



WESTERN  
AUSTRALIAN  
GOVERNMENT  
**Gazette**

ISSN 1448-949X PRINT POST APPROVED PP665002/00041

691



PERTH, FRIDAY, 19 FEBRUARY 2010 No. 27 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.45 PM

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PLANNING AND DEVELOPMENT ACT 2005

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**SHIRE OF ESPERANCE**

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**LOCAL PLANNING SCHEME**  
**No. 23**



**PLANNING AND DEVELOPMENT ACT 2005**

## SHIRE OF ESPERANCE

**LOCAL PLANNING SCHEME No. 23**

Ref: TPS/0043

It is hereby notified for public information, in accordance with section 87 of the Planning and Development Act 2005 that the Minister for Planning approved the Shire of Esperance Local Planning Scheme No. 23 on 25 January 2010, the scheme text of which is published as a Schedule annexed hereto.

I.S.MICKEL, Shire President.  
M.J. OSBORNE, Chief Executive Officer.

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**SCHEDULE***Shire of Esperance*

## Local Planning Scheme No. 23

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

**Preamble**

*The Shire of Esperance Local Planning Scheme No. 23 consists of this Scheme Text and the Scheme Maps. The Scheme Text should be read with the Local Planning Strategy for the Shire of Esperance.*

*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.*

**Scheme Details**

The Shire of Esperance

Local Planning Scheme No. 23

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



**PLANNING AND DEVELOPMENT ACT 2005**

SHIRE OF ESPERANCE

**LOCAL PLANNING SCHEME No. 23**

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**PLANNING AND DEVELOPMENT ACT 2005**

## SHIRE OF ESPERANCE

**LOCAL PLANNING SCHEME No. 23****PART 1—PRELIMINARY****1.1 Citation**

1.1.1 The Shire of Esperance Local Planning Scheme No. 23—Local Planning Scheme (“the Scheme”) comes into operation on its Gazettal date.

1.1.2 The Shire of Esperance Town Planning Schemes No. 20—Guided Development Scheme gazetted on 29 November 1985 and No. 22—District Zoning Scheme gazetted on 27 September 1991 are revoked upon the Gazettal date of this Scheme.

**1.2 Responsible Authority**

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

**1.3 Scheme Area**

The Scheme applies to the Scheme Area which covers the whole of the local government district of the Shire of Esperance as shown on the Scheme Map and includes land, waterways, the ocean foreshore to low water mark and all the outlying islands of the Recherche Archipelago.

**1.4 Contents of Scheme**

1.4.1 The Scheme comprises—

- (a) the Scheme Text;
- (b) the Scheme Maps; and
- (c) supplementary Special Control Area Maps.

1.4.2 The Scheme is to be read in conjunction with the Shire of Esperance Local Planning Strategy.

**1.5 Purposes of the 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 the Seventh Schedule to the Planning and Development Act.

**1.6 Aims of the Scheme**

The aims of the Scheme are to—

- (a) ensure there is a sufficient and sustainable supply of serviced and suitable land for housing, commercial activities, community facilities, recreation, and open space;
- (b) support such expansion as is consistent with the provision and improvement of infrastructure, services and facilities;
- (c) provide for a range of accommodation choices that meets the needs and aspirations of the community;
- (d) provide for convenient, attractive and viable commercial areas and tourist facilities to serve the needs of the residents and visitors;
- (e) encourage the development of businesses that will strengthen the economic base of the central business district;
- (f) ensure the use and development of land does not result in significant adverse impacts on the physical and social environment;
- (g) promote the sustainable use of land for agriculture, forestry and aquaculture whilst accommodating other compatible rural activities;

- (h) protect the agricultural areas from inappropriate development and intrusion by urban and semi-rural uses;
- (i) protect the amenity and enhance the quality of urban, rural and coastal environments;
- (j) protect and enhance the environment and natural resources, including waterways and wetlands, of the local government district;
- (k) protect remnant vegetation;
- (l) protect local public drinking water supply areas from inappropriate development; and
- (m) protect objects and places of outstanding natural, historic, architectural, scientific and cultural significance.

### 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 2005; 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 of Defined Words and Expressions in Schedule 1 prevails.

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

### 1.8 Relationship with Local Laws and Provisions within this Scheme

1.8.1 Where a provision of the Scheme is inconsistent with any local law, regulation or order, the provision of the Scheme prevails.

## PART 2—LOCAL PLANNING POLICY FRAMEWORK

### 2.1 Scheme Determinations to Conform with Local Planning Strategy

Except to the extent that the Shire of Esperance 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.

*Note: A Local Planning Strategy has been prepared for endorsement 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 and may address land use as well as development requirements. 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 a Local Planning Policy**

A Local Planning Policy may be revoked by—

- (a) the adoption by a local government of a new Local Planning 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.

## **2.6 Pre-existing Local Planning Policies**

Where a Local Planning Policy has been adopted in accordance with the requirements of the previous Scheme, it shall continue to have effect and may be amended or revoked as if it were a Local Planning Policy made under the Scheme.

# **PART 3—RESERVES**

## **3.1 Reserves**

Certain lands within the Scheme area are classified as Local Reserves.

## **3.2 Local Reserves**

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

## **3.3 Use and Development of Local Reserves**

3.3.1 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.

3.3.2 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.

3.3.3 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**

*Notes: See this Part 4 for objectives of the zones, Part 5 for development requirements, Part 6 for Special Control Areas, and Schedule 1 for Dictionary of Defined Words and Expressions.*

## **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**

### **4.2.1 Residential Zone Objectives**

The objectives of the Residential Zone are to—

- (a) provide for a range of housing types and encourage a high standard of residential development;
- (b) maintain and enhance the residential character and amenity of the zone; and
- (c) provide for a range of associated compatible land uses which assist in the development of efficient and sustainable residential neighbourhoods.

#### 4.2.2 Tourist Residential Zone Objectives

The objectives of the Tourist Residential Zone are to—

- (a) promote a mixture of holiday accommodation, tourist facilities, recreational and residential development acknowledging the proximity of the coast;
- (b) maintain the character and modest scale of the foreshore area;

#### 4.2.3 Central Area Zone Objectives

The objectives of the Central Area Zone are to—

- (a) provide a cohesive central business area that functions as the primary focus for shopping, offices, entertainment, civic, tourism and supportive accommodation uses;
- (b) ensure that the established town centre of Esperance remains the principal shopping precinct for both daily and weekly needs for the entire district;
- (c) provide for the efficient and safe movement and parking of vehicles without compromising pedestrian movement, safety and convenience;
- (d) encourage mixed use development containing a residential component and activity and amenity at pedestrian level;

#### 4.2.4 Shops & Offices Zone Objectives

The objectives of the Shops and Offices Zone are to—

- (a) provide for accessible, predominantly small scale convenience shops, offices and community facilities to serve the day-to-day needs of the local neighbourhood; and
- (b) provide for the efficient and safe movement and parking of vehicles without compromising pedestrian movement, safety and convenience;.

#### 4.2.5 Country Town Zone Objectives

The objectives of the Country Town Zone are to—

- (a) maintain the country town atmosphere and provide for lifestyle choice;
- (b) provide for residential development and a range of commercial, industrial and other uses in country towns to protect and maintain local amenities; and
- (c) ensure that development within towns maintains an appropriate level of residential amenity.

#### 4.2.6 Industry—Business Zone Objectives

The objectives of the Industry—Business Zone are to—

- (a) provide for a wide range of light and service industries, wholesale sales, showrooms, trade and services which, by reason of their scale, character, operational or land requirements, are not generally appropriate in, or cannot conveniently or economically be accommodated in, the central area, shops and offices or industrial zones;
- (b) allow for commercial and light industrial uses that are compatible with nearby uses;
- (c) provide for the efficient and safe movement and parking of vehicles; and
- (d) encourage new development that will enable future adaptation and re-use; and will enhance the visual amenity of the area.

#### 4.2.7 Industry—General Zone Objectives

The objectives of the Industry—General Zone are to—

- (a) encourage and facilitate employment-generating development which will contribute to economic and social well-being;
- (b) provide for industrial, service and storage activities which, by the nature of their operations, should be isolated from residential and other sensitive land uses;
- (c) discourage non-industry related uses within industrial areas that may constrain industrial activities;
- (d) provide for the efficient and safe movement and parking of vehicles; and
- (e) encourage new industry to contain its emissions on-site and, if that is not possible, within the zone having due regard to nearby established premises.

*Note: See also Special Control Areas 3A, 3B and 3C for the Shark Lake Industrial Park.*

#### 4.2.8 Rural Residential Zone Objectives

The objectives of the Rural Residential zone are to—

- (a) provide for large lots primarily for single residential development whilst ensuring development does not have a detrimental impact on environmental or landscape values including vegetation, wetlands and drinking water supply.
- (b) ensure development is residential in nature, limiting additional uses to those that are minor in nature or incidental to the residential use; and
- (c) direct and control the design and staging of rural residential subdivision to prevent premature demand of services and facilities.

#### 4.2.9 Rural Smallholdings Zone Objectives

The objectives of the Rural Smallholdings Zone are to—

- (a) provide for large lots primarily for rural development whilst ensuring development does not have a detrimental impact on broad acre agriculture, and environmental values including landscape, vegetation, wetlands and drinking water supply;

- (b) support a range of rural pursuits, which are compatible with the capability of the land and retain the rural character and amenity of the locality;
- (c) encourage the establishment of home businesses, cottage industries and tourist uses while retaining the rural character and amenity of the locality; and

#### 4.2.10 Agriculture—General Zone Objectives

The objectives of the Agriculture—General Zone are to—

- (a) ensure the continuation of broad acre agricultural activities and that high quality agricultural land is retained for primary production;
- (b) discourage the subdivision of established farm holdings;
- (c) support diversification activities, in suitable areas within proximity to significant transport routes;
- (d) consider non-rural uses including low key tourism where they can be shown to be of benefit to the district and not detrimental to the natural resources or the environment;
- (e) encourage sustainable farming practices;
- (f) encourage generally the retention of remnant vegetation and vegetation corridors concomitant with the agricultural use of the land.

#### 4.2.11 Rural Unsettled Zone Objectives

The objective of the Rural Unsettled Zone are to provide for mining activity and low key eco-tourism uses and agricultural uses immediately adjacent to established properties.

#### 4.2.12 Future Residential Zone Objectives

The objectives of the Future Residential Zone are to—

- (a) provide for new urban land for the sustainable expansion of the town in accordance with the social, environmental and economic goals of the local government;
- (b) encourage orderly planning and best practice in urban design;
- (c) encourage a high standard of residential development together with supporting amenities such as neighbourhood shops, schools and recreation areas;

#### 4.2.13 Future Commercial/Industrial Zone Objectives

The objectives of the Future Commercial/Industrial Zone are to—

- (a) provide for new land for commercial and industrial development for the sustainable expansion of the town in accordance with the social, environmental and economic goals of the local government;
- (b) encourage orderly planning and best practice in design;
- (c) encourage and facilitate employment-generating development which will contribute to the economic and social well-being of the Shire;
- (d) provide for industrial, service and storage activities which, by the nature of their operations, should be isolated from residential and other sensitive land uses; and
- (e) discourage non-industry related uses within industrial areas that may constrain industrial activities;

#### 4.2.14 Tourist Zone

The objectives for the Tourism zone are to—

- (a) promote and provide for tourism opportunities at strategic tourism sites in and surrounding Esperance that will complement the existing natural and man-made features of the Shire;
- (b) provide for a variety of holiday accommodation styles and associated uses, including retail and service facilities where such facilities are an integral part of the development and are of an appropriate scale where they will not significantly impact on the surrounding or wider area;
- (c) to encourage the location of tourist facilities so that they may benefit from existing road services, physical service infrastructure, other tourist attractions, natural features and urban facilities; and
- (d) ensure that short stay tourist and holiday accommodation are the predominant land uses in this zone.

### 4.3 Zoning Table

4.3.1 The Zoning Table indicates, subject to the provisions of the Scheme, the uses permitted in the Scheme Area in the various zones. The permissibility of any use is determined by cross-reference between the list of use classes on the left hand side of the Zoning Table and the list of zones at the top of the Zoning Table.

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

- ‘P’ means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme;
- ‘D’ means that the use is not permitted unless the local government has exercised its discretion by granting planning approval;
- ‘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; and
- ‘X’ means a use that is not permitted by the Scheme.

## 4.3.3 A change in the use of land from one use to another 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' or 'D' 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 generally refuse a 'P' use because of the unsuitability of the use for the zone but may impose conditions on the use of the land as provided for under clause 10.4. Exceptions to this rule may apply where the land is the subject of a Special Control Area (Part 6), an Additional Use (Schedule 2) or a Restricted Use (Schedule 3) and/or where the site is the subject of some form of heritage designation under Part 7 of the Scheme.
- In considering a 'D' or an 'A' use, the local government will have regard to the matters set out in clause 10.2 and may refuse or impose condition on any such use.
- The local government must refuse to approve any 'X' (not permitted) use of land. Approval to a 'X' use of land may only proceed by way of an amendment to the Scheme.

*N.B. The provisions of the Scheme apply in addition to the requirements of other relevant legislation, under which separate approval may also be required, e.g. Aboriginal Heritage Act, Bush Fires Act, Environmental Protection Act and, in particular the Environmental Protection (Clearing of Native Vegetation) Regulations.*

Table No. 1—Zoning and Land Use Table

USES	ZONES											
	1	2	3	4	5	6	7	8	9	10	11	12
	Residential	Tourist Residential	Central Area	Shops & Offices	Country Town	Industry—Business	Industry—General	Rural- Residential	Rural Smallholdings	Agriculture—General	Rural Unsettled	Tourist
Abattoir	X	X	X	X	X	X	X	X	X	A	D	X
Aged Person's Dwelling	D	D	D	X	D	X	X	D	D	D	X	X
Agriculture—Extensive	X	X	X	X	X	X	X	X	D	P	D	X
Agriculture—Intensive	X	X	X	X	X	X	X	X	A	D	D	X
Agroforestry	X	X	X	X	X	A	A	X	A	D	X	X
Airfield	X	X	X	X	X	X	X	X	X	A	D	X
Amusement Facility	X	A	A	A	A	A	X	X	X	X	X	X
Amusement Parlour	X	A	A	A	D	D	X	X	X	X	X	X
Ancillary Accommodation	P	D	X	X	D	X	X	D	P	P	D	X
Animal Establishment	X	X	X	X	A	X	X	A	A	D	X	X
Animal Husbandry—Intensive	X	X	X	X	X	X	X	X	A	D	X	X
Arts and Craft Studio	A	D	P	P	D	P	X	A	D	D	D	X
Bed and Breakfast	P	D	D	X	D	X	X	D	D	D	X	A
Boat Building	X	X	X	X	X	D	P	X	X	X	X	X
Builder's Storage Yard	X	X	X	X	D	D	P	X	A	D	X	X
Cabin	X	D	X	X	A	X	X	X	A	A	X	A
Camping Area	X	A	X	X	A	X	X	X	A	D	D	P
Car Park	X	D	P	P	P	D	D	X	X	X	X	X
Caravan Park	X	D	X	X	D	X	X	X	A	A	A	P
Caretaker's Dwelling	X	D	D	D	D	D	X	X	D	D	D	X
Chalet	X	D	X	X	A	X	X	X	A	A	X	A
Chalet Park	X	D	X	X	X	X	X	X	A	A	A	P
Child Care Premises	A	D	D	D	D	X	X	X	X	X	X	X
Club Premises	X	A	D	A	D	D	D	X	A	X	A	X
Consulting Rooms	A	D	P	D	D	D	X	X	X	X	X	X
Convenience Store	A	D	P	D	D	D	X	X	X	X	X	X
Dry Cleaning Establishment	X	X	D	D	D	P	P	X	X	X	X	X

USES	ZONES											
	1	2	3	4	5	6	7	8	9	10	11	12
	Residential	Tourist Residential	Central Area	Shops & Offices	Country Town	Industry—Business	Industry—General	Rural- Residential	Rural Smallholdings	Agriculture—General	Rural Unsettled	Tourist
Dwelling	P	D	D	X	D	X	X	D	P	P	D	P
Earthmoving Equipment—Depot for	X	X	X	X	A	X	P	X	A	D	D	X
Educational Establishment	A	A	A	A	D	X	X	X	A	A	X	X
Exhibition Centre	X	D	P	D	D	D	D	A	A	D	D	X
Family Day Care	D	D	D	X	D	X	X	D	D	D	D	X
Farm Stay	X	X	X	X	D	X	X	X	D	D	X	X
Fast Food Outlet	X	A	D	D	D	D	X	X	X	X	X	X
Fish Processing	X	X	X	X	A	A	A	X	X	X	X	X
Fuel Depot	X	X	X	X	A	D	D	X	A	D	D	X
Funeral Parlour	X	X	A	X	A	D	D	X	X	X	X	X
Garden Centre	X	X	A	D	D	P	P	X	D	D	X	X
Grain Depot	X	X	X	X	A	X	A	X	X	A	X	X
Group Dwelling	D	D	X	X	X	X	X	X	X	X	X	X
Guesthouse	X	D	D	X	A	X	X	X	A	D	X	A
Health Farm	X	X	X	X	X	X	X	X	A	D	X	X
Holiday Cottages	X	D	X	X	D	X	X	X	A	A	D	A
Holiday Home	A	D	X	X	D	X	X	A	D	D	D	X
Home Business	A	D	D	D	D	X	X	D	D	P	D	X
Home Business—Rural	X	X	X	X	D	X	X	A	D	D	D	X
Home Occupation	D	D	D	X	D	X	X	D	D	P	D	X
Home Office	P	P	P	X	P	X	X	P	P	P	P	X
Home Store	X	X	X	X	A	X	X	X	A	D	D	X
Hostel	A	D	X	X	A	X	X	X	A	D	D	X
Hotel	X	D	D	X	D	X	X	X	X	X	X	A
Industry—Extractive	X	X	X	X	X	X	D	X	A	A	D	X
Industry—General	X	X	X	X	X	X	P	X	X	X	D	X
Industry—Hazardous	X	X	X	X	X	X	X	X	X	A	A	X
Industry—Light	X	X	X	X	A	P	P	X	X	X	D	X
Industry—Service	X	X	X	D	D	P	P	X	X	X	D	X
Industry—Mining	X	X	X	X	X	X	X	X	X	A	D	X
Industry—Rural	X	X	X	X	A	X	D	X	A	A	D	X
Industry—Cottage	A	A	X	X	X	X	X	D	D	D	D	X
Kennels and/or Cattery	X	X	X	X	A	X	D	X	A	A	X	X
Laundromat	X	D	D	D	D	P	P	X	X	X	D	X
Lunch Bar	X	X	P	P	P	D	D	X	X	X	D	X
Marina	X	A	X	X	X	X	X	X	X	X	X	X
Marine Filling Station	X	A	X	X	D	D	D	X	X	X	D	X
Market	X	D	D	X	D	X	X	X	X	X	X	X
Medical Centre	X	D	D	D	P	X	X	X	X	X	X	X
Motel	X	A	D	X	A	X	X	X	X	A	X	X
Motor Vehicle Repair	X	X	X	X	D	P	P	X	X	X	D	X
Motor Vehicle Repair—Major	X	X	X	X	A	A	P	X	X	X	X	X
Motor Vehicle Wash	X	X	X	X	D	D	D	X	X	X	D	X
Motor Vehicle, Boat or Caravan Sales Premises	X	X	X	X	P	P	P	X	X	X	X	X
Night Club	X	A	A	A	D	D	X	X	X	X	D	X
Nursing Home	A	X	X	X	A	X	X	X	X	X	X	X
Office	X	D	P	P	D	X	X	X	X	X	D	X
Park Home Park	X	X	X	X	X	X	X	X	X	X	X	A
Place of Worship	A	X	A	A	A	A	X	X	X	A	D	X

USES	ZONES											
	1	2	3	4	5	6	7	8	9	10	11	12
	Residential	Tourist Residential	Central Area	Shops & Offices	Country Town	Industry—Business	Industry—General	Rural- Residential	Rural Smallholdings	Agriculture—General	Rural Unsettled	Tourist
Produce Store	X	X	X	X	D	P	P	X	A	A	X	X
Reception Centre	X	A	D	D	D	X	X	X	A	A	X	X
Recreation—Private	A	D	D	X	D	D	D	A	A	A	A	X
Residential Building	D	D	X	X	D	X	X	D	D	D	D	X
Restaurant	X	P	P	P	D	X	X	X	A	A	D	A
Restricted Premises	X	X	A	A	A	A	D	X	X	X	D	X
Rural Pursuit	X	X	X	X	D	X	X	A	D	P	D	X
Salvage Yard	X	X	X	X	A	A	D	X	X	X	X	X
Service Station	X	X	X	D	D	D	D	X	X	X	X	X
Serviced Apartment	X	A	D	X	D	X	X	X	X	X	X	A
Shop	X	A	P	P	D	X	X	X	X	X	D	X
Showroom	X	X	D	D	D	P	P	X	X	X	X	X
Single Bedroom Dwelling	P	D	X	X	D	X	X	D	D	D	D	X
Stables	X	X	X	X	A	X	X	A	D	P	D	X
Stock—Holding & Sales Yard	X	X	X	X	X	X	X	X	A	D	D	X
Supermarket	X	X	D	A	X	X	X	X	X	X	X	X
Tavern	X	A	D	X	D	X	X	X	X	X	X	X
Telecommunications Infrastructure	A	A	D	D	A	D	D	A	D	D	D	X
Tourist Resort	X	A	A	X	X	X	X	X	X	X	X	P
Transient Workforce Accommodation	X	X	X	X	D	X	X	X	X	D	D	X
Transport Depot	X	X	X	X	A	D	P	X	A	D	D	X
Veterinary Centre	X	X	X	X	A	D	D	X	A	D	X	X
Warehouse	X	X	X	X	D	D	P	X	X	X	D	X
Winery	X	X	X	X	X	X	X	X	D	P	D	X
Woodyard	X	X	X	X	A	X	D	X	A	D	D	X
Wrecking Premises	X	X	X	X	A	X	D	X	X	X	X	X

#### 4.4 Interpretation of the Zoning and Land Use Table

4.4.1 Where a specific use is mentioned in the Zoning and Land Use 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 and Land Use Table and that use 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 and Land Use 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 and Land Use 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/are permitted on a specific portion of land and other uses that would otherwise be permissible in the zone are not permitted.*

#### 4.7 Special Use Zones

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 shall 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 fit comfortably within any other zone of 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. Non-conforming use is also defined in the Act.*

#### 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 six (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: Section 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

*Note: This Part sets out the general requirements which apply to land use and development within the Scheme area and the specific requirements which apply to particular uses and forms of development, such as site requirements, access, parking, building design, setbacks and landscaping, for residential, commercial, industrial, rural and other uses. See Part 4 for the zoning table and objectives of the zones, this Part 5 and Part 6 Special Control Areas and the Schedules for other development requirements. Schedule contains the Dictionary of Defined Words and Expressions.*

#### 5.1 Compliance with Development Standards and Requirements

Any development of land is to comply with the provisions of the Scheme including the development standards listed in Schedule 8 and 9.

