

PART 8 - FINANCE AND ADMINISTRATION

8.1 ADDITIONAL POWERS OF THE SCHEME

8.1.1 The Council in implementing the Scheme has, in addition to all other powers vested in it, the following powers:

- (a) The Council may enter into an agreement with any owner, occupier or other person having an interest in land affected by the provisions of the Scheme in respect of any matters pertaining to the Scheme.
- (b) The Council may acquire any land or buildings within the Scheme Area pursuant to the provisions of the Scheme or the Act. The Council may deal with or dispose of any land which it has acquired pursuant to 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.

8.1.2 The procedure for carrying out any compulsory acquisition under this Scheme shall be the procedure in the Land Administration Act 1997 subject to the modification referred to in Section 13 of the Town Planning and Development Act 1928 (as amended).

8.1.3 Without affecting the generality of the preceding subclause, the Council may, with the prior consent of the Minister, acquire premises by purchase or resumption for public works to facilitate the development of adjacent land in accordance with an Agreed Structure Plan to assist a landowner who is endeavouring to develop land to comply with an Agreed Structure Plan, provided that the landowner:

- (a) proves to the Council's satisfaction that during a period of not less than six months, bone fide negotiations to acquire the premises have not been successful; and
- (b) enters into an agreement with the Council to meet all the costs of purchase or resumption including the Council's legal costs, and to develop the premises for the purposes specified within the specified time limit.

8.1.4 Disposal of Land

The Council may deal with or dispose of any land which it has acquired pursuant to the preceding subclauses, in accordance with the Act and in conformity with the provisions of the Scheme, upon such terms and conditions as it thinks fit, and for such purpose may make such agreements with other owners and parties as it thinks fit.

8.2 AMENITY

8.2.1 No building shall be so constructed, finished or left unfinished that its external appearance would significantly detract from the amenity of the

locality or tend to depreciate the value of adjoining property. All land and buildings shall be so used and maintained as to preserve the local amenity.

- 8.2.2 No land, building or appliance shall be used in such a manner as to permit the escape therefrom of smoke, dust, fumes, odour, noise, glare, vibration or waste products in such quantity or extent or in such a manner as will create or be a nuisance to any inhabitant, or to traffic or persons using any land or roads in the vicinity.
- 8.2.3 If the Council forms the opinion that there has been a breach of the requirements of the preceding subclauses it may, by notice in writing, require the owner to make good the breach in the manner and within the time stated in the notice. The notice may be served on the owner personally or by posting it to the last address of the owner known to the Council, and if served by post, shall be deemed to have been served three (3) clear days after the date of posting.
- 8.2.4 Any person upon whom a notice is served pursuant to this clause may, within 28 days of the date of service of the notice on that person, appeal pursuant to Part V of the Act against the requirements of the notice and, where any such appeal is lodged the effect of the notice shall be suspended until a decision to uphold, quash or vary the notice has been made on the appeal or the appeal has been withdrawn, whereupon the time stated in the notice shall again begin to run.
- 8.2.5 Failure to comply with a notice under this clause shall be a breach of the provisions of the Scheme.

8.3 UNKEMPT LAND

- 8.3.1 On any land within the Scheme Area any undergrowth, refuse, rubbish or disused material which in the opinion of the Council is likely to affect adversely the value of adjoining property or the health, comfort or convenience of the inhabitants thereof, the Council may cause a notice to be served on the owner or occupier of such land requiring that the land is cleared of trees, scrub, undergrowth, refuse or rubbish, or such refuse, rubbish or disused material is removed from such land within a specified period.
- 8.3.2 Every owner or occupier of land upon whom a notice is served shall comply with such notice within the time period therein specified.
- 8.3.3 Where the owner or occupier does not clear the land or remove the refuse, rubbish or disused material as required by the notice given by the Council, the Council may without payment or any compensation in respect thereof, clear or remove it and dispose of it at the expense of and recover in a court of competent jurisdiction the amount of the expense from the owner or occupier to whom the notice is given.
- 8.3.4 Failure to comply with a notice under this clause shall be a breach of the provisions of the Scheme.

