

PART 6 - DEVELOPMENT AND USE OF LAND**6.1 APPLICATION FOR PLANNING APPROVAL**

- 6.1.1 The Council's Planning Approval is required for any development on or partly on any land zoned or reserved under the Scheme other than development referred to in subclause 6.1.3, and with those exceptions no person shall commence or carry out any development unless the Council's approval has first been obtained.
- 6.1.2 Any application for Planning Approval shall be made by way of the form prescribed under the Metropolitan Region Scheme for such purpose or by way of Form 1 of the Scheme or other form as determined by Council from time to time. The application shall be submitted to the Council in duplicate together with such plans and other information and details as the Council reasonably requires.
- 6.1.3 Except in the case of the Marina Zone, the Centre Zone, the Urban Development Zone, the Industrial Development Zone and the Rural Community Zone in respect of land for which no Agreed Structure Plan is in place, the Council's prior Planning Approval on land zoned by the Scheme is not required if the development consists of:
- (a) the erection of a boundary fence;
 - (b) the erection on a lot of a single house which will be the only building on that lot and where a dwelling is a permitted ("P") use in the zone in which that lot is situated except where in the opinion of Council the single house will affect a place included on the Heritage List pursuant to subclause 5.2.2 of the Scheme. For the purposes of this subparagraph the term "single house" does not include the erection of a mast or antenna, the erection of which requires prior Planning Approval;

Notwithstanding that a single house may not otherwise require the prior approval of the Council pursuant to the Scheme, any person who wishes to carry out development of a single house involving the exercise of discretion by the Council or who wishes to construct a single house in an area or manner where the provisions of a Structure Plan prepared and adopted under Part 9 of the Scheme or an Agreed Detailed Area Plan or a Policy prepared and adopted under Clause 8.11 of the Scheme, shall at the time of lodging an application for a Building Licence or earlier, apply in writing to Council, seeking Council's approval.

The Council may approve the application with or without conditions or may refuse to approve the application. The Council shall, before granting its approval involving the exercise of its discretion under the R Codes, satisfy itself that:

- (i) the variation requested is one which the Council has the power to approve; and
- (ii) approval of that variation would not compromise the objectives of the R Codes.

Where the application for Council's approval consists solely of an application relating to a single house for the Council to exercise its discretion under the R Codes or where required by the provisions of a Structure Plan prepared and adopted under Part 9 of the Scheme or an Agreed Detailed Area Plan or a policy prepared and adopted under Clause 8.11 of the Scheme, the application may be in the form of that required for a Building Licence application.

- (c) the use of any buildings or land within the curtilage of a dwelling for any purpose incidental to the enjoyment by the occupants of the dwelling as such unless otherwise required under the terms of the Scheme;
- (d) the carrying out of any building or works which affect only the interior of a building and which do not materially affect the external appearance of the building unless the building is:
 - (i) located in a place that has been registered in the Register of Places under the Heritage of Western Australia Act 1990;
 - (ii) the subject of an Order under Part 6 of the Heritage of Western Australia Act 1990;
 - (iii) included on the Heritage List under subclause 5.2.2 of the Scheme.
- (e) the carrying out of works urgently necessary to ensure public safety, for the safety or security of plant or equipment or for the maintenance of essential services;
- (f) the conducting of a Home Business – Category 1;
- (g) 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 subclause 5.2.2 of the Scheme;

- (iv) located in an area that will in the opinion of Council affect a place included on the Heritage List pursuant to subclause 5.2.2 of the Scheme;
- (h) any works that are temporary and in existence for less than 48 hours or such longer time as the Council agrees;
- (i) any of the exempted classes of advertisements listed in Schedule 4 of the Scheme, except in respect of a place included on the Heritage List or which in the opinion of Council will affect such a place;
- (j) any development works required to be carried out as a condition of subdivision, strata or survey strata subdivision approval granted by the Commission.

6.1.4 Notwithstanding that any development by reason of the preceding subclause does not require the approval of the Council, an application must nevertheless be submitted to the Council for referral to the Commission for determination where required by the Metropolitan Region Scheme or the Metropolitan Region Town Planning Scheme Act 1959 if the land the subject of the application is wholly or partly:

- (a) affected by a gazetted notice of a resolution by the Commission under Clause 32 of the Metropolitan Region Scheme;
- (b) within an area duly declared by the Commission to be a Planning Control Area; or
- (c) not the subject of a gazetted notice of delegation of authority of the Commission to the Council to determine applications for approval to commence and carry out development under the Metropolitan Region Scheme.