#### 5.2 Residential Design Codes

5.2.1 A copy of the Residential Design Codes (the 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 Design Code density, as being contained within the area defined by the centre-line of those borders.

### 5.3 Special Application of Residential Design Codes

#### 5.3.1 Density Provisions

- (a) Within areas with split coding the local government may permit development above the lower code to the higher code specified on the Scheme Map, provided that the development is consistent with the Scheme and complies with the following requirements—
  - (i) Existing and proposed dwellings shall be connected to reticulated sewerage system, where available, prior to occupation of new development.
  - (ii) The difference in natural ground levels within the site and adjacent land will not result in excessive bulk, visual privacy or overlooking problems and will not require excessively high retaining walls.
- (b) In the Tourist Residential Zone the residential density may be increased from R40 to R50 for residential development and from R40 to R60 for tourism development subject to—
  - (i) a minimum lot size of 2000m<sup>2</sup>;
  - (ii) front setback of 4 metres for the residential portions of the development; and
  - (iii) compliance with clause 5.3.1(a)(i-ii).
- (c) The local government may permit frontage to be reduced to less than 10 metres to a public street in the R12.5/20 Code to discourage battleaxe access.
- (d) To encourage amalgamation of sites and use of a central access, within areas coded R20 a bonus to R25 may be granted by the local government if the site is no less than 2000m<sup>2</sup> and the site satisfies the objectives of the Scheme and the conditions of clause 5.3.1(a)(i-ii).
- (e) Where no code is stipulated in the 'Residential' zone development is to comply with the R12.5 standard with the exception of minimum and average lot sizes.

#### 5.3.2 Setbacks for Castletown Quays and Twilight Beach Road

In the established Residential Zone along Castletown Quays and Twilight Beach Road the minimum front setback shall be 7.5 metres unless otherwise provided by Special Control Area provisions of this Scheme.

*Note: See Special Control Area 2 for Flinders and SCA 7 for Blue Haven and Second Beach.*

#### 5.3.3 Building Height in Residential Zones

- (a) For Lots 306 to 311 Wollamai Place, West Beach, the local government shall not grant approval for any part of the roof or any architectural feature of a building to be higher than five (5) metres above the ground level established by the initial subdivision.
- (b) Dwelling height on sites zoned or used for residential purposes shall generally be limited to a maximum height in accordance with Table 3—Category B (commonly referred to as 'two storey') of the Residential Design Codes within the Esperance and Country Townsites.
- (c) The height limit in clause 5.3.3 above shall not exceed a maximum height of nine (9) metres above natural ground level unless considered in accordance with clauses 5.5.2 and 5.5.3.

*Note: The Residential Design Codes indicate that Category B (commonly known as 'two storey') will apply unless the local government requires the application of Category A (generally single level) or allows Category C (3 levels). Category C may in some instances be deemed appropriate in the Future Residential Zone.*

#### 5.3.4 Minimum Lot Sizes in Residential Zones

- (a) The minimum lot or development site sizes shall be as designated by the Code on the Scheme Maps or on an approved Outline Development Plan or Detailed Area Plan.
- (b) Where no Code is designated in a Residential, Future Residential or Special Residential Zone, unless a Code has been designated on an approved Outline Development Plan, the local government shall deem the site to have been subdivided to its full potential and shall not support further subdivision.

#### 5.3.5 Residential R2 and R2.5 Areas

- (a) Residential R2 and R2.5 Areas—Development Conditions—
  - (i) The construction of dams and soaks shall not be permitted within a building and clearing exclusion area or where it is considered that the appearance and amenity of the area would be adversely affected.
  - (ii) No building shall be constructed on a vacant lot unless a dwelling has been established on the site or the local government has given special approval for such a building to be erected subject to concurrent construction of an approved dwelling.
  - (iii) No outbuildings shall be erected between a dwelling and a public road alignment unless otherwise provided by the Scheme or Residential Design Codes.

#### 5.3.6 Variations to Height for the Residential R2 and R2.5 and Country Towns Zones

- (a) Dwelling height on sites zoned or used for residential purposes shall generally be limited to a maximum height in accordance with Table 3—Category B of the Residential Design Codes within the Esperance and Country Townsites.



- (b) The height limit in clause 5.3.6(a) may exceed a maximum height of nine (9) metres above natural ground level, without advertising of the proposal if the local government is satisfied that the site is sufficiently and permanently screened from any other public or private property and that there will be no detrimental affect to amenity.

*Note: The Residential Design Codes indicate that Category B (commonly known as 'two storey') will apply unless the local government requires the application of Category A (generally single level) or allows Category C (3 levels). Category C may in some instances be deemed appropriate in the Special Residential and Country Town Zones.*

#### 5.3.7 Tourist Residential Zone, Central Area, Shops and Offices and Country Town Zones

##### (a) Building Heights for Buildings with a Residential Component—

- (i) Building height shall generally be limited to a maximum height in accordance with Table 3—Category B of the Residential Design Codes within the Tourist Residential, Central Area, Shops and Offices and Country Town Zones.
- (ii) The height limit in clause 5.3.7(a)(i) shall not be exceeded for commercial buildings or by mixed use buildings with a residential component unless the provisions of clauses 5.5.2 and 5.5.3 have been satisfied.

*Note: The Residential Design Codes indicate that Category B (commonly known as 'two storey') will apply unless the local government requires the application of Category A (generally single level) or allows Category C (3 levels). Category C may in some instances be deemed appropriate in the Central Area or Tourist Residential Zones if in a mixed-use development.*

#### 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 Planning 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 subject are incorporated into the Scheme by Schedule 7.

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.*

#### 5.7 Development of Land without Constructed/Dedicated Road Frontage or Access

Notwithstanding any other provision of the Scheme, planning approval is required for any development on land abutting an unconstructed road or a lot or location which does not have frontage to a constructed/dedicated road. In considering such an application, the Local Government may—

- (a) refuse the application until the road has been constructed or access by means of a constructed/dedicated road is provided; or

- (b) grant approval to the application subject to a condition requiring the applicant to pay a sum of money in or towards the cost of construction the road or part thereof and any other condition it considers fit to impose; or
- (c) require other legal arrangements are made for permanent legal access, to the satisfaction of the Council.

### 5.8 Internal Access and Laneways

5.8.1 Except for development to which the Residential Design Codes apply, it is expected that any access laneway within a development site shall be not 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 a one-way system can be established.

5.8.2 The local government shall require laneways in the Central Area and Tourist Residential Zones to be widened in accordance with the following—

- (a) Where access to a laneway is available, prior to commencement of development arrangements shall be put in place for any land needed to widen the laneway to six (6) metres to be granted to the local government free of cost.
- (b) In any case the maximum amount of land to be ceded from one side of the laneway will be one (1) metre.
- (c) Subdivision of lots abutting a laneway that is less than six (6) metres wide will not be permitted where the laneway is the only access.

### 5.9 Site with more than One Street Frontage

Where a development site has frontage to more than one street (except in the 'Residential' zone or 'Future Residential' zone with an adopted outline development plan, the local government may:—

- (a) Designate one of the streets to be a primary street for the purpose of determining front setbacks;
- (b) Require that the specified front setbacks shall apply to each road;
- (c) Permit the setback on a secondary street to be reduced to half of the specified front setback or averaged unless the site is adjacent to a State Highway, Limited Access Road, Important Local Road unless other more specific provisions in the Scheme apply; or
- (d) Refuse vehicular access to one of the roads.

### 5.10 Advertisements—Power to Control

5.10.1 An advertisement as defined in Schedule 1 except as otherwise provided, requires the prior planning approval of the local government in addition to any license required pursuant to the local government's *Local Laws Relating to Signs*.

5.10.2 Applications for planning approval shall be submitted in accordance with the provisions of Clause 9.1.1 of the Scheme and shall be accompanied by a completed Additional Information Sheet in the form set out at Schedule 11 giving details of the proposed advertisement unless the local government waives the requirement to submit an application in this form.

#### 5.10.3 Existing Advertising Signs

Signs which—

- (a) were lawfully erected, placed or displayed prior to the approval of this Scheme; or
- (b) may be erected, placed or displayed pursuant to a licence granted by the local government prior to the approval of this Scheme; or
- (c) were erected, placed or displayed pursuant to previous Schemes or by-laws which did not require the approval of the local government or Main Roads WA prior to the approval of this Scheme, may, except as otherwise provided, continue to be displayed or be erected and displayed unless the condition of the advertisement warrants removal or repair in accordance with clause 11.2 of this Scheme.

#### 5.10.4 Exempted Advertisements

Subject to the provisions of the *Main Roads (Control of Signs) Regulations* and notwithstanding the provisions of clause 5.10.1 the prior approval of the local government is not required in respect of those advertisements listed in Schedule 6 of the Scheme and under the local laws which for the purpose of this Part are referred to as 'exempted advertisements'.

### 5.11 Parking and Landscaping

#### 5.11.1 Parking/Service Facilities Separated from Development

Where parking or loading and unloading is provided on a lot or lots separated from the lot upon which the development or redevelopment is to occur, the local government will need to be satisfied that the land so allocated to parking or loading and unloading will be permanently retained for such purpose by either requiring an amalgamation of the lots set aside for parking and/or loading and unloading with the lots being developed or, by a right of carriageway being registered on the respective titles.

#### 5.11.2 Cash in lieu of Parking Spaces

In the Central Area, Tourist Residential, Shops and Offices Zones, the local government may accept a cash payment in lieu of all or part of the carparking provisions subject to the following—

- (a) The cash-in-lieu payment shall not be less than the estimated cost to the owner or developer of providing and constructing the parking spaces required by the Scheme, plus the value, as ascertained in accordance with clause 5.11.2(b) of that area of the land which would have been occupied by the parking spaces.

- (b) The value of land referred to in clause 5.11.2(a) may be determined by either the Valuer-General or by a licensed valuer appointed by the local government.
- (c) Before the local government agrees to accept a cash payment in lieu of the provision of parking spaces, the local government must either have purchased land and/or provided a public carpark nearby or have an adopted parking strategy to provide such a public carpark within five years of agreeing to accept the cash payment.
- (d) Each parking space shall consist of one standard bay of 2.5m x 5.5m plus half the width of the standard access aisle, ie. a total of 2.5m x 8.5m in the case of 90 degree bays.
- (e) Payments made under this clause shall be paid into a special purpose fund to be used for the provision of public carparking facilities and the local government may use this fund to provide or maintain public parking facilities anywhere within the Central Area, Tourist Residential or Shops and Offices Zone.
- (f) If an owner or developer shall object to the amount of the costs and values determined by the local government pursuant to clause 5.11.2(a), the matter may be referred to arbitration in accordance with the provisions of the Commercial Arbitration Act 1985.

#### 5.11.3 Provisions for Parking, Access for Loading and Unloading Vehicles

In the Central Area, Tourist Residential, Shops and Offices, Industry—Business, and Industry—General Zones—

- (a) No land or buildings shall be developed unless provision is made for an area clear of the street for the purpose of loading or 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 a forward direction.
- (c) Parking, loading and unloading and access, complete with necessary drainage, signs and marking as required by the local government, shall be provided prior to any occupation of the development or at such time as may be agreed in writing between the local government and the developer.
- (d) External servicing areas shall be established and maintained to the satisfaction of the local government.

#### 5.12 Parking of Commercial Vehicles in Residential Areas

No person shall park with the Residential zone a commercial vehicle without the planning approval of the Council. If the following requirements are met, then Planning Approval is not required, but adherence to the conditions is—

- (a) not more than one such vehicle is to be parked on a lot;
- (b) the vehicle forms an essential part of the lawful occupation of an occupant of the dwelling and that occupation if carried on upon the lot does not contravene the Scheme;
- (c) the vehicle is parked behind the front building line and effectively screened from view from outside the lot;
- (d) no part of the vehicle is parked on any portion of a right-of-way or public road contiguous with the lot;
- (e) the vehicle does not exceed 3.0 metres in height or 8.0 metres in length;
- (f) no major/minor servicing of vehicles shall be undertaken on the lot; and
- (g) the vehicle is not brought to or taken from the lot between the hours of midnight and 6.00 am.

#### 5.13 Rural-Residential Development Provisions

##### 5.13.1 Setbacks

Within this zone the minimum setback from any highway or railway shall be 100 metres and from any other boundary shall be as specified in Schedule 8 unless an approved Outline Development Plan or subdivision guide plan specifies otherwise.

5.13.2 The local government may require exposed areas to be replanted extensively to provide concealment, shelter or assist with improving land quality, reducing the water table or preventing erosion.

5.13.3 The construction of dams and soaks shall not be permitted within a building and clearing exclusion area or where it is considered that the appearance and amenity of the area would be adversely affected.

##### 5.13.4 Special Provisions

As well as these general provisions additional provisions for controlling subdivision, land uses and development relating to specific Rural Residential and Rural Smallholding Zones are in the Schedule of Special Provisions in Schedule 5 to the Scheme.

5.13.5 Water supplies may be supplemented with bore water for human consumption and mixed with other water collected on site provided that it meets guidelines for potable water to the satisfaction of the local government and any license that is required has been obtained from the responsible authority for groundwater licensing.

5.13.6 A permanent water supply of no less than 10,000 litres is to be maintained for bush fire fighting purposes outside of urban areas.

5.13.7 Where lots contain steeply sloping land that, in the opinion of the local government, requires preservation of the natural vegetation to prevent erosion, the local government may require such areas to be fenced or treated in such other fashion as to ensure that such land is not degraded by grazing, browsing or the movement of stock or by any other causes.

5.13.8 Where a landscaping, revegetation or fire management plan has been adopted by the local government or was included with rezoning or subdivision documentation, affected lots shall be managed in accordance with the plan.

5.13.9 Development, which would conflict with or impede the implementation of the plan, shall not be permitted or undertaken unless variations have been approved following consultation between the affected landowners, the local government and the District Manager of the Fire and emergency Services where appropriate.

#### **5.14 Effluent Disposal**

5.14.1 Where existing and proposed lots within the Scheme Area are not connected to a reticulated sewerage system, on-site effluent disposal systems shall be to the specifications and satisfaction of Council. The use of 'non-standard' effluent disposal systems may be required at the discretion of Council and in any event the following requirements shall be satisfied—

- (a) a 2 metre separation between the base of the leach drain and the highest recorded groundwater level or bedrock;
- (b) at least 100 metres horizontal separation between the effluent disposal system and existing drains, water courses and water bodies;
- (c) the area around each effluent disposal system shall be planted with indigenous trees and shrubs shall be maintained;
- (d) prevention of direct movement of wastewater and nutrients from the locality of each effluent disposal system.

The above requirements may be altered where soil amending techniques are introduced or alternatively the use of modified effluent disposal systems may be permitted in accordance with management guidelines prepared by Council.

5.14.2 Where on site effluent disposal systems are used, the system shall be located within the prescribed building envelope or in another appropriate location specified by Council.

#### **5.15 Building Height**

5.15.1 The height limit of any building that is not residential in nature shall be limited to 9 metres.

#### **5.16 Agriculture General Provisions**

5.16.1 Within this zone planning approval is required for the erection of two dwellings on any lot of more than 40 hectares.

#### **5.17 Bush Fire Prone Land**

5.17.1 Any habitable building must be constructed to comply with Australian Standard 3959 Building in Bushfire Prone Areas.

#### **5.18 Potable Water Supply**

5.18.1 All buildings intended for residential use shall be connected to a reticulated water supply provided by a licensed water provider. Where a reticulated supply is not available buildings intended for residential use must include provision for the storage of water tanks of not less than 120,000 litres of capacity.

Where rainfall is to be used as the predominant source for a water storage tank, the minimum collection area, in terms of rain surface runoff, to service the tank, is to be provided. The collection area will normally comprise of the roof area of structures on the lot and may include the dwelling, outbuildings and any other structure capable of collecting and directing water into the tank.

The size of the collection area is to be based on the following calculation—

Collection area (m<sup>2</sup>) = 120000 divided by 0.85 divided by (local rainfall-24mm)

- Collection area (m<sup>2</sup>) is the minimum area for rain surface runoff that is required to service the water tank.
- 120000 is the minimum size of the water tank in litres (unless council has determined an alternative size in accordance with the scheme).
- 0.85 is the efficiency of the collection meaning a minimum of 85% of the water will be collected (Council may accept a greater efficiency rate if it can be demonstrated through design).
- Local rainfall is the average annual mean rainfall measured in millimetres (mm) guided by the nearest collection point provided by the bureau of Meteorology.
- 24mm is the anticipated loss through absorption and wetting of materials based on 2mm a month.

### **PART 6—SPECIAL CONTROL AREAS**

*This Part is included in the Scheme to identify areas which are significant for a particular reason and where special provisions in the Scheme may need to apply. These provisions would typically target a single issue or related set of issues often overlapping zone and reserve boundaries. The Special Control Areas (SCAs) should be shown on Scheme Maps as additional to the zones and reserves. If a special control area is shown on a Scheme Map, special provisions related to the particular issue would apply in addition to the provisions of the zones and reserves. These provisions would set out the purpose and objectives of the SCA, any specific development requirements, the process for referring applications to relevant agencies and matters to be taken into account in determining development proposals.*

## 6.1 Operation of Special Control Areas

6.1.1 The following Special Control Areas (SCAs) are shown on the Scheme Maps—

- (a) Special Control Area 1—Port and Transport Corridor
- (b) Special Control Areas 2A & 2B—Flinders Residential Development
- (c) Special Control Areas 3A, 3B & 3C—Shark Lake Industrial Park
- (d) Special Control Area 4—Public Drinking Water Source Protection Areas
- (e) Special Control Area 5—Wetlands of Significance and Lake Warden Recovery Catchment
- (f) Special Control Area 6—Brazier Street Redevelopment
- (g) Special Control Area 7A, 7B, 7C, 7D, 7E—Blue Haven and Second Beach
- (h) Special Control Area 8—Esperance Airport
- (i) Development Areas shown on the Scheme Map as DA with a number and included in Schedule 14
- (j) Development Contribution Areas shown on the Scheme Map as DCA with a number and included in Schedule 15

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

## 6.2 SCA 1—Port and Transport Corridor Special Control Area 1

### 6.2.1 Purpose

The purpose of Special Control Area 1 is to provide guidance for land use and development within the area shown on the Scheme Maps as SCA 1.

### 6.2.2 Objectives

The objectives for SCA 1 are to—

- (a) identify land which may be adversely affected by the Esperance Port and the services and transport corridor;
- (b) ensure that the use and development of affected land is compatible with the existing and proposed future use and development of the Esperance Port and associated transport and services corridor;
- (c) minimise impacts of emissions—particularly dust and noise from heavy freight haulage by road and rail—on existing residential and other sensitive uses;
- (d) implement Scheme controls designed to mitigate adverse environmental effects;
- (e) ensure that no new development on land within SCA 1 is permitted unless arrangements are made for noise or other mitigation measures to be put in place;
- (f) maximise the distance of new residential and noise sensitive subdivisions from the Esperance port, transport and services corridor and ensure that any that are permitted incorporate noise mitigation measures;
- (g) restrict vehicle and pedestrian access points to the service corridor; and
- (h) seek to improve the safety and efficiency of existing infrastructure.

### 6.2.3 Application Requirements

- (a) Despite any other provisions in the Scheme, planning approval is required for land use or development proposed within Special Control Area 1;

### 6.2.4 Relevant Considerations

In addition to provisions of the Scheme, the local government in considering applications for rezoning, subdivision or planning approval in SCA 1 is to have due regard to—

- (a) *Esperance Port Access Corridor Review: Stage 2—Noise Assessment* by Lloyd Acoustics;
- (b) *The Esperance Service Corridor Town Planning Scheme and Industrial Park Location Study* by ERM Mitchell McCotter;
- (c) Statement of Planning Policy No. 4.1 *State Industrial Buffer Policy*;
- (d) the *Environmental Protection (Noise) Regulations 1997* and use of noise mitigation measures for noise-sensitive premises; and
- (e) the potential for adverse environmental impacts and the management of such potential impacts;

and shall determine applications for planning approval accordingly.

### 6.2.5 Referral of Applications

The local government may refer applications for planning approval to the Department of Planning and Infrastructure and/or the Department of Environment and Conservation and the local government is to have due regard to advice received when determining applications.

### 6.2.6 Development Requirements

- (a) All residential and noise sensitive development shall comply with the noise management requirements specified in the clause 6.2 of the Scheme. Council may be willing to approve an alternate solution in relation to clauses 6.2.8 and 6.2.9, subject to the submission and consideration of a satisfactory alternate solution.

