial water courses to be fenced off and strategically grazed for fire hazard reduction;</p> <p>(n) On site fire places and barbeque facilities to be constructed to the satisfaction of the local government.</p>
9	Reserve 46058, Lot 298 Folwood Road, Toodyay.	Religious Purposes and Ancillary Purposes (Toodyay Congregation of Jehovah's Witnesses)	Development shall be generally compatible with the objectives of the adjoining zones.

No.	Description of land	Special use	Conditions
10	Avon Loc 463 Julimar Road	Boutique micro brewery and chalets	Site development subject to local government's Planning Approval in accordance with approved site plans and any conditions imposed under Planning Approval, including controls on building design and construction, and landscaping.
11	Lot 525 Nerramine Drive, Julimar	Restaurant, winery, chalets, single dwelling and rural use	<p>Uses may be approved at discretion of Council, following, if deemed necessary by Council, an advertising period of not less than 21 days.</p> <p>Consideration will be given to the following when determining a development application for the site, to ensure the proposal is in keeping with the rural nature of the area—</p> <ul style="list-style-type: none"> <li>(a) Building design and location</li> <li>(b) Construction materials</li> <li>(c) Landscaping</li> <li>(d) Floor area, opening hours and capacity of the restaurant</li> <li>(e) Number of chalets</li> <li>(f) Traffic movements</li> <li>(g) Offsite impacts.</li> </ul>
12	Lot 1 Salt Valley Road, Hody Well	Landfill—Class 1 Waste Only	<ul style="list-style-type: none"> <li>(i) Operation of landfill on Lot 1 is to be in accordance with the management plans contained in <i>Rehabilitation of Clay Pit Lot 1 Salt Valley Road, Toodyay</i> prepared by Landform Research, July 2004.</li> <li>(ii) The landfill is to be confined to that part of Lot 1 that has been used for an extractive industry and such adjacent land as is required for operation of landfill as identified in the management plans referred to in paragraph (i).</li> <li>(iii) Unless otherwise in accordance with the management plan referred to in paragraph (i), existing vegetation is not to be removed from the operation of landfill.</li> <li>(iv) Tyres, asbestos and putrescible waste may not be disposed of at the landfill facility.</li> </ul>
13	Lot 5 Dumbarton Road	Chalet Development, shop, restaurant and seminar facilities.	<p>Uses are permitted subject to the following conditions—</p> <ul style="list-style-type: none"> <li>(a) Subject to a development plan being adopted by Council prior to consideration of Planning Approval, The design, character and scale of development shall be in keeping with the objectives of the Rural 5—Resource</li> </ul>

No.	Description of land	Special use	Conditions
			<p>Conservation zone. In considering an application for planning approval, Council will have particular regard to landscaping, servicing and amenity.</p> <p>(b) Each additional use requires planning approval of Council.</p> <p>(c) No more than six (6) chalets being developed on site.</p> <p>(d) The additional use of 'shop' shall not exceed a maximum gross leasable area of 100m<sup>2</sup>, and will be restricted to the sale of craft goods, souvenirs and other tourism related products.</p> <p>(e) The seminar facility is to be developed for no more than 50 persons. Licensing of this development would ensure this could be regulated.</p>

**Schedule 5  
EXEMPTED**

[cl. 8.2(f)]

Land use and/or development	Exempted sign	Maximum size
Dwellings	One professional name-plate as appropriate.	0.2m <sup>2</sup>
Home Business	One advertisement describing the nature of the home occupation.	0.2m <sup>2</sup>
Places of Public Meeting, assembly or Worship.	One advertisement detailing the function and/or the activities of the institution concerned.	0.2m <sup>2</sup>
Entertainment Venue	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 <sup>2</sup> .
Shops, Showrooms and other uses appropriate to commercial development.	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 any Council Local Law or Planning Policy in place from time to time.	A maximum of one free-standing advertisement signs not exceeding 5m in height above ground level.
Industrial and Warehouse Premises	<p>A maximum of 4 advertisements applied to or affixed to the walls of the building but not including signs which project above the eaves or the ridge of the roof of the building, and excluding signs projecting from a building whether or not those signs are connected to a pole, wall or other building.</p> <p>A maximum of 2 free-standing advertisement signs not exceeding 5m in height above ground level.</p>	<p>Total area of any such advertisements, shall not exceed 15m.</p> <p>Maximum permissible total area shall not exceed 10m<sup>2</sup> and individual advertisement signs shall not exceed 6m<sup>2</sup>.</p>