6.2 APPLICATION FOR APPROVAL OF USE

6.2.1 Without affecting the generality of any other provision of the Scheme, for the purpose of the Scheme the commencement, carrying out or change of a use on land shall be a development notwithstanding that it does not involve the carrying out of any building or other works.

6.2.2 If an application for Planning Approval involves the carrying out of building or other work on land, the approval by the Council of the application, shall unless the Council stipulates otherwise in its approval, be an approval also of the commencement and carrying out of any use of the land:

- (a) which is specifically proposed and referred to in the application; or
- (b) which is normally associated with and follows as the most usual consequence of the carrying out or completion of the building or other work.

6.3 PROCEDURES FOR DEALING WITH APPLICATIONS RECEIVED

6.3.1 An application for Planning Approval in respect of land which is wholly within a regional reserve shall be referred by the Council to the Commission for determination in accordance with the Metropolitan Region Scheme. No separate determination of the application shall be made by the Council.

6.3.2 An application for Planning Approval in respect of land which is:

- (a) wholly zoned or reserved by the Scheme; or
- (b) partly within a regional reserve and partly zoned or reserved by the Scheme; or
- (c) affected by a gazetted notice of resolution made by the Commission under Clause 32 of the Metropolitan Region Scheme, or
- (d) within or partly within a Planning Control Area duly declared by the Commission

shall be dealt with by the Council in accordance with the requirements of the Notice of Delegation published in the Government Gazette from time to time by the Commission acting pursuant to the provisions of Section 20 of the Western Australian Planning Commission Act 1985. Where that Notice of Delegation requires the application to be determined by the Commission, the procedure is as follows:

- (a) one copy of the application and supporting papers submitted by the applicant shall, within seven days of receipt of the application, be forwarded by the Council to the Commission for determination by the Commission pursuant to the provisions of the Scheme and the Metropolitan Region Scheme or the Metropolitan Region Town Planning Scheme Act 1959;
- (b) the Council shall retain the other copy of the application and supporting papers and determine the application in accordance with the provisions of the Scheme;
- (c) the Council may, within 30 days of receipt of that application (or such further period as the Commission may allow) forward to the Commission its recommendation as to the manner in which the application should be determined.

6.3.3 If the Council receives an application for Planning Approval on land which is partly within a regional reserve and partly zoned or reserved by the Scheme then:

- (a) the Council shall retain one copy of the application and refer the other copy to the Commission for determination of the application pursuant to the Metropolitan Region Scheme;
- (b) if it is reasonable in the circumstances for the Council to make determination as to the part of the proposed development which is on the land zoned or reserved by the Scheme, the Council shall determine that part of the application in accordance with the provision of the Scheme but where appropriate the Council may express any approval it gives to be subject to the approval of the Commission;
- (c) if it is not reasonable in the circumstances for the Council to make a determination at once as to the part of the development which is on the land zoned or reserved by the Scheme the Council may delay its determination of the application as to that part until the determination of the Commission is made known to it.

6.3.4 Subject to the provisions of the Metropolitan Region Scheme, if in respect of any proposal for development the Council is required to deal with an application under the Scheme and also an application under the Metropolitan Region Scheme by virtue of an authority delegated to it under the provisions of the Metropolitan Region Town Planning Scheme Act 1959, unless it stipulates a contrary intention, the decision conveyed to the applicant or proponent shall be its decision both under the Metropolitan Region Scheme and under the Scheme.

6.4 REFERRAL TO OTHER AUTHORITIES

The Council may if it so desires, before determining any application consult with any other statutory, public or planning authority and with any other party it deems fit.

6.5 DEEMED REFUSAL

6.5.1 Notwithstanding the provisions of subclause 6.9.1 (d):

- (a) Subject to subclause 6.5.1 (b), an application for planning approval shall be deemed to have been refused where a decision in respect of that application is not conveyed to the applicant by the Council within 60 days of the receipt of it by the Council, or within such further time as agreed in writing between the applicant and the Council.
- (b) An application for planning approval which is subject of public notice under Clause 6.7 or referred to other authorities under Clause 6.4 shall be deemed refused where a decision in respect of that application is not conveyed to the applicant by the Council within 90 days of the receipt of it by the Council, or within such further time as agreed in writing between the applicant and the Council.