- (b) The local government may impose a condition on its planning consent for a dwelling or other noise sensitive premise that does not comply with these conditions requiring an appropriate mechanism to be placed on the title addressing and/or advising of the deficiencies associated with ameliorating transportation noise levels.
- (c) Within SCA 1, all new subdivisions shall be designed to maximize the distance of noise-sensitive premises from the Esperance Port and the transport and services corridor and local government may request the Commission to impose conditions of approval requiring portions of the parent lot to be excluded from development of noise sensitive premises, limit access points to the transport corridor, install earth bunds or noise barrier fencing, establish landscaping along the service corridor frontages and significant entry points to the subdivision, require notification on certificates of title advising of the potential for nuisance impacts associated with operation of the port and heavy freight transport on road and rail.

All residential and noise sensitive development shall comply with the noise management guidelines unless discretion to vary them is expressed or implied in the following provisions.

#### 6.2.7 Exposure Level 1 (Condition 1 Area)

- (a) Standard double brick, brick veneer or reverse brick veneer on slab construction built in accordance with the energy efficiency provisions of the Building Code of Australia will be deemed to comply for residential and other noise sensitive development. Providing that the predicted noise thresholds are not exceeded there will be no requirement for additional noise attenuation measures.
- (b) Lightweight building construction material on timber or steel framing with compressed fibre cement, timber or corrugated sheet metal cladding, will not be acceptable unless the proponent demonstrates that the structure achieves an internal noise level complying with Australian Standard 2107—*Recommended Design Sound Levels and Reverberation Times for Building Interiors*.
- (c) The local government may impose a condition on its planning consent for a dwelling or other noise sensitive premise that does not comply with these conditions requiring a memorial to be placed on the title advising of the potential to be affected by transportation noise levels and the deficiencies in meeting those conditions. The notification will need to be in place before a building licence is issued.
- (d) New property titles (including strata titles) should warn of the proximity of the access corridor and the potential to be affected by transportation noise levels. This notification pursuant to Section 165 of the Planning and Development Act is to state “*This lot is located in close proximity to the Esperance Port Access Corridor and may experience high levels of transportation noise.*”

#### 6.2.8 Exposure Level 2 (Condition 2 Area)

- (a) Noise sensitive development will require double brick masonry, brick veneer or reverse brick veneer on slab construction, including a tiled roof or corrugated metal roof with sarking and fibrous insulation between joists in the roof space together with enclosed eaves, unless a report is prepared by a suitably qualified person or organisation and endorsed by the Council which demonstrates alternative construction methods achieve the same level of noise reduction.
- (b) Windows facing the port access corridor should non-opening with at least 8.38mm thick glazing; other may be 6.38mm. Mechanical ventilation or air conditioning would be required and acoustically treated. Careful consideration to building layout should be made including the placement of noise sensitive rooms, in particular the bedrooms, away from the façade facing the port access corridor and limiting the maximum size of openings, unless a report is prepared by a suitably qualified person or organisation and endorsed by the Council which demonstrates alternative construction methods achieve the same level of noise reduction.
- (c) Lightweight building construction material on timber or steel framing with compressed fibre cement, timber or corrugated sheet metal cladding, will not be acceptable unless the proponent demonstrates that the structure achieves an internal noise level complying with Australian Standard 2107—*Recommended Design Sound Levels and Reverberation Times for Building Interiors* and with Australian Standard 3671-1989—*Acoustics—Road Traffic Noise Intrusion—Building Siting and Construction*.
- (d) Masonry fencing or bunding may be required for all new subdivisions in this area.
- (e) The local government may impose a condition on its planning consent for a dwelling or other noise sensitive premise that does not comply with the relevant scheme provisions, requiring a memorial to be placed on the title advising of the potential to be affected by transportation noise levels and that the premises are deficient in meeting those provisions. The notification will need to be in place before a building licence is issued.

#### 6.2.9 Exposure Level 3 (Condition 3 Area)

- (a) Residential development should generally not be permitted without specific acoustic specialist advice considering and estimating internal noise levels. Internal noise level should meet the requirements of Australian Standard 2107—*Recommended Design Sound Levels and Reverberation Times for Building Interiors*. Outdoor areas should be restricted to the opposite side of the corridor. Specialist acoustic advice should also be sought for other noise sensitive uses, in particular, schools, holiday and short term accommodation and offices within this area.
- (b) Noise sensitive development shall be double brick masonry, brick veneer or reverse brick veneer on slab construction, including tiled roof with insulated roof space and enclosed eaves.

Ceilings should be double thick plasterboards or a layer of compressed fibre cement sheeting placed under the tiles. Windows facing the port access corridor should be non-opening and their size kept to a practical minimum. If windows are required they should be at least 10mm thick single laminate sheet glass, or sealed double glass panels. Mechanical ventilation in all rooms is required. Noise sensitive rooms, in particular bedrooms should be shielded by other purpose areas, which would be facing the port access corridor. Outdoor areas should be well shielded from the corridor using the house as a barrier, unless a report is prepared by a suitably qualified person or organisation and endorsed by Council, demonstrates that alternative construction methods achieve the same level of noise reduction.

- (c) Lightweight building construction materials on timber or steel framing with compressed cellulous fibre cement, timber or corrugated sheet metal cladding, will not be acceptable within areas of Exposure Level 3 unless for non-habitable extensions to existing dwellings.
- (d) The local government may impose a condition on its planning consent for a dwelling or other noise sensitive premise that does not comply with these conditions requiring a memorial to be placed on the title advising of the potential to be affected by transportation noise levels and the deficiencies in meeting those conditions. The notification will need to be in place before a building licence is issued.
- (e) Residential densities shall not be increased in this area unless located within the Tourist Residential zone. Any such buildings are to be purpose built and an acoustic specialist is to certify that interior and exterior living areas comply with Australian Standard 2107—*Recommended Design Sound Levels and Reverberation Times for Building Interiors* and with Australian Standard 3671-1989—*Acoustics—Road Traffic Noise Intrusion—Building Siting and Construction*.
- (f) Masonry fencing or bunding shall be required for all new subdivisions.
- (g) New property titles (including strata titles) should warn of the proximity of the access corridor and the potential to be affected by transportation noise levels. This notification pursuant to Section 165 of the Planning and Development Act is to state “*This lot is located in close proximity to the Esperance Port Access Corridor and may experience high levels of transportation noise.*”

### **6.3 SCA 2A—Flinders Residential Development Special Control Area 2**

#### **6.3.1 Purpose**

The purpose of Special Control Area 2A is to provide development control and guidance for land zoned or identified on an Outline Development Plan for single residential R12.5 development within the Flinders subdivision.

#### **6.3.2 Objectives**

The objectives of the SCA 2 are to—

- (a) provide a high level of amenity;
- (b) create an attractive, desirable and responsive environment;
- (c) create a safe and interesting streetscape and ensure that development enhances rather than detracts from it;
- (d) provide for and protect a unique suburban residential character for the area;
- (e) promote and encourage climate sensitive and passive energy efficient design;
- (f) promote retention of stormwater on site; and
- (g) promote waterwise gardening.

#### **6.3.3 Application Requirements**

Despite any other provision of the Scheme planning approval is required for all use and development including a single house.

#### **6.3.4 Development Requirements**

All residential development shall comply with the development standards unless discretion to vary them is expressed or implied in the following provisions.

#### **6.3.5 Development and Subdivision of Lots**

- (a) All lots are to be single residential R12.5.
- (b) The local government shall not support further subdivision or amalgamation of single residential lots that would have the effect of increasing residential density.

#### **6.3.6 Setbacks**

- (a) All buildings shall be set back a minimum of five (5) metres from any street boundary.
- (b) No garages, carports, sheds, balconies, verandahs or the like shall extend into the street setback area.

#### **6.3.7 Building Form**

- (a) All dwellings shall have eaves.
- (b) The street frontage entrance to dwellings shall be clearly defined.
- (c) Balconies shall be constructed on street and rear facades only and should be designed to protect the privacy of adjacent properties.

### 6.3.8 Building Height

- (a) The vertical distance at any point from natural ground level to the uppermost part of the building above that point (roof ridge, parapet, or wall) shall be no higher than eight (8) metres.
- (b) Natural ground level shall be deemed to be the finished ground level established as part of the subdivision of the land preceding development.

### 6.3.9 Fencing

- (a) Front fencing is not required. Where a front fence is to be constructed forward of the building or the street setback, the following provisions shall apply—
  - (i) Solid fencing shall be no higher than 750 millimetres; or
  - (ii) Fences may be up to 1.8 metres, where the section of the fence higher than 750 millimetres has a minimum of 60% visual permeability with the exception of piers and posts that may be constructed up to 200 millimetres higher than the infill panels.
- (b) All front and side fences forward of the building or street setback, whichever is the greater, or adjacent to public open space, should be constructed in the same materials as, or be aesthetically compatible with, the residence on that lot.
- (c) All fencing for rear and side boundaries with the exception of fencing forward of the building or street setback area, whichever is the greater, shall be 1.8 metres in height from ground level as set down in 6.3.8(b).
- (d) No fibre cement fencing shall be permitted.
- (e) No fences shall be constructed of reflective materials.
- (f) No fences shall be constructed of second hand materials, except where the use of such materials has been specifically proposed because of its aesthetic qualities and where the use of such materials integrates with the character or architecture of the building, and the local government approves such use.

### 6.3.10 Retaining Walls, Excavation and Fill

- (a) No retaining walls shall be permitted forward of the building or front setback, whichever is the greater, unless required as part of an architectural theme or garden feature unless it has been designed and constructed of the same materials or approved similar materials as those provided by the developer and approved by the local government.
- (b) Unless required for a garden feature, undercroft parking or approved swimming pool, no lot shall be excavated or filled forward of the building or front setback, whichever is the greater, from finished ground level as set down in clause 6.3.8(b).

### 6.3.11 Standard of Construction

- (a) No new, relocated or jinkered transportable dwellings are permitted.
- (b) No second hand materials shall be permitted in the construction of any external walls or roofing of any residence or outbuilding constructed on any lot, except where the use of such materials has been specifically proposed because of its aesthetic qualities and where the use of such materials integrates with the character or architecture of the building, and such use is approved by the local government.
- (c) No reflective materials shall be permitted in the construction of any external walls or roofing of any residence or outbuilding constructed on any lot without due regard to the local government policy, except where the use of such materials has been specifically proposed because of its aesthetic qualities and where the use of such materials integrates with the character or architecture of the building and is approved by the local government.
- (d) All dwellings are to be predominantly masonry construction or an acceptable exterior combination of masonry and/or composite materials approved by the local government. Predominantly shall be defined as 50% or greater of the wall area, and does not include roofing materials or windows.

## 6.4 SCA 2B—Flinders Residential Development Special Control Area 2B

### 6.4.1 Purpose

The purpose of Special Control Area 2B is to provide development control and guidance for land zoned or identified on an Outline Development Plan for a mixture of residential densities within the Flinders subdivision.

### 6.4.2 Objectives

The objectives of the SCA 2B are to—

- (a) provide for a mixture of residential densities;
- (b) provide a high level of amenity;
- (c) create an attractive, desirable and responsive environment;
- (d) create a safe and interesting streetscape;
- (e) provide for and protect a unique suburban residential character for the area;
- (f) promote and encourage climate sensitive and passive energy efficient design;
- (g) promote retention of stormwater on site;
- (h) promote waterwise gardening; and
- (i) provide a means of implementing a development contribution area.



#### 6.4.3 Application Requirements

Despite any other provision of the Scheme planning approval is required for all use and development including a single house.

#### 6.4.4 Development Requirements

- (a) All residential development shall comply with the development standards unless discretion to vary them is expressed or implied in the following provisions.
- (b) All portions of restrictive covenants relating to single dwellings, setbacks, building height, construction materials, transportable dwellings, air conditioners, storage of refuse containers and retaining walls on lots within SCA 2B are hereby varied to the extent of their removal.

#### 6.4.5 Development and Subdivision of Lots

- (a) The local government shall not support further subdivision or amalgamation of single residential lots that would have the effect of increasing residential density.
- (b) Lots may be developed to the maximum density as prescribed by the density coding as indicated on the approved ODP or scheme map.
- (c) The local government may implement a development contribution area as set down Clause 6.14.

#### 6.4.6 Setbacks

- (a) On lots designated as single residential R12.5 on the approved ODP or scheme map, all buildings shall be set back a minimum of 5m from any street boundary.
- (b) On lots designated with a density greater than R12.5 all buildings shall be set back from the street boundary in accordance with setbacks prescribed for the specific density as set out in the Residential Design Codes.
- (c) No garages, carports, sheds, balconies, verandahs or the like shall extend into the street setback area.

#### 6.4.7 Building Form

- (a) All dwellings are encouraged to have eaves.
- (b) The street frontage entrance to dwellings shall be clearly defined.
- (c) Balconies shall be designed and constructed so as to protect the privacy of adjacent properties in accordance with the R Codes.

#### 6.4.8 Building Height

- (a) The vertical distance at any point from natural ground level to the uppermost part of the building above that point (roof ridge, parapet, or wall) shall be no higher than eight (8) metres.
- (b) Natural ground level shall be deemed to be the finished ground level established as part of the subdivision of the land preceding development.

#### 6.4.9 Fencing

- (a) Front fencing is not required. Where a front fence is to be constructed forward of the building or the street setback, the following provisions shall apply—
  - (i) Solid fencing shall be no higher than 750 millimetres; or
  - (ii) Fences may be up to 1.8 metres, where the section of the fence higher than 750 millimetres has a minimum of 60% visual permeability with the exception of piers and posts that may be constructed up to 200 millimetres higher than the infill panels.
- (b) All front and side fences forward of the building or street setback, whichever is the greater, or adjacent to public open space, should be constructed in the same materials as, or be aesthetically compatible with, the residence on that lot.
- (c) All fencing for rear and side boundaries with the exception of fencing forward of the building or street setback area, whichever is the greater, shall be 1.8 metres in height from ground level as set down in 6.4.8(b).
- (d) No fibre cement fencing shall be permitted.
- (e) No fences shall be constructed of reflective materials.
- (f) No fences shall be constructed of second hand materials, except where the use of such materials has been specifically proposed because of its aesthetic qualities and where the use of such materials integrates with the character or architecture of the building, and the local government approves such use.

#### 6.4.10 Retaining Walls, Excavation and Fill

- (a) No retaining walls shall be permitted forward of the building or front setback, whichever is the greater, unless required as part of an architectural theme or garden feature unless it has been designed and constructed of the same materials or approved similar materials as those provided by the developer and approved by the local government.
- (b) Unless required for a garden feature, undercroft parking or approved swimming pool, no lot shall be excavated or filled forward of the building or front setback, whichever is the greater, from finished ground level as set down in clause 6.4.8(b).

#### 6.4.11 Standard of Construction

- (a) No new, relocated or jinkered transportable dwellings are permitted.

- (b) No second hand materials shall be permitted in the construction of any external walls or roofing of any residence or outbuilding constructed on any lot, except where the use of such materials has been specifically proposed because of its aesthetic qualities and where the use of such materials integrates with the character or architecture of the building, and such use is approved by the local government.
- (c) No reflective materials shall be permitted in the construction of any external walls or roofing of any residence or outbuilding constructed on any lot without due regard to the local government policy, except where the use of such materials has been specifically proposed because of its aesthetic qualities and where the use of such materials integrates with the character or architecture of the building and is approved by the local government.
- (d) All dwellings are to be predominantly of masonry construction or an acceptable exterior combination of masonry and/or composite materials approved by the local government. Predominantly shall be defined as 50% or greater of the wall area, and does not include roofing materials or windows.

### **6.5 SCA 3A—Shark Lake Industrial Park Special Control Area 3A**

#### **6.5.1 Purpose**

The purpose of SCA 3A is to provide guidance for land use and development within proximity to the Shark Lake Industrial Park.

#### **6.5.2 Objectives**

The objectives of SCA 3A are to—

- (a) identify land which may be affected by emissions such as odour, noise, vibration and light from the Shark Lake Industrial Park;
- (b) ensure that the use and development of land is compatible with the proposed future use and development within the Shark Lake Industrial Park;
- (c) minimise impacts on residential and other sensitive uses from emissions such as odour, noise, vibration and light from the Shark Lake Industrial Park; and
- (d) minimise the risk of adverse impact on the RAMSAR listed Lake Warden wetland system and the Shark Lake Nature Reserve.

#### **6.5.3 Application Requirements**

Despite any other provision of the Scheme planning approval is required for all use and development including a single house.

#### **6.5.4 Relevant Considerations**

In addition to provisions of the Scheme the local government in considering applications for planning approval is to have due regard to—

- (a) Statement of Planning Policy No. 4.1 *State Industrial Buffer Policy*;
- (b) guidelines of the Environmental Protection Authority for protection of the environment including but not limited to emissions to the atmosphere, and maintenance of water quality;
- (c) guidelines of the Department of Water for protection of the environment including but not limited to maintenance of water quality;
- (d) guidelines for the assessment of risk;
- (e) the *Environmental Protection (Noise) Regulations 1997*;
- (f) the potential for adverse environmental impacts and the management of such potential impacts; and
- (g) a general presumption against construction of dwellings and other sensitive uses in SCA 3A;
- (h) the Commonwealth's Environmental Biodiversity Conservation Act 1999 for reference to the Lake Warden wetland system and RAMSAR lakes;

and shall determine applications for planning approval accordingly.

#### **6.5.5 Referral of Applications**

The local government may refer applications for planning approval to the Department of Environment and Conservation and the local government is to have due regard to recommendations and advice received from the Department of Environment and Conservation when determining applications.

### **6.6 SCA 3B—Shark Lake Industrial Park Special Control Area 3B**

#### **6.6.1 Purpose**

The purpose of SCA 3B is to provide guidance for land use and development within proximity to the Shark Lake Industrial Park.

#### **6.6.2 Objectives**

The objectives of SCA 3B are to—

- (a) identify land which may be affected by emissions such as odour, noise, vibration and light from the Shark Lake Industrial Park;
- (b) ensure that the use and development of land is compatible with the proposed future use and development within the Shark Lake Industrial Park;
- (c) minimise impacts on residential and other sensitive uses from emissions such as odour, noise, vibration and light from the Shark Lake Industrial Park; and

- (d) provide for “home business—rural” and “industry—rural” uses subject to the provisions of the Scheme.

#### 6.6.3 Application Requirements

- (a) Despite any other provision of the Scheme planning approval is required for all use and development including a single house.
- (b) Despite any other provision of the Scheme, “Home Business—Rural” and “Industry—Rural” may be permitted with the approval of the local government on a lot any part of which is within Special Control Area 3B as shown on the Scheme Map.

#### 6.6.4 Relevant Considerations

In addition to provisions of the Scheme the local government in considering applications for planning approval is to have due regard to—

- (a) Statement of Planning Policy No. 4.1 *State Industrial Buffer Policy*;
- (b) guidelines of the Environmental Protection Authority for protection of the environment including but not limited to emissions to the atmosphere, and maintenance of water quality;
- (c) guidelines for the assessment of risk;
- (d) the *Environmental Protection (Noise) Regulations 1997* and use of noise insulation within dwellings; and
- (e) the potential for adverse environmental impacts and the management of such potential impacts;

and shall determine applications for planning approval accordingly.

#### 6.6.5 Referral of Applications

The local government may refer applications for planning approval to the Department of Environment and Conservation and the local government is to have due regard to recommendations / advice received from the Department of Environment and Conservation when determining applications.

### **6.7 SCA 3C—Shark Lake Industrial Park Special Control Area 3C**

#### 6.7.1 Purpose

The purpose of SCA 3C is to provide guidance for land use and development within proximity to the Shark Lake Industrial Park.

#### 6.7.2 Objectives

The objectives of SCA 3C are to—

- (a) identify land which may be affected by emissions such as odour, noise, vibration and light from the Shark Lake Industrial Park;
- (b) ensure that the use and development of land is compatible with the proposed future use and development within the Shark Lake Industrial Park;
- (c) minimise impacts on residential and other sensitive uses from emissions such as odour, noise, vibration and light from the Shark Lake Industrial Park; and
- (d) encourage conservation of environmental values and protection of water quality in Shark Lake.

#### 6.7.3 Application Requirements

Despite any other provision of the Scheme planning approval is required for all use and development including a single house.

#### 6.7.4 Relevant Considerations

In addition to provisions of the Scheme the local government in considering applications for planning approval is to have due regard to—

- (a) Statement of Planning Policy No. 4.1 *State Industrial Buffer Policy*;
- (b) guidelines of the Environmental Protection Authority for protection of the environment including but not limited to emissions to the atmosphere, and maintenance of water quality;
- (c) guidelines for the assessment of risk;
- (d) the *Environmental Protection (Noise) Regulations 1997* and use of noise insulation within dwellings;
- (e) the potential for adverse environmental impacts and the management of such potential impacts; and
- (f) a general presumption against construction of dwellings and other sensitive uses in SCA 3C;

and shall determine applications for planning approval accordingly.

#### 6.7.5 Referral of Applications

The local government may refer applications for planning approval to the Department of Environment and Conservation and the local government is to have due regard to recommendations / advice received from the Department of Environment and Conservation when determining applications.

## 6.8 SCA 4—Public Drinking Water Source Protection Areas—Special Control Area 4

### 6.8.1 Purpose

The purpose of SCA 4 is to provide guidance for land use or development for the protection of public drinking water areas.

*Note: Public Drinking Water Source Protection Areas are defined on the Scheme Map in accordance with information provided by the Department of Environment and Conservation, on behalf of the Department of Water.*

### 6.8.2 Objectives

The objectives of SCA 4 are to—

- (a) provide a basis for the protection of public drinking water resources through the control of land use or development, which has the potential to prejudice the quality of water supplies for public use;
- (b) identify land that has been designated as groundwater reserves that supply public drinking water;
- (c) ensure that any land use does not detrimentally impact on a public drinking water source;
- (d) implement Scheme controls that are designed to mitigate any adverse effects on a public drinking water source.