8.4 APPEALS

Should an applicant, a proponent or an owner of land the subject of an application be aggrieved by a decision given or deemed to have been given by the Council in the exercise of a discretionary power under the Scheme or by a determination of the Commission under Part 9 the applicant, proponent or owner may appeal pursuant to Part V of the Act and the rules and regulations made pursuant to the Act.

8.5 COMPENSATION

8.5.1 A claim for compensation for injurious affection can be made pursuant to Section 11 of the Act when the Scheme:

- (a) permits development on land for no purpose other than a public purpose;
- (b) prohibits wholly or partially the continuance of any non-conforming use according to the terms of the Act.

8.5.2 The time limit for the making of claims for compensation for injurious affection pursuant to Section 11(1) of the Act resultant from the making of, or the making of an amendment to, the Scheme, is six (6) months from the date of publication of the Scheme or Scheme Amendment in the Government Gazette.

8.5.3 In addition to the compensation provisions of the Act and sub-clause 8.5.1 of this Scheme, where, in respect of any application for planning approval to commence or carry out development on land reserved under this Scheme, the Council, or any appellate body thereafter, refuses or grants approval subject to conditions such that the effect of the decision is to permit the land to be used or developed for no purpose other than a public purpose, the owner of the land may claim compensation from the Council for injurious affection.

8.5.4 The time limit for the making of claims for compensation pursuant to subclause 8.5.3 is not later than 6 months after the date of the decision of the Council or appellate body.

8.6 DELEGATION OF DEVELOPMENT CONTROL POWERS, AND POWERS AND DUTIES IN RELATION TO OTHER PLANNING FUNCTIONS

8.6.1 The Council may, either generally or in a particular case or particular class of case or cases, by resolution passed by an absolute majority of Council, delegate to all or any of the persons or committees referred to in Schedule 6 any power conferred or duly imposed on the Council under this Scheme.

8.6.2 All delegations made under the City's Town Planning Scheme No 1 shall continue to have effect until the Council first passes a resolution after the gazettal date of the Scheme to delegate any power conferred or duly imposed on the Council under the Scheme.

- 8.6.3 Any delegation made under sub-clause 8.6.1 shall have effect for the period of twelve (12) months following the resolution unless the Council stipulates a lesser or greater period in the resolution.
- 8.6.4 A delegation of authority pursuant to the provisions of this clause has effect and may be exercised according to its tenor, but is revocable at the will of the Council and does not preclude the Council from exercising the power.
- 8.6.5 A resolution to revoke or amend a delegation under this Clause may be passed by a simple majority.
- 8.6.6 A committee, member or officer exercising the power delegated pursuant to the provisions of this Clause shall comply with the provisions of the Scheme governing the exercise of the power of the Council, insofar as such provisions are reasonably applicable.
- 8.6.7 A person who is or has been a delegate of the Council is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any powers conferred, or the carrying out of any duty imposed on the Council by this Scheme.

8.7 ENTRY TO PREMISES

Any officer or agent of the Council may enter at all reasonable times any premises within the Scheme Area for the purposes of ascertaining whether the provisions of the Scheme are being complied with, and at the time of entry may do all things reasonably necessary to record evidence of any non-compliance.

8.8 GENERAL OBLIGATIONS

Subject to the provisions of the Act and all regulations made thereunder and to Part 7 of the Scheme, no person shall depart from or permit or suffer any departure from the requirements and provisions of the Scheme, nor shall any person commence or carry out or permit the commencement or carrying out of any development which:

- (a) does not conform with the Scheme; or
- (b) being or involving a use or other development which requires the approval of the Council or the Commission or both, does not have such approval or approvals is not permitted; or
- (c) does not comply with the terms of any approval or any condition attached thereto.

8.9 NOTICE FOR REMOVAL OF CERTAIN BUILDINGS

- 8.9.1 Twenty eight (28) days' written notice is hereby prescribed as the notice to be given pursuant to Section 10 of the Town Planning Act for the removal of certain buildings.
- 8.9.2 Council may recover expenses under section 10(2) of the Act in a court of competent jurisdiction.