6.5.2 Notwithstanding that the application for planning approval may be deemed to have been refused, the Council may issue a decision in respect of the application at any time after the expiry of the periods specified in those

subclauses 6.5.1 (a) and 6.5.1 (b) respectively, and that decision shall be valid and effective as from the date of determination.

- 6.5.3 An application for planning approval shall, for the purpose of calculating time limits, be deemed not to have been received by the Council until such time as all of the plans, information and details as may be reasonably required by the Council have been received by the Council.

6.6 DEALING WITH “P”, “D”, “A” AND “X” USES

- 6.6.1 “P” Uses – If an application under the Scheme for Planning Approval involves a “P” use, the Council shall not refuse the application by reason of the unsuitability of that use, but notwithstanding that, the Council may in its discretion impose conditions upon the Planning Approval and if the application proposes or necessarily involves any building or other work, the Council upon considering that building or other work may exercise its discretion as to the approval or refusal and the conditions to be attached to the proposed development.

- 6.6.2 “D” Uses – The Council in exercising its discretion as to the approval or refusal of an application for Planning Approval, shall have regard to the provisions of Clause 6.8.

If in any particular case Council considers that it would be appropriate to consult with the public generally or with the owners or occupiers of properties adjoining or in the vicinity of a site the subject of an application for Planning Approval involving a “D” use, the Council may direct that the provisions of Clause 6.7 shall apply to that application.

- 6.6.3 “A” Uses – The use is not permitted unless the Council has exercised its discretion and has granted planning approval after giving special notice in accordance with Clause 6.7.

- 6.6.4 “X” Uses – The Council shall refuse to approve any application for Planning Approval which involves an “X” use, except as otherwise specifically provided by the Scheme.

6.7 PUBLIC NOTICE

- 6.7.1 Notification of “D” Uses

Before considering an application for planning approval involving a “D” use, the Council may do any one or more of the following:

- (a) cause to be advertised one or more times in a newspaper circulating in the district notice of the Council’s intention to consider the application for the proposed use. Any such advertisement shall state that the application and associated documents are available for inspection at the office of the Council and that written comments on the application may be lodged with the Council before a specified date, being not less

than three weeks after the first publication of the notice;

- (b) sign or signs displaying notice of the proposed use or development to be erected in a conspicuous position on the land for the specified period from the date of publication of the notice referred to in subclause 6.7.1 (a);
- (c) use any other methods or media to ensure widespread notice of the proposal; and/or
- (d) give notice to ratepayers and/or occupiers likely to be affected by the granting of the approval; such notice shall be in writing supplying at least the information referred to in item (a) of this subclause, and allowing a like time after receipt of the notice for objections to be lodged with the Council.

6.7.2 Notification of “A” Uses

When considering an application for planning approval involving an “A” use, the Council shall not grant approval to that application unless notice has been given in accordance with subclause 6.7.1.

6.7.3 Consideration of Submissions on “D” and “A” Uses

If Council has advertised an application for planning approval pursuant to subclause 6.7.1 or 6.7.2, Council shall not make a decision to approve the application until after the latest date for submissions stated in any notice given or published pursuant to subclause 6.7.1 or 6.7.2 and until after Council has considered submissions lodged in accordance with the notice.

6.8 MATTERS TO BE CONSIDERED BY COUNCIL

The Council in considering an application for planning approval shall have due regard to such of the following matters as are in the opinion of the Council relevant to the use or development subject of the application:

- (a) the aims and provisions of this Scheme and any other relevant town planning scheme(s) operating within the Scheme Area;
- (b) the requirements of orderly and proper planning including any relevant proposed new town planning scheme or amendment, or region scheme or amendment, which has been granted consent for public submissions to be sought;
- (c) any approved Statement of Planning Policy of the Commission;
- (d) any approved Environmental Protection Policy under the Environmental Protection Act 1986;
- (e) any relevant policy or strategy of the Commission or any relevant planning policy adopted by the Government of the State of Western Australia;

- (f) any agreed structure plan prepared under the provisions of Part 9 of the Scheme or the desirability of having in place an agreed structure plan in the absence of such a plan;
- (g) any local planning policy of the Council adopted under the provisions of Clause 8.11 of the Scheme;
- (h) the conservation of any place that has been registered in the Register of Places under the Heritage of WA Act 1990, or which is subject of an order under Part VI of the Heritage of WA Act, or which is included in the Heritage List under subclause 5.2.2 of the Scheme, and the effect of the proposal on the character or appearance of a Heritage Area;
- (i) the compatibility of a use or development within its setting;
- (j) any social issues that have an effect on the amenity of the locality;
- (k) the cultural significance of any place or area affected by the development;
- (l) the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment;
- (m) whether the land to which that application relates is unsuitable for the proposal by reason of it being, or likely to be, subject to flooding, tidal inundation, subsidence, landslip, bush fire or any other risk;
- (n) the preservation of the amenity of the locality;
- (o) the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal;
- (p) whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles;
- (q) the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;
- (r) whether public transport services are necessary and, if so, whether they are available and adequate for the proposal;
- (s) whether public utility services are available and adequate for the proposal;
- (t) whether adequate provision has been made for access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);
- (u) whether adequate provision has been made for access by disabled persons;