### 6.8.3 Application Requirements

Despite any other provision of the Scheme planning approval is required for all use and development including a single house, removal of vegetation, earthworks or the use of land for the keeping of or grazing animals, and shall be subject to discretion of the local government, notwithstanding that the use may be designated as a 'P' use under the Scheme.

### 6.8.4 Development Requirements

The local government may refuse any application for planning approval or impose conditions on any planning approval so as to—

- (a) protect the resource; and
- (b) require the registration of a notification under section 70A of the *Transfer of Land Act 1893* on the title to the land giving notice of any limitations or constraints associated with the protection of resources at the applicant's cost.

*Note: There will be a general presumption against development or use of land, which is not compatible with Public Drinking Water Source Areas or which involves a significant risk to the resource. The onus will be on the proponent of development to demonstrate that the proposed activity will not prejudice the resource.*

### 6.8.5 Relevant Considerations

In addition to other provisions of the Scheme, in considering any application for rezoning, subdivision or planning approval in SCA 4, the local government is to have particular regard to—

- (a) the Department of Water Water Quality Protection Note: *Land Use Compatibility in Public Drinking Water Source Areas*, and any advice received from the Department of Water;
- (b) Esperance Water Reserve Water Source Protection Plan and other plans associated with outlying Country Towns;
- (c) the requirements of Statement of Planning Policy No. 2.7, *Public Drinking Water Source Policy*;
- (d) The potential impact of the proposal on the quality of the water resource;
- (e) The practicability and cost of any ameliorative measures proposed for the protection of the resource;
- (f) The existing level of protection of the resource provided, with reference to management of land and location of development;
- (g) The nature, location and performance of any existing or proposed effluent disposal system.;
- (h) The drainage characteristics of the land, including surface and groundwater flow, and the adequacy of proposed measures to manage run-off and drainage.
- (i) For the purposes of this Scheme the groundwater reserves for the Country Town zones will be deemed to be Priority 3 (P3) and a wellhead protection zone of 300 metres will apply for all public drinking water supply bores unless the Department of Environment and Conservation, on behalf of the Department of Water indicates otherwise.

### 6.8.6 Referral of Applications

The local government may refer applications for planning approval to the Department of Conservation and Environment, the Department of Water or any other agency or organisation it deems necessary and shall have due regard to any advice received.

## 6.9 SCA 5—Wetlands of Significance and Lake Warden Recovery Catchment Special Control Area 5

### 6.9.1 Purpose

The purpose of SCA 5 is to provide guidance for land use and development within the catchments of wetlands of significance.

### 6.9.2 Objectives

The objectives of SCA 5 are to—

- (a) ensure that the use and development of affected land is compatible with and does not detrimentally affect the SCA 5 wetlands;
- (b) encourage retention and planting of native vegetation and properly managed perennial pasture;
- (c) encourage fencing and rehabilitation of creek lines; and
- (d) discourage subdivision and intensification of development within Department of Environment and Conservation Priority 1 areas due to the risks posed by the shallow water table, flooding, nutrient pollution, domestic animal impact and risks to public health.

### 6.9.3 Application Requirements

Despite any other provision of the Scheme planning approval is required for all use and development including a single house.

### 6.9.4 Relevant Considerations

In addition to provisions of the Scheme, the local government in considering applications for rezoning, subdivision or planning approval in SCA 5 is to have due regard to—

- (a) results of scientific research conducted by Department of Environment and Conservation regarding groundwater and surface water interactions within the Lake Warden Wetland System and recommendations for management of the priority areas;
- (b) guidelines of the Environmental Protection Authority for protection of the environment including but not limited to maintenance of water quality;
- (c) guidelines of the Department of Water for protection of wetlands and waterways including but not limited to maintenance of water quality;
- (d) the potential for adverse environmental impacts and the management of such potential impacts; and
- (e) a general presumption against land clearing, further subdivision and intensification of development beyond construction of a single dwelling,

and shall determine applications for planning approval accordingly.

### 6.9.5 Referral of Applications

- (a) The local government may refer applications for planning approval to the Department of Environment and Conservation and the Department of Water and the local government is to have due regard to recommendations and advice received from those authorities when determining applications.
- (b) The keeping of horses on lots of less than 4ha (or equivalent stocking rates of other animals) within SCA 5 will be refused or referred to the Department of Environment and Conservation for comment and subsequent determination by the Council.

## 6.10 SCA 6—Brazier Street Industry Special Control Area 6

### 6.10.1 Purpose

The purpose of SCA 6 is to provide guidance for land use and development within the area affected by proximity to the bulk fuel tank storage facilities, grain handling facilities, fertiliser plant, the Water Corporation wastewater treatment plant, railway line and the Shire depot.

### 6.10.2 Objectives

The objectives for SCA 6 are to—

- (a) avoid increasing residential densities and other sensitive uses within the SCA until industrial uses that might affect the site have been relocated;
- (b) recommend that any new subdivision or development include notification on title of the proximity of the industrial uses which might adversely affect them; and

### 6.10.3 Application Requirements

Despite any other provisions in this Scheme, planning approval is required for land use and development within Special Control Area 6.

### 6.10.4 Relevant considerations

In addition to provisions of the Scheme, the local government in considering applications for rezoning, subdivision or planning approval in SCA 6 is to have due regard to—

- (a) Statement of Planning Policy No. 4.1 *State Industrial Buffer Policy*;
- (b) guidelines of the Environmental Protection Authority for protection of the environment including but not limited to emissions to the atmosphere and maintenance of water quality;
- (c) guidelines for the assessment of risk;
- (d) the *Environmental Protection (Noise) Regulations 1997* and use of noise mitigation measures within noise sensitive premises;
- (e) the potential for adverse environmental impacts and the management of such potential impacts;
- (f) a general presumption against subdivision that would increase the construction of dwellings and other sensitive uses in SCA 6 until the industrial uses have been removed from the site or otherwise decommissioned;

(g) a requirement for a notification on title for any new subdivision or development advising of the proximity of the industrial activities and the wastewater treatment plant; and  
and shall determine applications for planning approval accordingly.

#### 6.10.5 Referral of Applications

- (a) The local government may refer applications for planning approval to the Department of Environment and Conservation and/or the Department of Consumer and Employment Protection and the local government is to have due regard to advice received from the responsible authorities when determining applications.
- (b) The local government may require the design and construction of any sensitive land use facilities in SCA 6 to include noise attenuation measures and mechanical ventilation to minimize the impacts from the industrial development and wastewater treatment plant upon the amenity of the premises.

### 6.11 SCA 7—Blue Haven and Second Beach Special Control Area 7

#### 6.11.1 Purpose

The purpose of Special Control Area 7 is to provide development control within the area shown on the scheme maps as SCA 7.

#### 6.11.2 Objective

The objectives of SCA 7 are to—

- (a) provide a high level of amenity in this visually sensitive coastal area;
- (b) maintain suitable street setbacks to minimise impact on Twilight Beach Road;
- (c) protect the vegetation corridor fronting Twilight Beach Road; and
- (d) maintain the land for purely residential purposes.

#### 6.11.3 Application Requirements

Despite any other provisions of the Scheme planning approval is required for all use and development including a single house.

#### 6.11.4 General Development Requirements

In addition to other provisions of the Scheme, the local government in considering applications for rezoning, subdivision or planning approval in SCA 7 is to have due regard to—

- (a) Generally within this area, no development will be permitted which, in the opinion of the local government, will be likely to endanger the visual amenity of Twilight Beach Road and the coastal views as seen from any lot or public place, and the ocean.
- (b) No land shall be cleared, (other than for construction of buildings), filled or excavated without the prior permission of the local government in accordance with Part 9. An application for such permission shall include a statement as to the measures that will be taken to prevent wind and water erosion and a plan showing the proposed landscaping, including the design and location of pathways and driveways.
- (c) The local government will encourage rear access to properties instead of direct access onto Twilight Beach Road. In no case shall permission be given for vehicular access across public open space or a PAW.
- (d) The local government may also determine a landscape protection area within the setback to Twilight Beach Road.
- (e) No fencing shall be erected without the prior permission of the local government, in accordance with Part 9. The local government will consider the use of materials, colour and height of the fence in an attempt to ensure that such structures blend into the landscape.
- (f) The local government will not permit the erection of sheds or other buildings between a house erected on the lot and any road except in the case of a corner lot or a lot with dual street frontages where the local government may permit such a building to be built between the residence and any road other than Twilight Beach Road.
- (g) The local government will expect any residential development, sheds or outbuildings to be constructed of materials that will not be intrusive or draw attention, with the use of light colours or shiny surfaces to be avoided.
- (h) Where setbacks under these provisions can be varied, the local government when exercising its discretion, shall give consideration to the following—
  - (i) existing vegetation and its retention;
  - (ii) views from outlooks and Twilight Beach Road;
  - (iii) difficult topography;
  - (iv) if the lot has a street frontage and/or the site area is less than is specified in the Codes;
  - (v) if the reduced setbacks will result in an improvement to the visual amenity of the area from Twilight Beach Road or adjoining properties; and
  - (vi) any other relevant matters.

#### 6.11.5 SCA 7A

In addition to the general development requirements in clause 6.11.4, the following apply specifically to lots as indicated on the Scheme Map as SCA 7A—

- (a) Setbacks on these lots will be in accordance with requirements of R10.

**6.11.6 SCA 7B**

In addition to the general development requirements in clause 6.11.4, the following apply specifically to lots as indicated on the Scheme Map as SCA7B—

**(a) Front Setback**

Minimum 20 metres, which may be averaged to an absolute minimum of 15 metres to the Twilight Beach Road boundary of the lot. Averaging will be in accordance with the methodology outlined in the *Residential Design Codes*.

**(b) Side Setbacks**

Minimum of 10 metres. May be reduced to 3 metres at the local government's discretion.

**(c) Rear / Secondary Street Setback**

Minimum of 10 metres from the boundary. May be reduced to 5 metres at the local government's discretion.

**6.11.7 SCA 7C**

In addition to the general development requirements in clause 6.11.4, the following apply specifically to lots as indicated on the Scheme Map as SCA 7C—

**(a) Front Setback**

20 metres to 40 metres from the Twilight Beach Road boundary, at the discretion of the local government.

**(b) Side and Rear Setbacks**

Minimum of 10 metres. May be reduced to 5 metres at the local government's discretion.

**6.11.8 SCA 7D**

In addition to the general development requirements in clause 6.11.4, the following apply specifically to lots as indicated on the Scheme Map as SCA 7D—

**(a) Front Setback**

Minimum of 10 metres.

**(b) Side and Rear Setbacks**

Minimum of 10 metres. May be reduced to 5 metres at the local government's discretion.

**6.11.9 SCA 7E**

In addition to the general development requirements in clause 6.11.4, the following apply specifically to lots as indicated on the Scheme Map as SCA 7E—

- (a) Prior to the subdivision of this land, a comprehensive Outline Development Plan will be required to be prepared for the area and approved by the local government and the WAPC. The ODP is to include road widening or the provision of a service road to limit access to Twilight Beach Road.

**6.12 SCA8—Esperance Airport Special Control Area 8****6.12.1 Purpose**

- (a) The purpose of Special Control Area 8 is to provide guidance for land use and development control within the area shown on the Scheme Map as SCA 8.
- (b) For the purpose of SCA 8, "development" shall include planting of trees and shrubs, a flagpole, antenna, aerial, tower, electricity transmission line, satellite dish, chimney, flue, smokestack or other similar structures.

**6.12.2 Objectives**

The objectives for SCA 8 are to—

- (a) protect the continued operations of the Esperance Airport near Gibson and its existing and potential future flight paths;
- (b) ensure that development and vegetation on and around the airport does not compromise the current and future operations of the airport;
- (c) control the height of all vegetation and development to prevent obstacles from being constructed within areas that are subject to airport height restrictions;
- (d) ensure that new development within the airport SCA is designed and constructed to mitigate any impact by noise;
- (e) generally discourage subdivision and development to minimise the potential for sensitive land uses to be undertaken within the airport SCA and allow for future airport expansion; and
- (f) ensure that development is in accordance with and does not compromise the objectives of the Esperance Airport Master Plan.

**6.12.3 Application Requirements**

Despite any other provisions in the Scheme—

- (a) planning approval is required for all land use and development within SCA 8A including the construction, extension or alteration of a dwelling or any other building or structure; and
- (b) within SCA 8B planning approval is required for any proposed structure which will exceed 15 metres in height.

#### 6.12.4 Development Requirements

- (a) Any new dwelling, including the extension or alteration of an existing dwelling, shall be constructed so as to comply with design and construction—
  - (i) noise attenuation measures contained in *Australian Standards AS2021-1994 Acoustics—Aircraft Noise Intrusion—Building Siting and Construction* in accordance with the best available advice regarding existing and future Australian Noise Exposure Forecast criteria; and
  - (ii) the height limitations associated with the Obstacle Limitation Surfaces.
- (b) The local government may restrict the development of residential uses and occupation of other buildings that may be adversely affected by aircraft noise in accordance with the Australian Noise Exposure Forecast criteria as follows—
  - (i) less than 20 ANEF is Acceptable for Development;
  - (ii) 20 to 25 ANEF may be Conditionally Acceptable for Development; and
  - (iii) greater than 25 ANEF is Unacceptable for Development.
- (c) The local government may require any owner or occupier to remove any structure or vegetation which in the opinion of the airport manager or Civil Aviation Safety Authority exceeds the Obstacle Limitation Surface height.

#### 6.12.5 Relevant Considerations

- (a) The local government shall not grant approval to any development that compromises the purpose of the Esperance Airport Special Control Area.
- (b) The local government shall not approve a dwelling including any alteration or extension on land contained within the greater than 25 ANEF contour line.
- (c) The local government shall not approve any development that infringes upon the Esperance Airport Obstacle Limitation Surfaces (OLS).
- (d) In considering any application for planning approval, subdivision or scheme amendment, the local government shall have regard to—
  - (i) objectives of the Esperance Airport Special Control Area 8;
  - (ii) advice from the Department for Planning and Infrastructure (Transport Division) and Civil Aviation Authority;
  - (iii) potential impacts of the proposal on the current and future operations of the airport;
  - (iv) relevant ANEF contour information as designated within the Special Control Area;
  - (v) *Australian Standards AS2021-1994 Acoustics—Aircraft Noise Intrusion—Building Siting and Construction*;
  - (vi) the Esperance Airport Obstacle Limitation Surfaces (OLS); and
  - (vii) the Esperance Airport Master Plan.

### 6.13 Development Areas

#### 6.13.1 Interpretation—

In clause 6.13, unless the context otherwise requires—

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

*‘Proposed Structure Plan’* means a structure plan or outline development plan, which may apply to either a local area or a district, that has been prepared in accordance with clause 6.13.4; and

*‘Structure Plan’* means a Proposed Structure Plan that has been approved by both the Commission and adopted by the local government under clause 6.13.5.15.

#### 6.13.2 Purpose

- (a) To identify areas requiring comprehensive planning prior to subdivision and development.
- (b) To coordinate subdivision, land use and development in areas requiring comprehensive planning.

#### 6.13.3 Planning Requirements

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

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

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

6.13.3.4 Schedule 14 describes the Development Areas in more detail and sets out the purpose and particular requirements that may apply to the Development Area.

#### 6.13.4 Preparation of Structure Plans

6.13.4.1 A Structure Plan may include plans and other documents.



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

6.13.4.3 A Structure Plan may relate to only part of a Development Area.

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

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

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

6.13.5 Adoption and approval of Structure Plans

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

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

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

6.13.5.3 If within 60 days of receiving a Proposed Structure Plan for approval for advertising, or such longer period as may be agreed in writing between the Proponent and the local government, the local government has not made one of the determinations referred to in clause 6.13.5.2, the local government is deemed to have determined that the Proposed Structure Plan is not satisfactory for advertising.

6.13.5.4

- (a) Where the Proponent is aggrieved by a determination of the local government under clause 6.13.5.2(b) or (c) or clause 6.13.5.3, the Proponent may request the local government by notice in writing to forward the Proposed Structure Plan to the Commission.
- (b) Within 21 days of receiving a notice from the Proponent under clause 6.13.5.4(a), the local government is to forward to the Commission—
  - (i) a copy of the Proposed Structure Plan;
  - (ii) details of the local government's determination including any modifications to the Proposed Structure Plan required by the local government; and
  - (iii) any other information the local government considers may be relevant to the Commission's consideration of approval of the Proposed Structure Plan for advertising.
- (c) Upon receiving a Proposed Structure Plan in accordance with clause 6.13.5.4(b), the Commission is to make one of the determinations referred to in clause 6.13.5.2 and advise the local government and the Proponent accordingly.

- (d) If the Commission requires modifications to the Proposed Structure Plan, the Commission is to consult with the local government prior to making its determination under clause 6.13.5.4(c).
- (e) If within 60 days of receiving a Proposed Structure Plan under clause 6.13.5.4(b), or such longer period as may be agreed in writing between the Proponent and the Commission, the Commission has not made one of the determinations referred to in clause 6.13.5.2, the Commission is deemed to have determined that the Proposed Structure Plan is not satisfactory for advertising.

6.13.5.5 Where the local government, or the Commission under clause 6.13.5.4, has determined that the Proposed Structure Plan is satisfactory for advertising, the local government is to—

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

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

6.13.5.7 The local government is to consider all submissions received and within 60 days of the latest date specified in the notice under clause 6.13.5.5 is to either—

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

6.13.5.8 If within the 60 day period, or such further time as may be agreed in writing between the Proponent and the local government, the local government has not made one of the determinations referred to in clause 6.13.5.7, the local government is deemed to have refused to adopt the Proposed Structure Plan.

6.13.5.9 Within 21 days of the local government making its determination under clause 6.13.5.7, or deemed refusal under clause 6.13.5.8, the local government is to forward to the Commission—

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

6.13.5.10 The Commission is to either—

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

6.13.5.11 If within 60 days of receiving the information referred to in clause 6.13.5.9, or such further time as may be agreed in writing between the Proponent and the Commission, the Commission has not made one of the determinations referred to in clause 6.13.5.10, the Commission is deemed to have refused to approve the Proposed Structure Plan.

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

6.13.5.13 If the Commission requires modifications to the Proposed Structure Plan, the Commission is to consult with the local government prior to approving the Proposed Structure Plan under clause 6.13.5.10.

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

- (a) readvertise the Proposed Structure Plan; or
- (b) require the Proponent to readvertise the Proposed Structure Plan

and, thereafter, the procedures set out in clause 6.13.5.5 onwards are to apply.

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

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

6.13.5.16 A Structure Plan is to be kept at the local government's administrative offices, and is to be made available for inspection by any member of the public during office hours.

### 6.13.6 Change or Departure from Structure Plan

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

#### 6.13.6.2

- (a) The local government is to forward a copy of the minor change or departure to the Commission within 10 days from the date of adopting the minor change or departure.
- (b) If the Commission considers that the change or departure adopted by the local government under clause 6.13.6.1 materially alters the intent of the Structure Plan, then the Commission—
  - (i) may require the local government to follow the procedures set out in clause 6.13.5 in relation to the change or departure; and
  - (ii) is to notify the local government of this requirement within 10 days.

6.13.6.3 Any change to or departure from a Structure Plan that is not within clause 6.13.6.1 is to follow the procedures set out in clause 6.13.5.

### 6.13.7 Detailed Area Plans

#### 6.13.7.1

- (a)
  - (i) The local government or the Commission may, by notice in writing, require a person to prepare and submit to the local government a detailed area plan within the time specified in the notice.
  - (ii) A person may prepare and submit to the local government a detailed area plan.
- (b) A detailed area plan is to relate to a particular lot or lots and may be prepared and submitted—
  - (i) to enhance, elaborate or expand on the details or provisions contained in a Proposed Structure Plan or a Structure Plan;
  - (ii) in place of a development approval required to comply with clause 2.5 of the *Residential Design Codes*; or
  - (iii) for any other planning purpose.
- (c) The local government is to—
  - (i) approve with or without conditions; or
  - (ii) refuse to approve the detailed area plan.
- (d) If within 60 days of receiving a detailed area plan under clause 6.13.7.1(a), or such longer period as may be agreed in writing between the person and the local government, the local government has not made one of the determinations referred to in clause 6.13.7.1(c), the local government is deemed to have refused to approve the detailed area plan.
- (e) The local government is to forward a copy of the detailed area plan to the Commission within 10 days of approving the detailed area plan.
- (f) The local government's refusal to approve a detailed area plan under clause 6.13.7 is not a valid reason for the local government to refuse to adopt or the Commission to refuse to approve a Proposed Structure Plan under clause 6.13.5.

6.13.7.2 Unless clause 6.13.7.1(b)(ii) applies, once approved by the local government, the detailed area plan is to be used as the basis for—

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

6.13.7.3 A detailed area plan may include details as to—

- (a) building envelopes;
- (b) distribution of land uses within a lot;
- (c) private open space;
- (d) services;
- (e) vehicular access, parking, loading and unloading areas, storage yards and rubbish collection closures;
- (f) the location, orientation and design of buildings and the space between buildings;
- (g) advertising signs, lighting and fencing;
- (h) landscaping, finished site levels and drainage;
- (i) protection of sites of heritage, conservation or environmental significance;
- (j) special development controls and guidelines; and
- (k) such other information considered relevant by the local government.

#### 6.13.7.4

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

### 6.13.8 Operation of Structure Plan

6.13.8.1 A Structure Plan commences operation on the date it is adopted by the local government pursuant to clause 6.13.5.15.

6.13.8.2 Subject to clause 6.13.8.5, if a Structure Plan imposes a classification on the land included in it by reference to reserves, zones, or *Residential Planning Codes* then—

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

6.13.8.3 Without limiting the generality of clause 6.13.8.2, under a Structure Plan—

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

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

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

### 6.13.9 Appeal

6.13.9.1 The Proponent may appeal, in accordance with Part 14 of the Planning and Development Act, any—

- (a) determination or decision made by the Commission;
- (b) requirement imposed by or modification sought by the Commission; or
- (c) determinations deemed to have been made by the Commission under clauses 6.13.5.4 or 6.13.5.11 in the exercise of the Commission's powers under clause 6.13.