Land use and/or development	Exempted sign	Maximum size
Public Places and Reserves	<p>(a) Advertisement signs (illuminated and non-illuminated) relating to the functions of government a public authority or local government of a local government excluding those of a promotional nature constructed or exhibited by, or on behalf of any such body.</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 of a local government.</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>N/A</p> <p>N/A</p> <p>N/A</p>
Railway Property and Reserves	Advertisement signs exhibited on such land provided that each such advertisement is directed only at persons at or upon a railway station.	No sign shall exceed 2m <sup>2</sup> in area.
Advertisements within buildings	All advertisements placed or displayed within buildings which cannot ordinarily be seen by a person outside of those buildings.	N/A
All classes of buildings other than single houses.	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 <sup>2</sup>
<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 projects.</p> <p>(c) Large Development or redevelopment projects involving commercial centres, office or other buildings exceeding 3 storeys in height.</p>	<p>One sign as for (i) above</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 (i) above</p> <p>One additional sign showing the name of the project builder.</p>	<p>2m<sup>2</sup></p> <p>5m<sup>2</sup></p> <p>10m<sup>2</sup></p> <p>5m<sup>2</sup></p>
Sales of Goods or Livestock	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.	2m <sup>2</sup>

Land use and/or development	Exempted sign	Maximum size
Property Transactions. Advertisement signs displayed for the duration of the period over which property transactions are offered and negotiated as follows— <ul style="list-style-type: none"> <li>(a) Dwellings</li> <li>(b) Multiple Dwellings, Shops, Commercial and Industrial Properties.</li> <li>(c) Large properties comprised of commercial centres, buildings in excess of four storeys and rural properties in excess of 5ha.</li> </ul>	One sign per street frontage for each property relating to the sale, leading or impending auction of the property at or upon which the sign is or the signs are displayed.  One sign as for (a) above  One sign as for (a) above	Each sign shall not exceed an area of 2m <sup>2</sup> .  Each sign shall not exceed an area of 5m <sup>2</sup> .  Each sign shall not exceed an area of 10m <sup>2</sup> .
Display Home Centres: Advertisement signs displayed for the period over which homes are on display for public inspection.	(a) One sign for each dwelling on display (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.	2m <sup>2</sup> . 5m <sup>2</sup>

*Schedule 6*

**FORM OF APPLICATION FOR PLANNING APPROVAL**

[cl. 9.1.1]

APPLICATION FOR PLANNING APPROVAL

<b>Owner details</b>		
Name:		
Address:		
Phone: (work): (home): (mobile):	Fax:	E-mail:
Contact person:		
Signature:		Date:
Signature:		Date:
<i>The signature of the owner(s) is required on all applications. This application will not proceed without that signature.</i>		

<b>Applicant details</b>		
Name:		
Address:		
Phone: (work): (home): (mobile):	Fax:	E-mail:
Contact person for correspondence:		
Signature:		Date:

<b>Property details</b>		
Lot No:	House/Street No:	Location No:
Diagram or Plan No:	Certificate of Title Vol. No:	Folio:
Diagram or Plan No:	Certificate of Title Vol. No:	Folio:
Title encumbrances (e.g. easements, restrictive covenants):		
Street name:		Suburb:
Nearest street intersection:		

<b>Existing building/land use:</b>
Description of proposed development and/or use:
Nature of any existing buildings and/or use:
Approximate cost of proposed development:
Estimated time of completion:

<i>OFFICE USE ONLY</i>	
Acceptance Officer's initials:	Date received:
Local government reference no:	

*(The content of the form of application must conform to Schedule 6 but minor variations may be permitted to the format.)*

**Schedule 7  
ADDITIONAL INFORMATION FOR ADVERTISEMENTS**

[cl. 9.1.2]

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

1.	Description of property upon which advertisement is to be displayed including full details of its proposed position within that property: .....
2.	Details of proposed sign: (a) Type of structure on which advertisement is to be erected (i.e. freestanding, wall mounted, other): ..... ..... (b) Height: ..... Width: ..... Depth: ..... (c) Colours to be used: ..... (d) Height above ground level— •(to top of advertisement): ..... •(to underside): ..... (e) Materials to be used: ..... ..... Illuminated: Yes/ No If yes, state whether steady, moving, flashing, alternating, digital, animated or scintillating and state intensity of light source: ..... .....
3.	Period of time for which advertisement is required: .....
4.	Details of signs (if any) to be removed if this application is approved: ..... ..... ..... Note: This application should be supported by a photograph or photographs of the premises showing superimposed thereon the proposed position for the advertisement and those advertisements to be removed detailed in 4 above. Signature of advertiser(s): ..... (if different from land owners) ..... Date: .....