- (v) whether adequate provision has been made for the landscaping of the land to which the planning application relates and whether any trees or other vegetation on the land should be preserved;
- (w) whether the proposal is likely to cause soil erosion or land degradation;
- (x) the potential loss of any community service or benefit resulting from the planning approval;
- (y) any relevant submissions received on the application including any relevant submission received by the applicant;
- (z) any relevant comments or submissions received from any authority or other party consulted under Clause 6.4; and
- (aa) any other consideration the Council considers relevant.

6.9 POWER TO DETERMINE APPLICATIONS FOR PLANNING APPROVAL

6.9.1 The Council having regard to the appropriateness of any proposed application for planning approval, may:

- (a) refuse to grant its approval;
- (b) grant approval without conditions;
- (c) grant approval subject to such conditions and requirements as it deems fit; or
- (d) defer consideration or determination of the application to a later time if in the Council's view additional information for, or more detailed investigation of the proposal is required.

6.9.2 Without limiting the generality of the foregoing, the Council may, where it deems appropriate, grant a Planning Approval which:

- (a) shall cease to be valid if it is not commenced, substantially commenced, or completed as the case may be within the period of time specified in the Approval; or
- (b) permits the use and/or other development of land to occur for a limited period of time specified in the approval, after the expiration of which period the use and/or other development shall cease and unless otherwise stipulated by the Council the site shall be restored to the condition existing at the time when the Approval was given, unless a further Approval has been sought and obtained.

6.9.3 The Council shall convey its decision to an applicant by way of the form prescribed under the Metropolitan Region Scheme for such purpose, or in any format that may be determined by the Council from time to time.

- 6.9.4 If the Council in exercising any discretion is required by the Scheme or by any other written law to have due regard to any matter or thing, it shall be deemed to have had due regard to such matter or thing unless the contrary is expressly stated in the Minutes of the relevant Council Meeting or the document communicating the determination for decision to the applicant, or is otherwise proved. In any event, due regard to the matter or thing by the responsible Committee or officer of the Council under delegated authority shall be sufficient compliance.

6.10 COMPLIANCE WITH CONDITIONS

- 6.10.1 If the Council or the State Administrative Tribunal on appeal from a decision of the Council, or any other decision making authority grants its approval of any development subject to conditions, no person shall use any land or building affected by the conditions or suffer or permit them to be used, or otherwise commence or carry out or suffer or permit the commencement or carrying out of any development on land otherwise than in accordance with the conditions.
- 6.10.2 The Council may, on application in writing 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.
- 6.10.3 No use shall commence until such time as all conditions of approval have been satisfied and the development from which the use is to be conducted has been completed in accordance with approved plans, unless otherwise agreed in writing by the Council.

6.11 APPROVALS ON APPEAL

In any case where a Planning Approval is given by the State Administrative Tribunal, or where a condition is imposed by the Tribunal, then that approval and/or any such conditions shall be deemed for the purpose of enforcement to have been imposed by the Council under the Scheme and may be enforced by the Council as such.

6.12 APPROVAL OF EXISTING DEVELOPMENTS

- 6.12.1 The Council may give planning approval to a development already commenced or carried out regardless of when it was commenced or carried out. Such approval shall have the same effect for all purposes as if it had been given prior to the commencement or carrying out of the development, but provided that the development complies with the provisions of the Scheme as to all matters other than the provisions requiring Council's approval prior to the commencement of development.
- 6.12.2 An application to the Council for planning approval under subclause 6.12.1 shall be made on such form as the Council provides from time to time.

- 6.12.3 A development which was not permissible under the Scheme at the time it was commenced or carried out may be approved if at the time of approval under this subclause it is permissible.
- 6.12.4 The approval by the Council of an existing development shall not affect the power of the Council to take appropriate action for a breach of the Scheme or the Act in respect of the commencement of the development without approval.