6.13.9.2 The Proponent may appeal, in accordance with Part 14 of the Planning and Development Act, any decision made by the local government under clause 6.13.6.1.

6.13.9.3 A person who has submitted a detailed area plan under clause 6.13.7 may appeal, in accordance with Part 14 of the Planning and Development, any decision made by the local government under clauses 6.13.7.1 or 6.13.7.4.

## 6.14 Development Contribution Areas

### 6.14.1 Interpretation

In clause 6.14, unless the context otherwise requires—

'Administrative Costs' means such costs as are reasonably incurred for the preparation and implementation of the development contribution plan;

'Cost Apportionment Schedule' means a schedule prepared and distributed in accordance with clause 6.14.10;

'Cost Contribution' means the contribution to the cost of infrastructure and administrative costs;

'Infrastructure' means services and facilities which, in accordance with the WAPC's policy, it is reasonable for owners to contribute towards;

'Owner' means an owner of land that is located within a Development Contribution Area.

### 6.14.2 Purpose

The purpose of having Development Contribution Areas is to—

- (a) provide for the equitable sharing of the costs of infrastructure and administrative costs between owners;
- (b) ensure that cost contributions are reasonably required as a result of the subdivision and development of land in the development contribution area; and
- (c) coordinate the timely provision of infrastructure.

### 6.14.3 Development Contribution Plan required

A Development Contribution Plan is required to be prepared for each development contribution area.

### 6.14.4 Development Contribution Plan part of scheme

The Development Contribution Plan is incorporated in Schedule 15 as part of this Scheme.

#### 6.14.5 Subdivision and Development

6.14.5.1 Where a development contribution plan is in effect, the local government shall not—

- (a) consider or recommend subdivision; or
- (b) development of land within a development contribution area until;
- (c) a development contribution plan is in effect; or
- (d) the the owner who has applied for subdivision or development approval has made arrangements in accordance with clause 6.14.14 for the payment of the owner's cost contribution.

6.14.5.2 Where a development contribution plan is not in effect, the local government may support subdivision or approve development where the owner has made other arrangements satisfactory to the local government with respect to the owner's contribution towards the provision of infrastructure and administrative costs in the development contribution area.

*Notes: A Development Contribution Plan is only enforceable once it is incorporated into the Scheme. This has two major implications—*

- *all advertising and other provisions under the Town Planning Regulations 1967 applicable to the making of schemes and amendments will apply; and*
- *any amendment to a Development Contribution Plan will require a scheme amendment in order to become enforceable.*

#### 6.14.6 Guiding Principles for Development Contribution Plans

The development contribution plan for any development contribution area is to be prepared in accordance with the following principles—

- (a) Need and the nexus  
The need for the infrastructure included in the development contribution plan must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).
- (b) Transparency  
Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.
- (c) Equity  
Development contributions should be levied from all developments within a development contribution area, based on their relative contribution to need
- (d) Certainty  
All development contributions should be clearly identified and methods of accounting for cost adjustments determined at the commencement of a development.
- (e) Efficiency  
Development contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.
- (f) Consistency  
Development contributions should be applied uniformly across a Development Contribution Area and the methodology for applying contributions should be consistent.
- (g) Right of consultation and review  
Developers have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe the calculation of the costs of the contributions is not reasonable.
- (h) Accountable  
There must be accountability in the manner in which development contributions are determined and expended.

*Notes: Apportionment of Infrastructure Costs based on area assumes that the land concerned has fairly common characteristics. Therefore, Development Contribution Areas should be identified, as far as possible, with common characteristics so that Cost Contributions reflect future development potential. Where it is not possible to identify land with fairly common characteristics throughout the whole of the Development Contribution Area, consideration may be given to dividing the area into contribution precincts or cells, or to apportioning Infrastructure Costs based upon land valuation (though the latter may have increased administrative and other costs).*

#### 6.14.7 Recommended content of Development Contribution Plans

6.14.7.1 The Development Contribution Plan is to specify—

- (a) the development contribution area to which the development contribution plan applies;
- (b) the Infrastructure and Administrative Items to be funded through the development contribution plan;
- (c) the method of determining the cost contribution of each owner; and
- (d) the priority and timing for the provision of infrastructure.

#### 6.14.8 Period of Development Contribution Plan

A development contribution plan shall specify the period during which it is to operate.

*Notes: A development contribution plan must specify the period during which it is to operate. However, any extension of the period of operation of a development contribution plan requires a scheme amendment which will, in turn, require the approval of the Minister. The recommended maximum period is 5 years (to coincide with the scheme review) but, a longer or shorter period may be appropriate depending upon the particular circumstances of the development contribution area (eg. size of the development contribution area, number of owners and nature of the Infrastructure to be funded). If the period is 10 years or longer, then reviews should occur at 5 year intervals (with the cost apportionment schedule to be reviewed at least annually).*

#### 6.14.9 Land excluded

In calculating both the area of an Owner's land and the total area of land in a Development Contribution Area, the area of land provided in that Development Contribution Area for—

- (a) existing public open space;
- (b) existing government primary and secondary schools; and
- (c) such other land as is set out in the Development Contribution Plan,

is to be excluded.

#### 6.14.10 Development contribution plan report and cost apportionment schedule

6.14.10.1 Within 90 days of the gazettal date of the development contribution plan, the local government is to make available a development contribution plan report and cost apportionment schedule to all owners in the development contribution area.

6.14.10.2 The development contribution plan report and the cost apportionment schedule shall set out in detail the calculation of the cost contribution for each Owner in the development contribution area based on the methodology provided in the Development Contribution Plan.

6.14.10.3 The Development Contribution Plan Report and the Cost Apportionment Schedule do not form part of the Scheme but once adopted by the local government is subject to review as provided under clause 6.14.11.

#### 6.14.11 Cost Contributions based on estimates

6.14.11.1 The determination of Infrastructure Costs and Administrative Costs is to be based on amounts expended, but when expenditure has not occurred, it is to be based on the best and latest estimated costs available to the local government and adjusted accordingly if necessary.

6.14.11.2 Where a Cost Apportionment Schedule contains estimated costs, such estimated costs are to be reviewed at least annually by the local government—

- (a) in the case of land to be acquired, in accordance with clause 6.14.12
- (b) in all other cases, in accordance with the best and latest information available to the local government,

until the expenditure on the relevant item of Infrastructure or Administrative Costs has occurred.

6.14.11.3 The local government is to have such estimated costs independently certified by appropriate qualified persons and must provide such independent certification to an Owner where requested to do so.

6.14.11.4 Where any Cost Contribution has been calculated on the basis of an estimated cost, the local government—

- (a) is to adjust the Cost Contribution of any Owner in accordance with the revised estimated costs; and
- (b) may accept a Cost Contribution, based upon estimated costs, as a final Cost Contribution and enter into an agreement with the Owner accordingly.

6.14.11.5 Where an owner's cost contribution is adjusted under clause 6.14.11.4, the local government, on receiving a request in writing from an Owner, is to provide the Owner with a copy of estimated costs and the calculation of adjustments.

#### 6.14.12 Valuation

6.14.12.1 Clause 6.14.12 applies in order to determine the value of land to be acquired for the purpose of providing Infrastructure.

6.14.12.2 In clause 6.14.12—

'Value' means fair net expectation value which is to be calculated by—

- (a) determining the highest and best use of the land in its englobed state, either on its own or with other land ripe for subdivision; and
- (b) adding the margin for profit foregone had the land been able to be subdivided in its optimum form including allowances for all usual costs and expenses attributed to that land required to carry out such an exercise,

but not including an allowance for risk as might otherwise have been made.

'Profit' is to be 10 per cent calculated by the difference between—

- (a) the gross realisation of the lots or part lots yielded from the subject land less the advertising and legal expenses so required to sell the lots; and
- (b) the amount of (a) divided by 1.1.

'Valuer' means a licensed valuer agreed by the local government and the owner, or where the local government and the owner are unable to reach agreement, a valuer appointed by the President of the Western Australian Division of the Australian Property Institute.

6.14.12.3 If an owner objects to a valuation made by the valuer, the owner may give notice to the local government requesting a review of the amount of the value, at the owner's expense, within 28 days after being informed of the value.

6.14.12.4 If the Valuer does not change the Value of the land to a figure acceptable to the Owner, the Value is to be determined—

- (a) by any method agreed between the local government and the Owner; or
- (b) if the local government and the Owner cannot agree, the Owner may apply to the State Administrative Tribunal for a review of the matter under part 14 of the *Planning and Development Act 2005*.

#### 6.14.13 Liability for Cost Contributions

6.14.13.1 An Owner must make a cost contribution in accordance with the applicable development contribution plan and the provisions of clause 6.14.

6.14.13.2 An Owner's liability to pay the owner's cost contribution to the local government arises on the earlier of—

- (a) the Western Australian Planning Commission endorsing its approval on the diagram or plan of survey of the subdivision of the owner's land within the development contribution area;
- (b) the commencement of any development on the owner's land within the development contribution area;
- (c) the time of applying to the local government or WAPC for any development on the owner's land within the development contribution area or—
- (d) at the expiry of the development contribution plan in accordance with clause 6.14.8

6.14.13.3 Notwithstanding clause 6.14.13.2, an owner's liability to pay the Owner's cost contribution does not arise if the owner commences development of the first single house, outbuildings associated with that first single house or a boundary fence on an existing lot which has not been subdivided the gazettal of the development plan.

#### 6.14.14 Payment of Cost Contribution

6.14.14.1 The Owner, with the agreement of the local government, is to pay the Owner's Cost Contribution by—

- (a) cheque or cash;
- (b) transferring to the local government or a public authority land in satisfaction of the cost contribution;
- (c) the provision of physical infrastructure;
- (d) some other method acceptable to the local government; or
- (e) any combination of these methods.

6.14.14.2 The owner, with the agreement of the local government, may pay the owner's cost contribution in a lump sum, by installments or in such other manner acceptable to the local government.

6.14.14.3 Payment by an owner of the cost contribution, including a cost contribution based on estimated costs, constitutes full and final discharge of the Owner's liability under the development contribution plan.

#### 6.14.15 Charge on land

6.14.15.1 The amount of any cost contribution for which an owner is liable under clause 6.14.13, but has not paid, is a charge on the owner's land to which the cost contribution relates, and the local government may lodge a caveat, at the Owner's expense, against the owner's title to that land.

6.14.15.2 The local government, at the owner's expense and subject to such other conditions as the local government thinks fit, is to withdraw a caveat lodged under clause 6.14.15.1 to permit a dealing and may then re-lodge the caveat to prevent further dealings.

6.14.15.3 If the Cost Contribution is paid in full, and if requested to do so by the Owner, the local government, at the expense of the Owner, is to withdraw any caveat lodged under clause 6.14.15.

#### 6.14.16 Administration of Funds

6.14.16.1 The local government is to establish and maintain a reserve account in accordance with the *Local Government Act 1995* for each development contribution area into which cost contributions for that development contribution area will be credited and from which all payments for the infrastructure costs and administrative costs within that development contribution area will be paid. The purpose of such a reserve account or the use of money in such a reserve account is limited to the application of funds for that development contribution area.

6.14.16.2 Interest earned on cost contributions credited to a reserve account in accordance with clause 6.14.16.1 is to be applied in the development contribution area to which the reserve account relates.

6.14.16.3 The local government is to publish an audited annual statement of accounts for that development contribution area as soon as practicable after the audited annual statement of accounts becomes available.

#### 6.14.17 Shortfall or Excess in Cost Contributions

6.14.17.1 If there is a shortfall in the total of cost contributions when all cost contributions have been made or accounted for in a particular development contribution area, the local government may—

- (a) make good the shortfall;
- (b) enter into agreements with Owners to fund the shortfall; or
- (c) raise loans or borrow from a financial institution,

but nothing in paragraph 6.14.17.1(a) restricts the right or power of the local government to impose a differential rate to a specified Development Contribution Area in that regard.

6.14.17.2 If there is an excess in funds available to the development contribution area when all cost contributions have been made or accounted for in a particular development contribution area, the local government is to apply the excess funds for the provision of additional facilities or or improvements in that Development Contribution Area.

#### 6.14.18 Powers of the local government

The local government in implementing the Development Contribution Plan has the power to—

- (a) acquire any land or buildings within the Scheme area under the provisions of the Planning and Development Act; and
- (b) deal with or dispose of any land which it has acquired under the provisions of 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.

#### 6.14.19 Arbitration

Subject to clauses 6.14.12.4, any dispute between an owner and the local government in connection with the cost contribution required to be made by an owner is to be resolved by arbitration in accordance with the *Commercial Arbitration Act 1985*.

### 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 Shire of Esperance Municipal Heritage 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 A copy of the Heritage List, 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.

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 available for public inspection during business hours at the offices of the local government.

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—
    - (a) the erection, placement and display of any advertisements and the use of land or buildings for that purpose;

- (b) any physical alteration of land including the erection or alteration of a building or structure which would have an effect on the amenity of the locality;
- (c) any excavation of land undertaken independently of the erection or alteration of a building or structure which in itself would constitute development;
- (d) the provision of infrastructure and activities by a telecommunications carrier except for low impact facilities as defined in the *Low Impact Facilities Declaration 1997*.

## 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 the local government—

- (a) the carrying out of any building or work which affects only the interior of a building and which does not materially affect the external appearance or the function 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 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;
- (c) a home office;
 

*Note: See definition for home office in Schedule 1.*
- (d) The use of land for Agriculture—Extensive purposes, the erection of windmills and the construction of water tanks in the Agriculture General zone.
- (e) farm buildings in the Rural Smallholdings and Agriculture—General Zones setback no less than 20 metres from any side boundary and 100 metres from any highway;
 

*Note: See definition for farm building in Schedule 1.*
- (f) keeping of horses and stables on lots greater than 4 ha at a stocking rate of 1 horse per 2 ha provided that the land is planted to perennial pasture and zoned Rural Residential, Rural Smallholdings or Agriculture—General and located outside of any Special Control Area or groundwater reserve protection area;
- (g) any works or occasional use which are temporary and in existence for less than 48 hours or such longer time as the local government agrees;
- (h) below ground swimming pools less than 0.5 metres above natural ground level;
- (i) rainwater tanks or pergolas not exceeding 10m<sup>2</sup> and 2.1 metres in height located behind the front of a dwelling, screened from public view, with setbacks and cumulative total floor area in accordance with Scheme requirements;
- (j) residential outbuildings not exceeding 10% of site area or 100m<sup>2</sup> whichever is less with a maximum wall height of 3.0m and a ridge height of no more than 4.0m, provided that they meet the reflective materials policy with setbacks and cumulative total floor area in accordance with Scheme requirements;
- (k) one satellite dish with a diameter of less than 1.2 metres;
- (l) street trading and outdoor eating facilities on public places in accordance with the local laws on trading in thoroughfares and public places;
- (m) one flagpole not exceeding 6 metres in height with the flags not used for commercial advertising;
- (n) rainwater tanks in the Rural Residential zone and the Rural Smallholdings zone which meet the reflective materials policy and are located within an approved building envelope, or where no building envelope exists, are set back no less than 20 metres from any lot boundary;
- (o) rainwater tanks on residential R2 and R2.5 dwelling sites located behind the front of a dwelling and set back in accordance with the Special Provisions of the Scheme (if any) and the Acceptable Development standards for outbuildings provided that they meet the reflective materials policy, the side setbacks, open space and cumulative total for outbuildings;
- (p) any retaining wall less than 500mm high constructed of masonry materials located to the rear of a building associated with the primary use of the site; and
- (q) replacement of an existing retaining wall less than 900mm with new masonry materials provided that there is no alteration of ground levels.

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

## 8.3 Amending or Revoking a Planning Approval

8.3.1 The local government may, on written application from the owner of land in respect of which planning approval has been granted, revoke 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 3.3;
- (b) commencement of any form of residential development, including a single house, notwithstanding it is a 'P' use in clause 4.3.2;
- (c) commencement of a 'P' use which does not comply with all relevant development standards and requirements of the Scheme as referred to in clause 4.3.2;
- (d) commencement of a 'D' use or an 'A' use as referred to in clause 4.3.2;
- (e) commencement of a use not listed in the Zoning Table under clause 4.4.2(b);
- (f) alteration or extension of a non-conforming use under clause 4.9;
- (g) a change of a non-conforming use under clause 4.9;
- (h) continuation of a non-conforming use under clause 4.12;
- (i) variation of a site or development requirement under Part 5;
- (j) commencement of development under clause 8.1;
- (k) continuation of development already commenced or carried out under clause 8.4;
- (l) a subsequent planning approval pursuant to an approval under clause 10.8.1; and
- (m) the erection, placement or display of an advertisement,

is, subject to clause 9.1.2, to be made in the form prescribed in Schedule 10 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 11.

#### 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; and
- (b) a detailed schedule of all finishes, including materials and colours of the proposed development and, unless the local government exempts the applicant from the requirement or any part of it, the finishes of the existing developments on the subject lot and on each lot immediately adjoining the subject lot.

### 9.4 Advertising of applications

9.4.1 Where an application 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; or
- (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 12 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.

*Note: Development by a public authority is exempt under the provisions of S6 of the Planning and Development Act 2005. Under S6, the public authority is required to consult with the local government and, so far as is reasonably possible, undertake the development in accordance with the design and intent of the Scheme.*

### 10.2 Matters to be Considered by the 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;
- (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 Local Planning Strategy adopted by the local government and endorsed by the Commission;
- (d) any approved Statement of Planning Policy (SPP) of the Commission;
- (e) any approved Environmental Protection Policy (EPP) under the Environmental Protection Act 1986;
- (f) any relevant policy or strategy of the Commission and any relevant policy adopted by the Government of the State;

- (g) any Local Planning Policy adopted by the local government under clause 2.4, any heritage policy statement for a designated Heritage Area adopted under clause 7.2.2, and any other plan or guideline adopted by the local government under the Scheme;
- (h) in the case of land reserved under the Scheme, the ultimate purpose intended for the reserve;
- (i) 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;
- (j) the compatibility of a use or development with its setting;
- (k) any social issues that have an effect on the amenity of the locality;
- (l) the cultural significance of any place or area affected by the development;
- (m) 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;
- (n) 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;
- (o) the preservation of the amenity of the locality;
- (p) 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 location, height, bulk, scale, orientation and appearance of the proposal;
- (q) 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;
- (r) 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;
- (s) whether public transport services are necessary and, if so, whether they are available and adequate for the proposal;
- (t) future road widening identified on the Scheme Map but land has yet to be acquired;
- (u) whether public utility services are available and adequate for the proposal;
- (v) whether adequate provision has been made for access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);
- (w) whether adequate provision has been made for access by disabled persons;
- (x) 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;
- (y) whether the proposal is likely to cause soil erosion or land degradation;
- (z) the potential loss of any community service or benefit resulting from the planning approval;
  - (aa) Aboriginal Heritage Sites and Places;
  - (bb) Whether the potential development may impact or have a potential impact upon the Esperance Water Reserve Water Source Protection Plan prepared by the Department of Water;
  - (cc) any comments or relevant submissions received on the application;
  - (dd) the comments or submissions received from any authority consulted under clause 10.1.1; and
  - (ee) 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 10 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—Planning Application

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 apply for review to the State Administrative Tribunal in accordance with Part 14 of the Planning and Development Act 2005 (as amended).

## 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 Act; and
- (c) deal with or dispose of any land which it has acquired under the provisions of the Scheme or the 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 determination of the local government, 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 apply for a review of the determination of the local government to the State Administrative Tribunal in accordance with Part V of the Act.

*Note: For the purposes of clause 11.2 'the advertiser' shall be interpreted as anyone or any group comprised of the landowner, occupier, or licensee.*

### 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 Chief Executive Officer (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 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 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.

- Note:*
1. *A claim for compensation under section 173 of the Act may be made in accordance with Form No. 7 in Appendix A of the Town Planning Regulations 1967.*
  2. *Section 175 of the Act relates to situations where compensation is not recoverable.*

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.