8.10 OFFENCES

- 8.10.1 No person shall depart from or permit or suffer any departure from the requirements and provisions of the Scheme, nor shall any person use or suffer or permit the use of any land or building or undertake or suffer or permit the undertaking of any development within the Scheme Area:
- (a) otherwise than in accordance with the provisions of the Scheme;
 - (b) unless all approvals required by the Scheme have been granted and issued;
 - (c) unless all conditions imposed upon the grant and issue of any approval required by the Scheme have been and continue to be complied with;
 - (d) unless all standards laid down and all requirements prescribed by the Scheme or determined by the Council pursuant to the Scheme with respect to that building or that use of that part have been and continue to be complied with.
- 8.10.2 Any person who fails to comply with any of the provisions of the Scheme is guilty of an offence and without prejudice to any other remedy given herein is liable to such penalties as are prescribed by Section 10 of the Act.

8.11 LOCAL PLANNING POLICIES

- 8.11.1 The Council may prepare a Local Planning Policy in respect of any matter related to the planning and development of the Scheme Area so as to apply:
- (a) generally or for a particular class or classes of matters; and
 - (b) throughout the Scheme Area or in one or more parts of the Scheme Area;
- and may amend or add to or rescind a Policy so prepared.
- 8.11.2 Relationship of Local Planning Policies to Scheme

- 8.11.2.1 Any Local Planning Policy prepared under this Part shall be consistent with the Scheme and if any inconsistency arises the Scheme shall prevail.
- 8.11.2.2 A Local Planning Policy is not part of the Scheme and shall not bind the Council in respect of any application for planning approval but the Council shall have due regard to the provisions of any Policy and the objectives which the Policy is designed to achieve before making its decision.
- 8.11.3 Procedures for Making and Amending a Local Planning Policy
- 8.11.3.1 Local Planning Policy shall become operative only after the following procedures have been completed:
- (a) The Council having prepared and adopted a draft Policy shall advertise the draft Policy by way of a notice published once a week for two consecutive weeks in a local newspaper circulating within the Scheme Area and by such other methods as the Council may consider appropriate to ensure notice of the draft Policy, giving details of where the draft Policy may be inspected, the subject and nature of the draft Policy, and in what form and during what period (being not less than 21 days from the date of the first notice) submissions may be made;
 - (b) the Council shall carry out such other consultations as it thinks fit;
 - (c) the Council shall review the draft Policy in the light of any submissions made and shall then resolve either to finally adopt the draft Policy with or without modification, or not to proceed with the draft Policy;
 - (d) following final adoption of a Policy, notification of the final adoption shall be published once in a newspaper circulating within the Scheme Area; and
 - (e) where, in the opinion of the Council, the provisions of any Policy affect the interests of the Commission, a copy of the Policy shall be forwarded to the Commission.
- 8.11.3.2 Copies of any Policy shall be kept and made available for public inspection at the offices of the Council.
- 8.11.3.3 Any amendment or addition to a Policy shall follow the procedures set out in (a) - (e) above.

8.11.4 Rescission of a Local Planning Policy

A Local Planning Policy may be rescinded by:

- (a) the final adoption of a new Policy pursuant to subclause 8.11.3 specifically worded to supersede an existing Policy; or
- (b) publication of a formal notice of rescission by the Council once a week for two consecutive weeks in a local newspaper circulating within the Scheme Area.

8.11.5 Any Planning Policy adopted and approved under the City's Town Planning Scheme No.1 immediately before the revocation of Scheme No.1 shall have the status of a Local Planning Policy as if it was prepared and adopted under the provisions of this Scheme.

8.11.6 When a draft Planning Policy was prepared under the provisions of Town Planning Scheme No.1 but had not completed the procedures required to give it the status of an adopted and approved Planning Policy under that Scheme by the time the Scheme was revoked, then the procedures may be completed under this Scheme. In that case all procedures required for the preparation and adoption of the Planning Policy shall be deemed to have been carried out under this Scheme and when the procedures are completed the Planning Policy shall have effect for all purposes as a Local Planning Policy under this Scheme.