*Schedule 8*

**NOTICE OF PUBLIC ADVERTISEMENT OF PLANNING PROPOSAL**

[cl. 9.4.4]

*Planning and Development Act 2005*

Shire of Toodyay

**NOTICE OF PUBLIC ADVERTISEMENT OF PLANNING PROPOSAL**

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

Lot No.: ..... Street: ..... Suburb: .....

Proposal: .....

.....

.....

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

.....

Signed: ..... Dated: .....

.....

For and on behalf of the City/Town/Shire of:.....

*Schedule 9*

**NOTICE OF DETERMINATION ON APPLICATION FOR PLANNING APPROVAL**

[cl. 10.4.1]

*Planning and Development Act 2005*

Shire of Toodyay

**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 reasons(s):

Conditions/reasons for refusal—

.....

.....

.....

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

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

Note 3: If an applicant is aggrieved by this determination there is a right of review under Part 14 of the *Planning and Development Act 2005*. An application for review must be lodged within 28 days of the determination.

Signed: ..... Dated: .....

.....

For and on behalf of the City/Town/Shire of:.....

*(The content of the determination notice must conform to Schedule 9 but minor variations may be permitted to the format.)*

**Schedule 10**  
**ENVIRONMENTAL CONDITIONS**

[cl. 5.6.1]

Scheme or Amendment No.	Gazettal Date	Environmental Conditions

**Schedule 11**  
**RURAL RESIDENTIAL DEVELOPMENT REQUIREMENTS**

Description of Land	Development Requirements
Lot 150 of Avon Locations 22050 & 22514 "Rugged Hills"	(a) Notwithstanding Clause 4.3, rural pursuits and the keeping of livestock are not permitted.
Avon Locations 22048 & 405 "Sanctuary Park"	(a) Notwithstanding Clause 4.3, rural pursuits are not permitted.  (b) Livestock may be held on lots west of White Gum Ridge in areas already cleared of natural vegetation at the time of subdivision and wherein slopes are 10% or less. The holding of livestock is permitted for domestic purposes only. That is, stock may be held for the use and enjoyment of landowners, or for the purposes of keeping of growth of grassland (and therefore fire hazard) in check. Commercial stockholding based activities constitute a rural pursuit and there not permitted.
Part Lot 18 Broadgrounds Place "Majestic Heights and Waters"	(a) Notwithstanding Clause 4.3, the keeping of any animal stock within the subdivisions of Magestic Heights and Majestic Waters is subject to approval of local government on the merits of the proposal.  (b) Notwithstanding the provisions of the Scheme, the Western Australia Planning Commission may, after consultation with local government, approve a plan of subdivision within Policy Area No.3, in which the minimum lot size is less than 2 hectares provided that—  (i) In any event no less than 0.8 ha in area.  (ii) The number of lots permitted does not exceed the number which, in the opinion of the Western Australia Planning Commission and the local government, could otherwise be achieved under the provisions of the Scheme.  (iii) The surplus area is allocated to public ownership as open space or reserves for the protection of some features of natural, historic and scientific value.  (iv) The variation in standards is, in the opinion of the Western Australia Planning Commission and the local government, desirable in the interests of enhancing or protecting the natural environment.
Lots 63 & 64 and Pt Avon Loc 0 Balgalling Road	Residential use on a lot is not permitted within the 100 metres stream setback area.

**ADOPTION**

Adopted by resolution of the Council of the Shire of Toodyay at the Ordinary Meeting of Council held on 26th day of June 2003.

C. WROTH, President.  
G. MERRICK, Chief Executive Officer.

Adopted for final approval by resolution of the Shire of Toodyay at the Ordinary Meeting of Council held on the 22nd day of July 2004, and the seal of the municipality was pursuant to that resolution hereunto affixed in the presence of—

C. WROTH, President.  
G. MERRICK, Chief Executive Officer.

Recommended/Submitted for Final Approval—

P. WOODWARD, delegated under S.16 of the  
Planning and Development Act 2005.

Date: 10 December 2007.

A. MacTIERNAN, Minister for Planning and Infrastructure.

Date: 17 December 2007.

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