### 11.6 Purchase or Taking of Land

11.6.1 If, where compensation for injurious affection is claimed under the 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 191 of the Act empowers the local government to purchase or compulsorily acquire land comprised in a scheme.*

### 11.7 Notice for removal of certain buildings

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

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

*Notes—*

*Section 214, 215, 216, 217, 218 and 224 of the Act pertain to contravention of the Scheme and prescribe the penalties applicable to offences.*

*The penalties for committing an offence are set down in section 223 of the Act.*

*If it is necessary for the local government to remove the development and restore the land as nearly as practicable to its previous condition, the local government may recover expenses under section 215 of the Act in a court of competent jurisdiction.*

## SCHEDULE 1

### DICTIONARY OF DEFINED WORDS AND EXPRESSIONS

[cl. 1.7]

In the Scheme—

“**abattoir**” means premises used for the slaughter of animals for human consumption or for sale as pet meat and the treatment of carcasses, offal and by-products;

“**Act**” means the *Planning and Development Act, 2005* (as amended);  
*also called: PD Act, P&D Act, Planning Act*

“**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, 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;

“**aged persons dwelling**” has the same meaning given to to ‘aged or dependent person’s dwelling’ defined in the Residential Design Codes;

“**aged or dependent person**” has the same meaning as 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;

“**airfield**” means any premises used for purposes relating to aircraft landing, take-off and maintenance and does not include a private airstrip incidental to farming operations;

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

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

“**amusement machine**” means a machine device or games table, mechanically or electronically powered, that releases or make available balls, discs or other items for projection in or on the machine by the use of springs, flippers, paddles or cues, or electronic devices which are controlled or partly controlled by computer associated with electronic screen(s) operated by one or more players for amusement or recreation;



- “**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**” has the same meaning as in the Residential Design Codes.
- “**animal establishment**” means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include animal husbandry—intensive or veterinary centre;
- “**animal husbandry—intensive**” means premises used for keeping, rearing or fattening of pigs, poultry (for either egg or meat production), rabbits (for either meat or fur production) and other livestock in feedlots;
- “**aquaculture**” means premises used for keeping, breeding, hatching or culturing of fish for which a license is required under the provisions of the Fish Resources Act;
- “**arts and crafts studio**” means any premises used to manufacture, display, and sell, works of art or 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;
- “**Boat Building**” means any land, structure or navigable water used for the building, repair or maintenance of marine craft of any kind;
- “**builder’s storage yard**” means premises used for the storage of building material, pipes or other similar items related to any trade, and may include manufacture, assembly and dismantling processes incidental to the predominant use;
- “**Building Code of Australia**” means the latest edition of the *Building Code of Australia* as published and amended from time to time by, or on behalf of, the Australian Building Codes Board, but not including explanatory information published with that Code;
- Note: Since 1 May 2004 the BCA has been published annually (i.e. BCA 2004, BCA 2005). A Glossary of Building Terms has also been published jointly by the National Committee on Rationalised Building (NCRB) and Standards Australia as HB50-2004. These documents and their successors are available electronically on [www.standards.org.au](http://www.standards.org.au). If the Scheme and the Codes do not provide sufficient clarification of the meaning of words the Glossary of Building Terms will be used in preference to common or dictionary usage.*
- “**building envelope**” means an area of land within a lot marked on a plan approved by the responsible authority within which all buildings and effluent disposal facilities on the lot must be contained;
- “**building exclusion area**” means an area of land within a lot marked on a plan approved by the responsible authority within which there may be no clearing or development;
- “**building, transportable**” means a building which is/was manufactured in a factory and transported to the building site, for erection on previously constructed footings but does not include a park home, donga or a relocated building that was not constructed initially for that purpose;
- “**bulk storage facility**” means land or buildings used for the bulk storage of goods such as (but not limited to) minerals, woodchips, grain, fuel and fertilisers;
- “**cabin**” means an individual self-contained unit similar to chalet but may comprise only one room and is designed for short stay guests, forming part of a tourism facility and where occupation by any person is limited to a maximum of three months in any 12-month period;
- “**camping area**” means land used for the lodging of persons in tents or other temporary shelter;
- “**camping ground**” has the same meaning as in the *Caravan Parks and Camping Grounds Act 1995*;
- “**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, plant or recreation facilities and occupied by a supervisor of those premises;
- “**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 or hire;
- “**cellar door sales**” is land or buildings used for the display and sales of wine and wine products grown or produced in the locality;
- “**chalet**” means an individual self-contained premises usually comprising cooking facilities, ensuite, living area and one or more bedrooms designed to accommodate short stay guests, forming part of a tourist facility and where occupation by any person is limited to a maximum of three months in any twelve month period;
- “**chalet park**” means a site occupied by buildings or units which, although constructed in the nature of residential units, are not for occupation as permanent dwellings and are set aside exclusively for occupation on a temporary basis principally for vacation use but also for short stay and overnight accommodation;
- “**child care premises**” has the same meaning as in the *Community Services (Child Care) Regulations 1988*;

- “**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;
- “**commercial vehicle**” means a vehicle whether licensed or not which is used or designed for use for business, trade or commercial purposes or in conjunction with a business, trade or profession and without limiting the generality of the foregoing includes any utility, van, truck, trailer, tractor and any attachment to any of them or any article designed to be attached to any of them, and any bus or any earthmoving machine whether self propelled or not. The term shall not include a vehicle designed for the use as a passenger car or any trailer or other thing most commonly used as an attachment to a passenger car, or a van, utility or light truck which is rated by the manufacturer as being suitable to car loads of not more than 1.5 tonnes.
- “**community purpose**” means the use of premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organisations involved in activities for community benefit;
- “**conservation**” has the same meaning as in the *Heritage of Western Australia Act 1990*; See also: “environment”
- “**consulting rooms**” means premises used by no more than two (2) health consultants 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);
- “**convenience store**” means premises—
- 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;
  - operated during hours which include, but may extend beyond, normal trading hours;
  - which provide associated parking; and
  - the floor area of which does not exceed 200 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;
- “**cultural heritage significance**” has the same meaning as in the *Heritage of Western Australia Act 1990*;
- “**development**” has the same meaning as in the Planning and Development Act 2005;
- “**dry cleaning establishment**” means specified offensive trade premises under Part 9 of the Health Local Laws;
- “**dwelling**” has the same meaning as in the Residential Design Codes.
- “**eco-tourist facility**” means a form of tourist accommodation that is designed, constructed, operated and of a scale so as not to destroy the natural resources and qualities that attract tourists to the location. The development should utilise sustainable power, have a low energy demand through incorporation of passive solar design, provide for low water consumption, ecologically sensitive waste processing and disposal with no pollutant product;
- “**educational establishment**” means premises used for the purposes of education and includes a school, tertiary institution, business college, academy or other educational centre;
- “**exhibition centre**” means premises used for the display, or display and sale, of materials of an artistic, cultural or historical nature, and includes a museum or art gallery;
- “**family day care**” means premises used to provide family day care within the meaning of the *Community Services (Child Care) Regulations 1988*;
- “**farm building**” means a building of a permanent nature, other than a building used or intended to be used for residential purposes, that is on land used for agricultural purposes;
- for storage of agricultural products and produce; and/or
  - for the maintenance of farm machinery used by the occupier of the site;
- but does not include Agriculture—Intensive, Industry—Rural, Industry—Service;
- “**farm stay**” means a residential building, bed and breakfast, chalet or similar used to accommodate short-stay guests on a farm or rural property and where occupation by any person is limited to a maximum of three months in any 12 month period;
- “**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;
- “**fish processing**” means premises that are deemed offensive trades under the Health Local Laws and would require a fish processor’s license under the Fish Resources Act;
- “**floodway**” means a river, stream or drainage channel and a portion of the floodplain which forms the main flow path for floodwaters once the main channel has overflowed and in which no development or filling should occur;
- “**flood fringe**” means the area of the floodplain outside of the floodway that is affected by flooding but where development could be permitted (from a flooding perspective only) provided appropriate measures are taken as such areas are generally covered by still or very slow moving waters during a 100-year average recurrence interval flood;

- “floodplain”** means the extent of the land near a wetland, waterway or major drainage channel that may be flooded;
- “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—
- residential purposes, has the same meaning as in the Residential Planning Codes; and
  - 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;
- “frontage, effective”** means the width of a lot at the setback distance from the street alignment at which buildings may be constructed, and shall be calculated as follows:—
- where the side boundaries of a lot are parallel to one another, the length of a line drawn at right angles to such boundaries;
  - where the side boundaries of a lot are not parallel to one another, the length of a line drawn parallel to the street alignment and intersecting the side boundaries at the setback distance prescribed in the Scheme or the Codes prior to making allowances for any variations which may subsequently be permitted;
  - where a lot fronts more than one street, is a battleaxe lot, is of irregular proportions or on a steep grade the frontage may be determined by the local government and may apply to more than one street;
- “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 chapel”** means a building or part of a building where funeral services are performed, and may include facilities for the viewing of bodies which have been prepared for burial, but does not include the preparation or storage of bodies;
- “funeral parlour”** means premises used to prepare and store bodies for burial or cremation;
- “garden centre”** means premises used for the sale and display of garden products, including garden ornaments, paving materials, plants, seeds, soils, fertilisers, pesticides, herbicides domestic garden implements and motorized implements and the display but not manufacture of pre-fabricated garden buildings;
- “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;
- “grain depot”** means the use of land for the receipt, storage, treatment and dispatch of grain;
- “gross floor area (GFA)”** means in relation to a building, the area of all floors measured from the outside faces of external walls or the building alignment, including shop fronts, basements, mezzanines, ablutions, stairways and storage areas;
- “grouped dwelling”** has the same meaning as in the Residential Design Codes.
- “guesthouse”** means integrated premises for short-stay guests comprising serviced accommodation units and on-site tourist facilities such as reception, centralised dining, and management and where occupation by any person is limited to a maximum of three months in any 12 month period;
- “health farm”** means a health facility at which or in conjunction with which accommodation is provided for patrons or clients;
- “height”** when used in relation to a building that is used for—
- residential purposes, has the same meaning as in the Residential Design Codes; or
  - purposes other than residential purposes, means the maximum vertical distance between the ground level and the finished roof height directly above;
- “holiday cottages”** means two or more detached dwellings on one lot let for holiday purposes, none of which is occupied by the same tenant for a continuous period of more than four months;
- “holiday home”** means a residential building used to provide accommodation for short-stay guests, rather than permanent residency, and excluding those uses more specifically defined elsewhere;
- “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—
- does not employ more than 2 people not members of the occupier’s household;
  - will not cause injury to or adversely affect the amenity of the neighbourhood;
  - does not occupy an area greater than 50 square metres;
  - does not involve the retail sale, display or hire of goods of any nature;
  - 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
  - does not involve the use of an essential service of greater capacity than normally required in the zone;

**“home business—rural”** 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 200 square metres;
- (d) does not involve the retail sale, display or hire of goods of any nature;
- (e) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of more than 3 vehicles, with vehicles not being more than 25 tonnes gross 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 associated outbuilding) 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;

**“hostel”** means lodging house which is not open to the public generally, but is reserved for use solely by students and staff of educational establishments, members of societies, institutes or associations;

**“hotel”** means premises providing accommodation the subject of a hotel licence under the *Liquor Licensing Act 1988* (as amended) and may include a betting agency, but does not include a tavern or motel;

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

**“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 winning, processing or treatment of minerals;
- (c) the making, altering, repairing, or ornamentation, painting, finishing, cleaning, packing or canning or adapting for sale, or the breaking up or demolition of any article or part of an article;
- (d) the generation of electricity or the production of gas;
- (e) the associated work of administration or accounting; or
- (f) the provision of amenities for employees,

incidental to any of those industrial operations but does not include a grain depot;

**“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—

- (a) the extraction of sand, gravel, clay, turf, soil, rock, and stone (but not including radioactive minerals, unless incidental to the mining of non-radioactive minerals), or similar substances from the land and also the storage, treatment or manufacture of products from those materials on the land from which those materials are extracted or on land adjacent to thereto; or
- (b) the production of salt by the evaporation of sea water;

but does not include industry—mining.

*See also: Shire of Esperance Extractive Industries Local Laws 2001*

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

**“industry—hazardous”** means an industry which by reason of the processes involved or the method or manufacture or the nature of the materials used or produced requires isolation from other development and land uses, but does not include a nuclear activity;

**“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 which—

- (a) is specifically listed as an *offensive trade* under Schedule 2 of the *Health Act 1911*,
- (b) excluding exempt cleaning establishments and exempt laundries, or
- (c) is specifically listed as a prescribed premises under Schedule 1 of the *Environmental Protection Regulations 1987*, excluding those industries encompassed by the definition of *agriculture—intensive, animal husbandry—intensive* or *industry—rural*.

**“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;

but does not include a grain depot.

**“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;

**“kennels and/or cattery”** means any premises used for the boarding, breeding or sale of dogs or cats where such premises are registered or required to be registered by the local government in accordance with the Dogs Local Law and/or the Health Local Laws;

**“laundromat”** means a building open to the public in which coin-operated or other washing machines, with or without provision for drying clothes, are available for use;

**“local government”** means government under the LG Act and for the purposes of this Scheme means the Shire of Esperance;

**“local laws”** means the Shire of Esperance Local Laws adopted in accordance with the LG Act;

**“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* as amended from time to time;

**“lodge”** see “guesthouse”

**“lot”** has the same meaning as in the Planning and Development Act but does not include a strata or survey strata lot;

**“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;

**“marina”** means premises at which berths or pens, and fuelling, servicing, repairing, storage (including storage on land) and other facilities for boats are provided, with or without the sale of boating gear and equipment, and includes all jetties, piers, embankments, quays and moorings and all offices and storerooms used in connection with the marina;

**“marine filling station”** means premises used for the storage and supply of liquid fuels and lubricants for marine craft;

**“market”** means premises used for the display and sale of goods from stalls by independent vendors;

**“medical centre”** means premises, other than a hospital, used by two (2) 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);

**“minerals”** has the same meaning as in the *Mining Act 1978*;

“**motel**” means premises used to accommodate patrons in a manner similar to a hotel but in which specific provision is made for the accommodation of patrons with motor vehicles and may comprise premises licensed under the *Liquor Licensing Act 1988*;

“**motor vehicle, boat or caravan sales premises**” means premises used for the display, sale or hire of new or second hand, cars, trucks, motorcycles, caravans, boats, and agricultural and / or earthmoving machinery or any one or more of them and may include the warranty servicing of motor vehicles sold or hired from the site, but does not include motor vehicle repair or wrecking;

“**motor vehicle repair**” means premises used for or in connection with—

- (a) electrical and mechanical repairs, or overhauls, to vehicles; or
- (b) repairs to tyres,

but does not include premises used for recapping or retreading of tyres, panel beating, spray painting or chassis reshaping;

“**motor vehicle repair—major**” means premises used for, and in conjunction with, the mechanical repair and overhaul of motor vehicles including recapping and retreading of tyres, panel beating, spray painting and chassis reshaping;

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

“**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;

“**night club**” means premises—

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

“**non-conforming use**” has the same meaning as it has in section 172 of the Planning and Development Act;

“**nursing home**” means premises in which persons receive medical and domestic care during a long illness or infirmity;

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

“**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;

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

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

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

“**Planning and Development Act**” means the Planning and Development Act 2005 (as amended);

“**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;

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

“**plot ratio (non residential)**” means the ratio of the gross total of all floors of buildings to the area of land within the site boundaries including the area of any walls but not including the areas of lift shafts, stairs or stair landings common to two or more units, toilets and amenities, external wall thicknesses, plant rooms and floor space used for the parking of wheeled vehicles below natural ground level including access to and from that space;

“**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 and/or buildings;
- “**produce store**” means premises wherein fertilizers and grain are displayed and offered for sale;
- “**radio and tv installation**” means land and buildings used for the transmission, relay and reception of signals and pictures, both commercial and domestic, but does not include domestic and radio and television receivers.
- “**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 land used for a public park, public gardens, foreshore reserves, playground or other grounds for recreation which are normally open to the public without charge;
- “**residential building**” has the same meaning as in the Residential Design Codes;
- “**Residential Planning Codes**” means the Residential Planning Codes in Appendix 2 to the Western Australian Planning Commission Statement of Planning Policy No. 1, as amended from time to time;
- “**restaurant**” means premises where the predominant use is the sale and consumption of food and drinks on the premises and where seating is provided for patrons, and includes a restaurant licensed under the *Liquor Licensing Act 1988*;
- “**restricted premises**” means premises used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of—
- (a) publications that are classified as restricted under the *Censorship 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;
- “**retail**” means the sale or hire of goods or services to the public;
- “**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, agriculture—intensive, animal husbandry—intensive or veterinary centre;
- “**salvage yard**” means land or building used for the storage and sale of materials salvaged from the erection, demolition, dismantling or renovating of, or fire or flood damage to structures including (but without limiting the generality of the foregoing) buildings, machinery, vehicle and boats.
- “**sawmill**” means premises where logs or large pieces of timber are sawn but does not include a joinery works;
- “**service station**” means premises used for—
- (a) the retail sale of petroleum products, motor vehicle accessories and goods of an incidental/convenience retail nature; and
  - (b) the carrying out of greasing, tyre repairs and minor mechanical repairs to motor vehicles,
- but does not include premises used for a transport depot, panel beating, spray painting, major repairs or wrecking;
- “**serviced apartment**” means a complex where all units or apartments provide for self-contained accommodation for short stay guests and where integrated reception and recreation facilities may be provided and where occupation by any person is limited to a maximum of three months in any 12-month period;
- “**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, supermarket, convenience store or fast food outlet;
- “**short stay accommodation**” and “**tourism development**” mean a building, or group of buildings forming a complex, designed for the accommodation of short stay guests and which provides on-site facilities for the convenience of guests and for management of the development, where occupation by any person is limited to a maximum of three months in any 12 month period;
- “**showroom**” means premises used to display, sell by wholesale or retail, or hire, automotive spare parts, camping equipment, carpets, electrical light fittings, equestrian supplies, large electrical appliances, floor coverings, furnishings, furniture, hardware, household appliances, party supplies, swimming pools, trade supplies, or goods of a bulky nature which require a large area for handling, storage or display or easy and direct vehicular access to enable the goods to be collected by customers after sale, but does not include the sale by retail of footwear, foodstuffs, liquor or beverages, items of clothing or apparel, magazines, medicinal or

pharmaceutical products, newspapers, books or paper products, china, glassware, items of personal adornment, and generally items of a cash and carry nature related to daily household and recreation needs and consumption.

“**single bedroom dwelling**” has the same meaning as in the Residential Design Codes.

“**stables**” means premises or land or both where horses are kept, bred and/or trained;

“**stock—holding and sales yard**” means any premises used for holding and/or sale of animal stock;

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

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

“**supermarket**” a business for the retail sale of household goods where the customer collects the proposed purchase from open shelves, payment being made at a central check point but does not include a convenience store, shop or a showroom;

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

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

“**tourist resort**” means an integrated, purpose built luxury or experimental premises for short stay guests comprising accommodation units and on-site tourism facilities such as reception, restaurant and leisure facilities like swimming pool, gymnasium, tennis courts, and where occupation is limited to a maximum of three months in any 12 month period;

“**transient workforce accommodation**” means premises used for the temporary accommodation of transient workers;

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

“**transport depot**” means premises for the parking or garaging of two or more commercial vehicles used or designed to be used commercially for carrying goods, livestock or persons and includes the transfer of goods from one such vehicle to another, and the maintenance and repair of the said vehicles but does not include farm vehicles owned and operated by the occupiers of premises in the Agriculture—General Zone and Rural Smallholdings Zone used for primary production;

“**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, but does not include kennels and/or cattery;

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

“**waterway**” consists of—

- (a) river and stream systems including permanent, seasonal and ephemeral drainage lines
- (b) wetlands connected to the stream systems (that is, those wetlands fed mainly by rivers and streams)
- (c) lakes, estuaries or inlets at the base of these systems; and
- (d) depending on the context, may include the floodplains of the above;

“**wetland**” means an area of seasonally, intermittently or permanently waterlogged or inundated land, whether natural or otherwise, and includes a lake, swamp, marsh, spring, dampland, tidal flat or estuary;

“**wetland buffer**” means a designated area adjoining a wetland that is managed to protect the wetland’s ecosystem;

“**wetland management category**” may be assigned to a wetland based on the evaluation of its attributes, functions and values to provide guidance on the nature of management and protection the wetland should be afforded such as *conservation*, *resource enhancement* and *multiple use*.

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

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

“**woodyard**” means premises on which wood is stored, sawn or cut for use as domestic firewood and on which no wood is stored, sawn or cut for any other purpose; (see ‘sawmill’)

“**wrecking premises**” means premises used for the storage, breaking up or dismantle of motor vehicles, agricultural and earthmoving equipment and includes the sale of secondhand parts from such vehicles and equipment;

“**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;



SCHEDULE 2  
ADDITIONAL USES

[cl. 4.5]

No.	Location	Base Zone	Additional Use(s)	Development Standards/Conditions
A1	Esperance Loc East 22, Lot 20, Daw Drive to Kent Place, Bandy Creek	Rural Residential	Restaurant	Trade access via Kent Place is denied.
A2	Lots 247 & 248 Daphne Street and Lot 336 Nugent Street, Castletown	Residential	Guesthouse	As determined by the local government.
A3	Lot 83 cnr Fisheries Road, Windabout Way and Lalor Drive, Windabout	Rural Residential	Place of Worship	<ol style="list-style-type: none"> <li>1. Maximum gross floor area of chapel—180m<sup>2</sup>.</li> <li>2. Maximum number of worshippers—75.</li> <li>3. The Chapel is to be located to the satisfaction of the local government.</li> <li>4. Minimum on-site parking requirement—20 spaces.</li> <li>5. No access to Fisheries Road.</li> <li>6. The base of any septic/leach drain system is to be installed a minimum of 2 metres above the highest known ground water level. If this cannot be achieved the provision of a high performance phosphorus retaining effluent disposal system shall be mandatory.</li> </ol>
A4	Lot 82 Coolgardie-Esperance Highway, Grass Patch	Country Towns <i>Note: was Shops and Offices under TPS 22.</i>	Mechanical repair of vehicles, plant, and equipment as an "AA" use under clause 4.3.2.	<ol style="list-style-type: none"> <li>1. The local government may approve a reduction in the front setback to zero where it is consistent with the setback for building/s fronting the Coolgardie-Esperance Highway.</li> <li>2. Mechanical repair of vehicles, plant, and equipment does not permit the recapping or retreading of tyres, panel beating, spray painting, or chassis reshaping.</li> </ol>
A5	Shark Lake Industrial Park Lot 6 on Deposited Plan 44884 Shark Lake Road and Coolgardie-Esperance Highway, Monjingup	Industrial—General	<ul style="list-style-type: none"> <li>• Bulk Storage Facility</li> <li>• Motor Vehicle wrecking facilities</li> </ul>	The local government shall determine applications for planning approval and make recommendations to the Commission on applications for subdivision in accordance with the adopted Outline Development Plan.
A6	Hellfire Art Gallery Lot 2 Tyrrell Rd, Merivale	Agriculture—General	Art Gallery, Gardens, Tea House, Function Centre, Exhibition Centre and small shop	No additional development shall be permitted or undertaken unless planning approval has been granted by the local government having regard for site limitations pertaining to parking and on-site effluent disposal.

No.	Location	Base Zone	Additional Use(s)	Development Standards/Conditions
A7	Duke of Orleans Bay Caravan Park Lot 1 and 5 on Deposited Plan 184414 Wharton Road, Condingup	Tourist	Shop	The Shop is not to have a net Floor Area in excess of 160m <sup>2</sup> .

SCHEDULE 3  
RESTRICTED USES

[cl. 4.6]

No.	Description of land	Base Zone	Restricted use	Conditions

SCHEDULE 4  
SPECIAL USE ZONES

[cl. 4.7.1]

No.	Description of land	Special use	Conditions
<i>SU1</i>	Part former Wireless Station Site being Lot 1 on Deposited Plan 40225	Historic Wireless Hill OTC Site	<ol style="list-style-type: none"> <li>1. The 3000m<sup>2</sup> site to be maintained to protect its cultural heritage significance as a former OTC site.</li> <li>2. Future use of the site is to demonstrate due regard to its heritage significance and the restrictive covenant on its title. Potential uses might be conversion to a dwelling or low-key tourism accommodation, arts and crafts associated with a tea room.</li> <li>3. Restrictive covenant to be retained on title to ensure that there is no erection, demolition or alteration of any part of the existing buildings nor any clearing of land or advertising signs placed on Lot 1 without prior written approval of the Shire of Esperance. This does not preclude a new restrictive covenant being prepared to reflect more appropriate arrangements for development.</li> </ol>
<i>SU2</i>	<u>Shark Lake Abattoirs</u> Lot 21 Coolgardie— Esperance Highway, Myrup	Local abattoir and associated uses	Site may continue to be used as a local abattoir and may include associated stockholding yards subject to continuing approvals as required by the Department of Environment and Conservation and the local government.
<i>SU3</i>	Portion Lot 322 Orleans Bay Road, Condingup	(a) Tourist Site Within the tourist site the following uses may be permitted at Council's discretion— <ul style="list-style-type: none"> <li>• Guesthouse</li> <li>• Chalet</li> <li>• Restaurant</li> <li>• Dwelling (Managers Residence)</li> <li>• Private Recreation</li> </ul>	(a) The objectives of the zone are— <ol style="list-style-type: none"> <li>(i) To provide for high quality holiday accommodation to complement the Duke of Orleans Bay Caravan Park</li> <li>(ii) To ensure all development within the landscape blends in with the landscape and complements the Condingup townsite.</li> </ol> (b) (i) Development shall generally be in accordance with the concept plan dated April 2006, or any

No.	Description of land	Special use	Conditions
			<p>variation to that plan approved by Council and shall incorporate the following—</p> <ul style="list-style-type: none"> <li>• All Fire breaks between the tourist development and adjoining uses;</li> <li>• Any buffers required from the adjoining blue gum plantation;</li> <li>• If the development is to be staged, the identification of the lots to be developed in each stage.</li> </ul> <p>(i) All development shall be subject to Planning Approval/Consent.</p> <p>(ii) Only one dwelling may be permitted on the site. This dwelling is for the exclusive occupation of the manager of the tourist accommodation, their partner and dependents.</p> <p>(c) Provision of Infrastructure—</p> <p>(i) The disposal of liquid and/or solid wastes shall be carried out with an effluent disposal system approved by Council and the Health Department of Western Australia.</p> <p>(ii) A potable water supply shall be provided to the satisfaction of Council and in accordance with Clause 5.17 of the Scheme.</p> <p>(iii) Appropriate arrangements to be made with the electricity supply to upgrade electricity supply to three phase power.</p> <p>(d) Location of Buildings and Infrastructure—</p> <p>(i) All buildings shall be set back a minimum of 20 metres from Orleans bay Road and Wharton Bay Townsite Reserve unless otherwise determined by Council, in order to reflect current guidelines and codes of practice in relation to bush fire management and buffer setbacks from rural land uses.</p> <p>(e) Building Designs, Materials and Colour—</p> <p>(i) Dwellings, outbuildings and structures associated with the use of the land shall be designed and constructed of materials which allow them to blend into the landscape of the site</p> <p>(ii) No boundary fencing shall be constructed of fibre cement, metal sheeting or wooden picket unless otherwise determined by Council. Preferred fencing shall be of rural construction (post and strand).</p> <p>(iii) An overall landscape plan for the site shall be prepared to Council's satisfaction and implemented as a condition of planning approval/consent.</p>

No.	Description of land	Special use	Conditions
			<p>(f) Bush Fire Management Control</p> <p>(i) Subdivision and development are to be in accordance with the Fire Management Plan for the land, as endorsed by FESA and the Shire of Esperance and accords with the plan dated April 2007</p> <p>(g) Notification of Prospective Owners</p> <p>(i) Provision shall be made to Council's satisfaction to ensure prospective purchasers of land within Special Use zone SU3 are given a copy of these conditions prior to entering into an agreement to acquire any property.</p> <p>(ii) Memorials to be incorporated onto all titles advising land owners and their successors of the existing blue gum plantation on the adjoining land and that in future there may be other agricultural uses developed in the surrounding area and that the plantation or other uses may impact on the amenity of the tourist development.</p> <p>(h) Strata Titling—</p> <p>(i) Strata titling of the development shall be subject to a centralised management structure including the preparation of a management statement to the satisfaction of Council, which includes, but is not limited to the following requirements—</p> <ul style="list-style-type: none"> <li>• Provision for a full time manager residing on site;</li> <li>• On going management of common property, the fire management plan and potable water supply;</li> <li>• Implementation of the design guidelines;</li> <li>• Ongoing management of joint effluent disposal systems;</li> <li>• Staging of development to be coordinated with harvesting and lease arrangements relating to the blue gum plantation.</li> <li>• Binding of successive owners of tourism units and the tourism manager/operator;</li> <li>• Occupation of units is controlled by the resort operator and units can only be held out of the rental pool for the period required for maintenance; and</li> <li>• Strata plans are to be specified with a Section 6 restriction of use limiting occupation of tourism units to Tourism purposes with an occupation restriction of a maximum of three months in any twelve month period.</li> </ul>

No.	Description of land	Special use	Conditions
			Survey Strata subdivision will not be considered by the Western Australian Planning Commission until such time as the management statement is suitably prepared.
SU4	Myrup Fly-in Estate Lot 900 corner of Fisheries and Merivale Roads	<p>Within the Fly-in Estate the following uses may be permitted at Council's discretion—</p> <ul style="list-style-type: none"> <li>• Airfield</li> <li>• Club Premises</li> <li>• Educational Establishment</li> <li>• Fuel Depot</li> <li>• Holiday Cottages</li> <li>• Home Occupation</li> <li>• Private Recreation</li> <li>• Public Utilities</li> <li>• Telecommunications Infrastructure</li> <li>• Single House</li> </ul>	<p><b>1.0 Subdivision and Development Guide Plan</b></p> <p>1.1 Subdivision shall be generally in accordance with the Subdivision and Development Guide Plan adopted by Council and signed by the Chief Executive Officer.</p> <p>1.2 Minor variations to the subdivision design may be approved by Council and the Western Australian Planning Commission but further subdivision of the lots created shall not be permitted.</p> <p>1.3 Development shall generally be in accordance with the Subdivision and Development Guide Plan adopted by Council and signed by the Chief Executive Officer.</p> <p><b>2.0 Objective of the Zone</b></p> <p>2.1 To provide for an Airfield and aircraft related operations including a "Fly-in Estate" to provide for all aspects of flying including residential development alongside aircraft storage, student flying training, charter flying, scenic tour flying, flying for sport, gliding, ultra-lights, short term accommodation for flying patrons and small aircraft maintenance and repair associated with the land use and environmental management controls to protect the subject land and adjoining Mullet Lake Nature Reserve.</p> <p><b>3.0 Land Use</b></p> <p>3.1 Incidental activities which are consistent with the objective of this Special Use zone may be considered by Council.</p> <p>3.2 Any proposals which may have an impact on groundwater quality will be referred to the Department of Water for comment, prior to determination by Council.</p> <p><b>4.0 Location of Buildings and Structures</b></p> <p>4.1 Setbacks for buildings and structures on residential lots shall be as determined by the R5 code of the Residential Design Codes of Western Australia.</p> <p>4.2 All other setbacks shall be determined by Council in accordance with the Subdivision and Development Guide Plan.</p> <p>4.3 Notwithstanding the above, aircraft hangars may be approved with a nil setback on all lots adjacent to taxiways subject to compliance with the Building Code of Australia.</p>

No.	Description of land	Special use	Conditions
			<p>4.4 No development is permitted on land north east of Runway 32—14.</p> <p><b>5.0 Building Design, Materials and Colour</b></p> <p>5.1 Dwellings and outbuildings shall be designed and constructed of materials which complement the character of the area.</p> <p><b>6.0 Vegetation Protection and Revegetation</b></p> <p>6.1 No clearing of vegetation shall occur except for—</p> <ul style="list-style-type: none"> <li>• Clearing to comply with the requirements of the Bush Fires Act 1954 (as amended) and Fire Management Plan;</li> <li>• Clearing as may reasonable be required to construct an approved structure;</li> <li>• Trees which are dead, diseased or dangerous;</li> <li>• Clearing to gain vehicular access to an approved structure or any other clearing which may be approved by Council; and</li> <li>• Clearing to give effect to the adopted Subdivision and Development Guide Plan.</li> </ul> <p>6.2 Revegetation of the Fly-in Estate including residential lots with native species is encouraged subject to fire management requirements.</p> <p><b>7.0 Water Supply</b></p> <p>7.1 Each single house and any holiday accommodation shall be provided with a water tank with a minimum capacity of 120,000 litres.</p> <p><b>8.0 Effluent Disposal</b></p> <p>8.1 On site effluent disposal shall be the responsibility of the individual landowners.</p> <p>8.2 Council shall require the use of approved Alternative Aerobic Treatment Unit Systems (ATU's).</p> <p><b>9.0 Bush Fire Management</b></p> <p>9.1 A Fire Management Plan shall be prepared, prior to development or subdivision into survey strata lots, in consultation with and to the satisfaction of the Shire of Esperance, Quarry Road Local Bush Fire Brigade and Fire and Emergency Services Authority and other relevant bodies, as considered by the Local Government or Statutory Authorities. The Fire Management Plan shall be reviewed on an annual basis in consultation with the Shire of Esperance and Quarry Road Local Bush Fire Brigade. The Fire Management Plan shall include fire fighting measures to be implemented on site including the</p>

No.	Description of land	Special use	Conditions
			<p>provision of fire fighting equipment including water supply, fire breaks and annual fire fighting training with the local Bush Fire Brigade. The Shire of Esperance and Quarry Road Local Bushfire Brigade shall be provided with an up-to-date Fire Management Plan annually.</p> <p>9.2 The subdivision shall be designed in accordance with 'Planning for Bushfire Protection' prepared by FESA and WAPC.</p> <p>9.3 Council will require the Western Australian Planning Commission to impose conditions at the time of subdivision of the land into survey strata lots requiring the preparation and implementation of a Fire management Plan for the subject land, including but not limited to the provision of a reliable water supply for fire fighting purposes.</p> <p><b>10.0 Conditions of Subdivision</b></p> <p>10.1 Provision shall be made to Council's satisfaction to ensure that prospective purchasers and occupiers of land within SU5 are provided with a copy of these Special Use SU5 Provisions prior to entering into an agreement to acquire any property.</p> <p><b>11.0 Application for Development Approval</b></p> <p>11.1 All development within SU5 shall require Planning Approval.</p> <p>11.2 Where development involves the maintenance and repair of aircraft, Council may require as a condition of Planning Approval, the provision of appropriate grease and oil traps for the storage and offsite disposal of oils.</p> <p><b>12.0 Mosquito Nuisance</b></p> <p>12.1 Notification in the form of a memorial shall be registered against the Certificate of Title of all residential lots created within SU5 advising of the existence of a hazard or other factor affecting the use or enjoyment of the land. The memorial is to state as follows—</p> <p style="padding-left: 2em;">This lot is in close proximity to mosquito breeding areas. The mosquito species is known to carry Ross River Virus and other diseases.</p> <p><b>13.0 Aboriginal Heritage</b></p> <p>13.1 Consultation with responsible Aboriginal representative organisations, including the Goldfields Land and Sea Council shall be undertaken prior to development or subdivision into survey strata lots.</p> <p><b>14.0 Aviation</b></p> <p>14.1 The airfield facility and activities shall comply with all relevant</p>

No.	Description of land	Special use	Conditions
			<p>regulations and guidelines of any Statutory Authority with regard to aviation operations and safety procedures.</p> <p><b>15.0 Environmental Conditions</b></p> <p>15.1 Vegetation</p> <p>15.1.1 The proponent will develop a Vegetation Management Plan prior to development or subdivision into survey strata lots which will include—</p> <ul style="list-style-type: none"> <li>• No clearing of land to the north –east of runway 32-14;</li> <li>• Weed control;</li> <li>• Fire Management;</li> <li>• Exclusion of stock; and</li> </ul> <p>Any other factors considered relevant by Council.</p> <p>15.1.2 The Vegetation Management Plan shall be prepared prior to development or subdivision into survey strata lots, in consultation with and to the satisfaction of the Shire of Esperance and Department of Environment and Conservation and other relevant bodies, as considered appropriate by the Local Government or Statutory Authorities. The Vegetation Management Plan shall be reviewed on a bi-annual basis in consultation with the Shire of Esperance and Department of Environment and Conservation.</p> <p>15.2 Local Water Management Strategy</p> <p>15.2.1 The proponent shall develop a Local Water Management Strategy prior to development or subdivision into survey strata lots.</p> <p>15.2.2 The Local Water Management Strategy shall be prepared in consultation with and to the satisfaction of the Shire of Esperance, the Department of Water Department of Environment and Conservation and other relevant bodies, as considered by the Local Government or Statutory Authorities. The Local Water Management Strategy shall be reviewed on a bi-annual basis in consultation with the Shire of Esperance, Department of Water and Department Environment and Conservation.</p> <p>15.2.3 The Local Water Management Strategy shall address potential impacts, monitoring and management issues relating to wetlands and waterways, flood risk, groundwater and surface water quality, drainage and nutrient management,</p>



No.	Description of land	Special use	Conditions
			<p>landscaping and revegetation, effluent disposal and storm water management and any other factors considered relevant by Local Government or Statutory Authorities.</p> <p>15.2.4 The proponent will develop a Fuel Spill Action Plan prior to development or subdivision into survey strata lots to minimise the occurrence of fuel spills and to ensure that if there is a fuel spill, clean up is immediate and there will be no resulting environmental impact on the site or on the adjacent wetlands.</p> <p>15.2.5 The proponent will develop Waste Oil Disposal Plan prior to development or subdivision into survey strata lots to ensure all workshop waste oil is disposed of appropriately off site.</p> <p>15.3 Noise</p> <p>15.3.1 The proponent will develop a Noise Management Plan prior to development or subdivision into survey strata lots. The Noise Management Plan shall address measures for the monitoring and management of noise including number of flight take-offs and landings, special procedures for airfield operation, flight circuits, special events, recording and monitoring of noise related complaints and monitoring, management and minimising impact on birds and nearby residences and any other factors considered relevant by the Local Government or Statutory Authorities.</p> <p>15.3.2 The Noise Management Plan shall be prepared in consultation with and to the satisfaction of the Shire of Esperance and Department of Environment and Conservation, Air Services Australia and other relevant bodies, as considered by the Local Government or Statutory Authorities. The Noise Management Plan shall be reviewed on a bi-annual basis in consultation with the Shire of Esperance, Department of Environment and Conservation and Air Services Australia.</p> <p>15.3.3 No aircraft larger than 5700kg shall operate from the Myrup Fly-in Estate.</p> <p>15.3.4 Runway 04 shall maintain special procedures for right hand circuits. Additional measures may be implemented as part of the Noise Management Plan to avoid flights over residential areas.</p>

No.	Description of land	Special use	Conditions
			<p>15.3.5 The annual number of flights (take-offs and landings of all types) shall be recorded by the operators of the Myrup Fly-In Estate and submitted to Council annually. The annual average weekly number of flights shall not exceed 100 flights. The number of flights in any seven day period shall not exceed 150 flights</p> <p>15.3.6 The number of daily flights shall not exceed 40 flights unless where part of a 'Special Event' as approved by Council or for emergency purposes.</p> <p>15.3.7 Written permission from the Council shall be sought a minimum of 21 days prior to any 'Special Event' (such as Air Rally or as deemed a Special Event by Council). The Council may request details of the 'Special Event' as it sees fit including but not limited to management plans and hours of operation. The Council may require the Myrup Fly-In Estate notify the local community of any 'Special Event'.</p> <p>15.4 Environmental Management</p> <p>15.4.1 The proponent and future occupiers/owners of Myrup Fly-In Estate and/or of survey strata lots are responsible for environmental management on the site.</p>

SCHEDULE 5  
RURAL RESIDENTIAL PROVISIONS

[cl. 5.13.4]

No.	Description of land	Special Provisions
<i>RR1</i>	<p>Previously comprised of Portions of Esperance East Location 17, 18 &amp; 22, Lots 5, 1 &amp; 2 to the north of Fisheries Road</p> <p><i>Note: Located within SCA 5.</i></p> <p><i>Note: As shown on the Scheme Map.</i></p>	<ol style="list-style-type: none"> <li>1. The local government, following development in accordance with any Outline Development Plan, Detailed Area Plan or preliminary subdivision approvals in place by 31 December 2005, will not support further subdivision of this land.</li> <li>2. A 20 metre wide landscape protection strip is to be retained as natural bush along the Fisheries Road frontage with the exception of access roads.</li> <li>3. Where land is to be cleared, the local government will not permit any lot to be cleared to more than 50 per cent of its total area (including the land covered by buildings) except where it determines that with supplementary tree planting and landscaping, parkland clearing can be done to no more than a further 25 percent of the lot area.</li> <li>4. The keeping of horses on lots less than 4 ha in area is prohibited.</li> </ol>
<i>RR2</i>	<p>Previously comprised of Lots 35, 367, 392, 396, 398, 400, 773, 774 and 775 Eleven Mile Beach and Barook Roads, Pink Lake</p> <p><i>Note: As shown on the Scheme Map.</i></p>	<ol style="list-style-type: none"> <li>1. The local government will support development in accordance with an Outline Development Plan or Detailed Area Plan adopted by 31 December 2005. Development will also be supported in accordance with a preliminary subdivision approval in place by 31 December 2005. Further subdivision of this land will not be supported.</li> <li>2. The keeping of horses on lots less than 4 ha in area is prohibited.</li> </ol>

No.	Description of land	Special Provisions
		<ol style="list-style-type: none"> <li>3. The number of horses permitted on lots of 4 ha or greater is restricted to a maximum of two horses only. The local government will only grant approval to the keeping of horses subject to submission of an application for planning approval that includes proposed measures to manage the land.</li> <li>4. The siting and erection of any building, outbuilding, or fence shall not be approved by the local government unless or until it is satisfied that the design, construction, materials and position will be in harmony with the character and amenity of the land within the zone and any fire management plan applicable to the site.</li> <li>5. Building materials are to be in accordance with the local government's reflective materials policy.</li> <li>6. Strategic Fire Breaks as nominated on an outline development plan, subdivision guide plan, or fire management plan, shall be provided as a condition of subdivision and constructed to a standard approved by the local government and the Fire and Emergency Services. The firebreaks should be located along contours and on level ground where possible, slashed and not cleared, to prevent wind erosion and to protect the fragile environment.</li> <li>7. Unless easements for the local government to access the site have been agreed, owners are to maintain Strategic Fire Breaks that cross their lots and to ensure fire fighting appliances can access their land.</li> <li>8. Owners are encouraged to obtain variations to the standard local government firebreak notices to avoid clearing of firebreaks over sloping land along fence lines (other than for approved Strategic Fire Breaks).</li> <li>9. The base of leach drains must be located a minimum of two (2) metres above the highest groundwater level and a minimum of one hundred (100) metres from any drain, waterway or wetland.</li> <li>10. In the absence of a supply of underground potable water, the provision of water storage tanks in accordance with Part 5 of the Scheme with the necessary accompanying roof catchment capacity of which 10,000 is to be retained for fire fighting purposes. In addition, a secondary (i.e. may be a non-potable) water supply sufficient for toilet and garden use from underground sources or dams has been developed.</li> </ol>
RR3	<p>Melijinup Heights former Lot 2 Melijinup Road, Myrup</p> <p><i>Note— Added to Town Planning Scheme No 22 by Amendment No 4 gazetted 16 December 1994 Note: As shown on the Scheme Map.</i></p>	<ol style="list-style-type: none"> <li>1. All trees and shrubs shall be retained unless their removal is authorised by the local government except in the cases of trees and shrubs which are proposed to be removed to make way for approved building construction, fences, firebreaks and constructed access ways.</li> <li>2. The local government may require, as a condition of planning approval, tree planting on lots it considers deficient in cover and the owner is to maintain such trees thereafter.</li> <li>3. Buildings shall be confined to building envelopes indicated on the adopted plan of subdivision unless the local government is satisfied that an alternative site has equal or better geological conditions for building and on-site effluent disposal and the alternative position will not unduly affect the amenity of nearby lots.</li> <li>4. On-site effluent disposal systems shall be to the specifications and satisfaction of the local government and the Health Department of WA. The use of alternative effluent disposal systems may be required and in any event the following requirements shall be satisfied— <ol style="list-style-type: none"> <li>(a) a 2 metre separation between the base of the leach drains and the highest recorded groundwater level or bedrock;</li> <li>(b) at least a 100m horizontal separation between the effluent disposal system and any drain, waterway or wetland;</li> <li>(c) the area around each effluent disposal system shall be planted with indigenous trees and shrubs by the owners and maintained to the satisfaction of the local government.</li> </ol> </li> </ol>

No.	Description of land	Special Provisions
RR4	<p>Gibson East Portion former Loc 626, now Lots 21 to 24 Gibson Road and Lots 26 to 31 Shipard Close, Gibson</p> <p><i>Note: Added to Town Planning Scheme No 22 by Amendment No 11 gazetted 28 March 1995</i></p> <p><i>Note: As shown on the Scheme Map.</i></p>	<ol style="list-style-type: none"> <li>1. Subdivision has been generally in accordance with the Subdivision Guide Plan as certified by the Shire Clerk on 8.9.94 and the local government will support no further subdivision of these lots.</li> <li>2. On lots 3, 4 and 6-11 on the Subdivision Guide Plan, any building development is to be sited within the building envelope as depicted on the Subdivision Guide Plan.</li> </ol> <p><i>Note: Affected lots are Lots 23 and 24 Gibson Road and Lots 26 to 31 Shipard Close.</i></p> <ol style="list-style-type: none"> <li>3. The vegetation wind breaks as established on the boundaries of the lots shall be maintained to the satisfaction of the local government and fenced if required by the local government if being adversely affected by grazing stock.</li> <li>4. On-site effluent disposal systems shall be limited to high performance environmental systems approved by the local government and the Health Department of WA.</li> </ol>
RR5	<p>Larmour Estate Part former Esperance Location 320, Gibson</p> <p><i>Note: Added by Amendment No 36 gazetted 23 May 2003.</i></p> <p><i>Note: As shown on the Scheme Map.</i></p>	<ol style="list-style-type: none"> <li>1. Subdivision and development shall generally be in accordance with the subdivision guide plan dated 28.8.2008. No further subdivision shall be permitted.</li> <li>2. No residential development or effluent disposal systems are permitted within the 300 metre water bore buffer identified on the subdivision guide plan.</li> <li>3. The keeping of horses is prohibited.</li> <li>4. The rearing or agistment of livestock and poultry for commercial purposes and keeping of pigs is prohibited.</li> <li>5. The keeping of grazing stock (other than horses or cattle) on any lot other than those affected by the wellhead protection buffer and the low lying building exclusion areas on subdivision guide plan Lots 6-12 inclusive and Lot 16 is permitted but shall be restricted to the equivalent of 10 Dry Sheep Equivalents (DSE) per hectare.</li> <li>6. Rural pursuits that have the potential to pollute the Gibson Public Drinking Water Source Area are to be refused or referred to the Water Corporation and the Department of Environment and Conservation for comment and the local government is to be due regard to advice received from those agencies when determining applications..</li> <li>7. Fertilisers, herbicides and insecticides should be applied sparingly to prevent excess chemicals or nutrients leaching into the groundwater with particular reference to protecting the Gibson Soak Reserve 3041.</li> <li>8. The local government may require, as a condition of planning approval, planting of trees and/or other perennial vegetation on lots that it considers require improvement and/or on areas that are identified for strategic (future) tree planting on the subdivision guide plan for the area.</li> <li>9. The local government may require, as a condition of planning approval, to take measures that adequately preserve and protect vegetation on lots where the cover of such vegetation is considered worthy of preservation and protection, and/or otherwise is located within the strategic tree planting areas identified on the subdivision guide plan for the area. Such measures may include installation of fencing, firebreaks and any other measure the local government thinks fit.</li> <li>10. Vegetation that is planted, preserved and/or protected in accordance with development of the subdivision and/or planning approval shall be retained to the satisfaction of the local government.</li> </ol>

SCHEDULE 6  
EXEMPTED ADVERTISEMENTS

[cl. 5.10.4]

Land Use and/or Development	Exempted Sign Type and Number (includes the change of posters on poster signs and applies to non-illuminated signs unless otherwise stated)	Maximum Area of Exempted Advertisement
Dwellings	One professional name-plate as appropriate	0.2m <sup>2</sup>
Home Occupation	One advertisement describing the nature of the home occupation.	0.2m <sup>2</sup>
All classes of buildings other than a single house or two group dwellings	One 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>
Places of Worship, Meeting Halls and Places of Public Assembly	One advertisement detailing the function and/or the activities of the institution concerned.	2.0m <sup>2</sup>
Cinemas, Theatres and Drive-In Theatres	Two signs (illuminated or non-illuminated) detailing the entertainment being presented from time to time at the venue upon which the signs are displayed.	Each sign not to exceed 5m <sup>2</sup>
Shops, Showrooms and other uses appropriate to a Shopping Area	All advertisements affixed to the building below the top of the awning or, in the absence of an awning, below a line measured at 5 metres from the ground floor level of the building	Not Applicable
Industrial and Warehouse Premises	A maximum of four advertisements applied to or affixed to the walls of the building but not including signs which project above the eaves or the ridge of the roof of the building, and excluding signs projecting from a building and excluding signs which are connected to a pole, wall, or other building.	Total area of such advertisements are not to exceed 15m <sup>2</sup> or 20% of the elevation of the building whichever is the lesser.
	A maximum of two freestanding advertisement signs not exceeding 5 metres in height above ground level.	Maximum permissible total area is not to exceed 10m <sup>2</sup> and individual advertisement signs are not to exceed 6m <sup>2</sup> .
Showroom, racecourses, major racing tracks, sports stadia, major sporting grounds and complexes	All signs provided that, in each case, the advertisement is not designed to be visible from outside the complex or facility concerned either from adjacent private land or from public places and streets.	Not Applicable
Public Places and Reserves	Signs (illuminated and non-illuminated) relating to the functions of Government, a responsible authority or the local government including those of a promotional nature constructed or exhibited by, or on behalf of any such body, and	Not Applicable
	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 signs have been constructed or exhibited by or at the direction of Government, a responsible authority or the local government, and	Not Applicable
	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.	Not Applicable
Railway Property	Advertisement signs exhibited on such land provided that each such advertisement is directed only at persons at or upon the railway station.	No sign shall exceed 2m <sup>2</sup> in area.

Land Use and/or Development	Exempted Sign Type and Number (includes the change of posters on poster signs and applies to non-illuminated signs unless otherwise stated)	Maximum Area of Exempted Advertisement
Advertisements within Buildings	All advertisements placed or displayed within buildings, which cannot ordinarily be seen by a person outside of those buildings.	Not Applicable

Temporary Signs	Exempted Sign Type and Number (All non-illuminated signs unless otherwise stated)	Maximum Area of Exempted Advertisement
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**Building Construction Sites (signs displayed only for the duration of the construction) as follows—**

Dwellings	(a) One sign per street frontage containing details of the project and the contractors undertaking the construction work.	2m <sup>2</sup>
Multiple dwellings, shops, commercial and industrial properties	One sign as for (a) above which may also include site security information.	5m <sup>2</sup>
Large development or redevelopment projects involving shopping centres, office or other buildings exceeding three (3) storeys in height	One sign as for (a) above	10m <sup>2</sup>
	One additional sign showing the name of the project builder.	5m <sup>2</sup>
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>

**Property transactions—Advertisement signs displayed for the duration of the period over which property transactions are offered and negotiated as follows—**

Dwellings	(b) One sign per street frontage for each property relating to the sale, leasing or impending auction of the property at or upon which the sign is or the signs are displayed.	Each sign is not to exceed an area of 2m <sup>2</sup>
Multiple dwellings, shops, commercial and industrial properties	One sign as for (b) above.	Each sign is not to exceed an area of 5m <sup>2</sup>
Large properties comprised of shopping centres, buildings in excess of four (4) storeys and rural properties in excess of five (5) hectares.	One sign as for (b) above	Each sign is not to exceed an area of 10m <sup>2</sup>

**Display Homes—Advertisement signs displayed for the period over which homes are on display for public inspection:**

	One sign for each dwelling on display.	2m <sup>2</sup>
	In addition to (b) 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.	5m <sup>2</sup>

SCHEDULE 7  
ENVIRONMENTAL CONDITIONS

[cl. 5.6]

Scheme or Amendment No	Gazettal Date	Environmental Conditions
At present there are none.		

SCHEDULE 8  
DEVELOPMENT PROVISIONS BY ZONE

[cl. 5.1]

Zones and Land Use	Minimum Lot Area Sq. m	Minimum Effective Frontage m	Max Plot Ratio	Minimum Setbacks			Minimum Landscaping	Minimum Car Spaces Space/Sq. Metre
				Front	Rear	Side		
<b>ZONES</b>								
Residential								
In accordance with the <i>Residential Design Codes</i>								
Tourist Residential	1000	20	0.5	5	Nil (i)	Nil (i)	50% of front setback area	1 per 25 gross floor area
(i) Where development adjoins a Residential Zone, the minimum distance shall be at the discretion of the local government.								
Central Area	200	5	0.75—1.5	at the discretion of the local government			50% of front setback area if a front setback applies	Retail— 1 per 25 gross floor area Office— 1 per 40 gross floor area <i>NB</i> Where the office area is at ground floor level and capable of being converted to a higher use (ie. A shop) then the parking requirement for a higher use shall prevail.
Country Town	As determined by the local government having regard to similar uses in other zones with a density of R10 being applied for Residential Development							
Shops and Offices	800	12	0.5	5	Nil	Nil	25% minimum front setback area	1 per 25 of gross floor area. Where a development exceeds 5000 sq. metres in gross floor area, the parking requirement over the minimum requirement shall be subject to the discretion of the Council

Zones and Land Use	Minimum Lot Area Sq. m	Minimum Effective Frontage m	Max Plot Ratio	Minimum Setbacks			Minimum Landscaping	Minimum Car Spaces Space/Sq. Metre
				Front	Rear	Side		
Industry Business	1000	20	0.5	20 (i) & (ii)	Nil (iii)	Nil (iii)	25% of area within 12 metres of the front boundary	1 per 100 gross floor area plus 1/20 gross office floor area. Minimum 3 spaces
	(i) At the discretion of the local government, may be reduced to a minimum of 12m where the front and side walls within 20m of the frontage are to be constructed of a hard, durable, fire resistant material approved by the local government.							
	(ii) Where the development adjoins a road not a Highway, proposed Highway or an Important Local Road, the local government may reduce the front setback distance to a minimum of 12 metres. (iii) Where the development adjoins a Residential Zone, the minimum distance shall be 7.5m.							
Industry—General	2000	25	0.5	20m (i), (ii) & (iii)	3 (iv)	3 (iv)	25% of area within 12 metres of the front boundary	1 per 100 gross floor area plus 1/20 gross office floor area. Minimum 3 spaces
	(i) At the discretion of the local government, may be reduced to a minimum of 12m where the front and side walls within 20m of the frontage are to be constructed of hard, durable, fire resistant material, approved by the Council.							
	(ii) Where the development adjoins a road, not a Highway or an Important Local Road, the Council may reduce the front setback distance to a minimum of 12 metres.							
	(iii) In the Town of Esperance on each side of the South Coast Highway between Elysium Road and Harbour Road, a minimum setback of 40m shall apply to provide for future service roads and landscaping.							
Private Clubs and Institutions	1000	20	0.5	12	7.5	2 per storey	50% of minimum front setback area	1 per 40 gross floor area
	As per Local Planning Strategy	30		20	10	10	As required by the local government.	As required by the local government.
Rural Residential	As per Local Planning Strategy	200		20	20	20	As required by the local government.	As required by the local government.
Rural Smallholdings Agriculture—General	1000	20	0.5	5	Nil (i)	Nil (i)	As per Schedule 9—Parking and Landscaping by Land Use	As per Schedule 9—Parking and Landscaping by Land Use
Rural Unsettled eTourist	(i) Where development adjoins a Residential Zone, the minimum distance shall be at the discretion of Council.							



SCHEDULE 9  
PARKING AND LANDSCAPING BY LAND USE

[cl. 5.1]

Zones and Land Use	Minimum Landscaping	Minimum Car Spaces Space/Sq. Metre
Amusement Parlour		1 per 30 m <sup>2</sup> gross floor area
Recreation—Building		1 per 40 m <sup>2</sup> gross floor area
Caravan Park	50% of all setback areas	Visitor car parking 1/10 bays—long stay 1/20 bays—short stay
Car Sales Yard, Garden Centre, and other Open Air Sales	10% of site	1/200 gross floor area
Factory Units	25% of area within 12 metres of front boundary	1/40 gross floor area for each unit
Fast Food—drive thru	50% of street setback areas	1 per 10 m <sup>2</sup> gross floor area or 1 per 4 seats whichever is greater
Fuel Depot		1 per 45 m <sup>2</sup> gross floor area
Health Studio		5 per room or 1 per 20 m <sup>2</sup> gross floor area, whichever is the greater
Holiday Accommodation		1 per unit
Hospital		1 per 4 beds plus 1 per employee
Hotels Motels & Taverns—Generally	25% of site	1/10 bar & lounge areas 1/4 restaurant plus 1/accommodation unit (i)
Hotels, Motels & Taverns—Central Area	75% of minimum front setback area	1/10 bar & lounge areas 1/4 restaurant plus 1/accommodation unit (i)
Kindergarten, Day Care Centre, etc	50% of site	1/staff member—a minimum of 5 spaces shall be available for the collection and leaving of children without obstructing traffic.
Library/Museum		1 per 35 m <sup>2</sup> gross floor area
Medical Centre		3 per consulting room plus 1 per staff member
Motor Vehicle Repair Station		2 per working bay plus 1 per employee
Motor Vehicle Wrecking Premises		1 per 25 m <sup>2</sup> gross floor area
Night Club, Other Club Premises or Reception Centre		1/10 gross public floor area (i)
Plant Nursery		1 per 50 m <sup>2</sup> gross floor area of display and sales area
Private Recreation	to be assessed by the local government with regard to the facilities required	2 / each facility
Professional Office		3 per professional for first 2 professionals plus 2 per 20 m <sup>2</sup> gross floor area thereafter
Public Uses, Worship or Assembly		25% of site 1 per 4 seats in the hall or auditorium (i)
Radio & TV Studio Installation		1 per 40 m <sup>2</sup> gross floor area
Restaurant		1 per 4 m <sup>2</sup> dining & waiting area
School		1.5 per classroom
Service Premises and Spare Parts Sales		1/10 shop gross floor area plus 1/100 storage area (ii)

Zones and Land Use	Minimum Landscaping	Minimum Car Spaces Space/Sq. Metre
Service Station		2 per pump plus 1 per employee plus 1 per 15m <sup>2</sup> shop
Showrooms	10% of site	1/100 gross floor area plus 1/40 office gross floor area
Squash Courts		3 per court
Supermarket		1 per 15 m <sup>2</sup> gross floor area
Warehouse		1 per 100 m <sup>2</sup> gross floor area
	(i) the local government may take into consideration any parking areas available after normal shop and office closing hours. (ii) Where the storage area is at ground floor level and capable of being converted to a higher use (i.e. a shop) then the parking requirement for the higher use shall prevail.	

## SCHEDULE 10

## FORM OF APPLICATION FOR PLANNING APPROVAL

[cl. 9.1.1]

*Application for planning approval***Owner details**

Full Name/s:

Postal Address:

Postcode:

 Phone: (home)  
 (work)  
 (mobile)

 Fax:  
 E-mail:

Contact person:

Signature:

Date:

Signature:

Date:

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

**Applicant details**

Company:

Full Name:

Address:

Postcode:

 Phone: (home)  
 (work):  
 (mobile):

 Fax:  
 E-mail:

Contact person for correspondence:

Signature:

Date:

**Property details**

Lot No:

House/Street No:

Location No:

Diagram/ Plan/Deposited Plan No:

Certificate of Title Vol. No:

Folio:

Diagram/ Plan/Deposited Plan No:

Certificate of Title Vol. No:

Folio:

Title encumbrances (e.g. easements, restrictive covenants). A copy of the Certificate of Title is required to accompany all applications for Commercial Development, Group Dwellings or Multiple Dwellings.

Street name:	Locality:
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Nearest street intersection:

**Existing and Proposed Development**

Description of proposed development and/or use—

Nature of any existing buildings and/or use—

Approximate cost of proposed development:

Estimated time of completion:

**OFFICE USE ONLY**

Acceptance Officer's initials: \_\_\_\_\_ Date received: \_\_\_\_\_

Shire of Esperance reference no: \_\_\_\_\_

*(The content of the form of application must conform to Schedule 10 but minor variations may be permitted to the format.)*

SCHEDULE 11

**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 12  
NOTICE OF PUBLIC ADVERTISEMENT OF PLANNING PROPOSAL

[cl. 9.4.4]

*Planning and Development Act 2005*

Shire of Esperance

Local Planning Scheme No. 23

***Notice of Public Advertisement of Planning Proposal***

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

Lot No:	Street:	Locality:
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Proposal:.....  
.....  
.....

Details of the proposal are available for inspection at the administration office of the Shire of Esperance. Comments on the proposal may be submitted to the Chief Executive Officer in writing on or before 4:30pm on the..... day of .....

Signed—

Dated:

for and on behalf of the Shire of Esperance:.....

*(The content of the form of application must conform to Schedule 12 but minor variations may be permitted to the format.)*

SCHEDULE 13

NOTICE OF DETERMINATION ON APPLICATION FOR PLANNING APPROVAL

[cl. 10.4.1]

*Planning and Development Act 2005*

Shire of Esperance

Local Planning Scheme No. 23

***Determination on Application for Planning Approval***

Location:

Lot:	Plan/Diagram:
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Vol. No.:	Folio No.:
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Application date:	Received on:
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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.
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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.
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Note 3:	If an applicant is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the Planning and Development Act 2005. An application for review must be lodged within 28 days of the determination.
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Signed:	Position:
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Dated:	Delegation No.:
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for and on behalf of the Shire of Esperance

*(The content of the determination notice must conform to Schedule 13 but minor variations may be permitted to the format.)*

SCHEDULE 14  
DEVELOPMENT AREAS

Ref No	Lot(s)	Provisions
DA1	Residential Development Area Lot 37 Fisheries Road and Sinclair Road <i>Note: As shown on the Scheme Map.</i>	<ol style="list-style-type: none"> <li>1. The local government will not support any increase in density above R20.</li> <li>2. Notwithstanding the above, the local government may agree to an increase in density to R30 subject to suitable arrangements being put in place to ensure that— <ul style="list-style-type: none"> <li>• significant stands of trees will be retained;</li> <li>• no access to Fisheries Road; and</li> <li>• bunding and/or uniform fencing designed to attenuate noise shall be installed along Fisheries Road and to a distance of 40 metres along any access road to Fisheries Road.</li> </ul> </li> </ol>
DA2	Residential Development Area Lots 81, 400 & 952 Johns Street and Lot 249 Amelia Circuit <i>Note: As shown on the Scheme Map.</i>	<ol style="list-style-type: none"> <li>1. All development is subject to Clause 6.13</li> </ol>
DA3	Residential Development Area Lots 32-59 & 99-107 Bayview Tce, Lot 49, 1655-1659 Blake Street, Lot 438 Frederick St, Lot 526 Freeman St, Lots 1-10, 12, 26, 53-57, 91, 1364, 1715-1717, 1736, 1737 & 1739 Gibson Street, Lots 26, 27, 27-31, 33, 34, 60, 1672-1679 & 1738 Gladstone Street, Lots 3, 61-69, 1687-1689 Moir St, Lots 3, 4, 10, 11, 42-44, 1628-1645 & 1690-1708 Mount Street, Lots 5, 1680-1686 Ocean St, Lots 15, 16, 58-60, 1665-1671 Piesse St, Lots 45-47, 50-59, 67, 68, 81, 1709-1714 & 1718-1730 St Patricks Ave, Lots 70-95 & 105-113 Synnot St, Lots 87-89, 96-98 & 1731-1735 Thompson St and VCL corner Ocean St and Moir St <i>Note: As shown on the Scheme Map.</i>	<ol style="list-style-type: none"> <li>1. All development is subject to Clause 6.13</li> </ol>
DA4	Residential Development Area Lots 38, 117, 118, 123 & Pt 129 Rowse Street, Lots 119-122, 128 & Pt 135 Sims Street. Lot 842 Dean Street and Lot 479 Symons Street <i>Note: As shown on the Scheme Map.</i>	<ol style="list-style-type: none"> <li>1. All development is subject to Clause 6.13</li> </ol>
DA5	Industrial Development Areas Lot 1, 2, 24-26, 127, 133, 134, Pt Lot 135, 628, & 629 Sims Street, Pt Lot 300 & 685 Kalgoorlie Street, Lot 17 Harbour Road, Lot 55 McLean Road, Lots 502 & 506 South Coast Highway and closed road reserve. <i>Note: As shown on the Scheme Map.</i>	<ol style="list-style-type: none"> <li>1. All development is subject to Clause 6.13</li> </ol>
DA6	Residential Development Area Lot 134 Goldfields Road & Lots 19 & 20 Daw Drive <i>Note: As shown on the Scheme Map.</i>	<ol style="list-style-type: none"> <li>1. All development is subject to Clause 6.13</li> </ol>
DA7	Residential Development Area Lots 63 & 64 Bandy Creek Road and Pt Loc 819 Wylie Bay Road <i>Note: As shown on the Scheme Map.</i>	<ol style="list-style-type: none"> <li>1. All development is subject to Clause 6.13</li> </ol>
DA8	Residential Development Area Lots 15, 51 & 53 Daw Drive <i>Note: As shown on the Scheme Map.</i>	<ol style="list-style-type: none"> <li>1. All development is subject to Clause 6.13</li> </ol>

SCHEDULE 15  
DEVELOPMENT CONTRIBUTION PLANS

Ref No	Lot(s)	Provisions

**ADOPTION**

Adopted by resolution of the Shire of Esperance at the Special Meeting of the Council held on the 24th day of January 2006.

I. S. MICKEL, JP FAICD, Chief Executive Officer.

**FINAL APPROVAL**

Adopted for final approval by resolution of the Shire of Esperance at the Special Meeting of the Council held on the 8th day of December 2008.

The Common Seal of the Shire of Esperance was hereunto affixed by authority of a resolution of the Council in the presence of—

I. S. MICKEL, JP FAICD, Chief Executive Officer.  
M. J. OSBORNE, Chief Executive Officer.

Recommended/Submitted for Final Approval—

PAM BASKIND, Delegated Under S.16 of the Planning and Development Act 2005.

Date 14 January 2010.

Final Approval Granted—

J. DAY, Minister for Planning.

Date 25 January 2010.