



**CITY OF SUBIACO**  
**TOWN PLANNING SCHEME NO. 4**

**Updated 28 April 2016**  
**Prepared by Department of Planning**

Original Town Planning Scheme Gazettal Date: 23 March 2001

## **Introductory Notes**

*\*This page is not a formal part of the City's Town Planning Scheme.*

This is a copy of the City of Subiaco's Town Planning Scheme, as gazetted on 23 March 2001 and updated on 22 September 2015.

On the 19 October 2015, the Planning and Development (Local Planning Schemes) Regulations 2015 came into effect. These Regulations are to be read in conjunction with the Town Planning Scheme. The Regulations contain a range of 'Deemed Provisions' which are to be automatically read into the Town Planning Scheme, and where the deemed provisions are different to requirements within the Scheme, the deemed provisions prevail.

The City is in the process of reviewing the Town Planning Scheme and the deemed provisions will form part of that review. However, the City's current Town Planning Scheme is, in places, inconsistent with the deemed provisions. This version of the Scheme has been annotated to show where the deemed provisions apply, and refer the reader to the relevant part of the deemed provisions.

A copy of the Deemed Provisions contained within the Planning and Development (Local Planning Schemes) Regulations 2015 is available from [http://planning.wa.gov.au/dop\\_pub\\_pdf/LPS\\_deemed.pdf](http://planning.wa.gov.au/dop_pub_pdf/LPS_deemed.pdf)

Comment [D1]: Comments in this column refer to Deemed Provisions

**CONTENTS**

**PART 1: INTRODUCTORY 1**

1. TITLE ..... 1

2. COMMENCEMENT ..... 1

3. SCHEME DOCUMENTS ..... 1

4. SCHEME AREA ..... 1

5. RESPONSIBLE AUTHORITY ..... 1

6. PURPOSES OF SCHEME ..... 1

7. OBJECTIVES AND INTENTIONS ..... 2

8. RELATIONSHIP WITH OTHER LAWS ..... 2

9. RELATIONSHIP WITH THE METROPOLITAN REGION SCHEME ..... 2

10. MINOR TOWN PLANNING SCHEMES ..... 2

11. REPEALS ..... 3

12. DEFINITIONS ..... 3

**PART 2: LAND USE 4**

13. ZONES ..... 4

14. ZONING TABLE ..... 4

15. NON-CONFORMING USES ..... 7

17. ADDITIONAL USES ..... 8

**PART 3: RESERVES 9**

18. RESERVES ..... 9

19. REGIONAL RESERVES ..... 9

20. PERMITTED USES FOR CITY OF SUBIACO SCHEME RESERVES ..... 9

21. ACQUISITION OF RESERVES AND COMPENATION ..... 9

**PART 4: DEVELOPMENT APPROVAL 10**

22. NEED FOR DEVELOPMENT APPROVAL ..... 10

23. EXEMPTION FROM DEVELOPMENT APPROVAL ..... 10

24. UNAUTHORISED EXISTING DEVELOPMENTS ..... 11

25. FORM OF APPLICATION ..... 11

26. ADVERTISING OF APPLICATIONS FOR DEVELOPMENT APPROVAL ..... 12

27. DETERMINATION OF APPLICATION: GENERAL PROVISIONS ..... 13

27A. DETERMINATION OF APPLICATIONS INVOLVING LIQUOR LICENCES ..... 13

28	VARIATIONS TO SITE AND DEVELOPMENT STANDARDS AND REQUIREMENTS.....	14
29	DETERMINATION OF ADDITIONAL USE APPLICATIONS FOR DEVELOPMENT APPROVAL	15
30	DETERMINATION OF AN APPLICATION FOR DEMOLITION.....	15
31	NOTICE OF LOCAL GOVERNMENT DECISION.....	15
32	TERM OF DEVELOPMENT APPROVAL.....	15
33	TEMPORARY DEVELOPMENT APPROVAL.....	16
34	DEEMED REFUSAL.....	16
35	REVOCATION OF DEVELOPMENT APPROVAL FOR HOME BUSINESSES.....	16
36	APPEALS.....	17
<b>PART 5: DEVELOPMENT REQUIREMENTS</b>		<b>17</b>
DIVISION 1: GENERAL DEVELOPMENT REQUIREMENTS.....		18
37	PRECINCTS.....	18
38	COMPLIANCE WITH DEVELOPMENT STANDARDS AND REQUIREMENTS.....	18
39	RESIDENTIAL DESIGN CODES.....	18
DIVISION 2: RESIDENTIAL ZONE.....		19
40	APPLICATION.....	19
41	AIMS AND OBJECTIVES.....	19
42	SPECIAL APPLICATION OF RESIDENTIAL DESIGN CODES.....	19
42A	DETERMINATION OF APPLICATION WHERE WALL/OVERALL HEIGHT IS NON COMPLIANT	22
DIVISION 3: COMMERCIAL/RESIDENTIAL ZONE.....		23
43	APPLICATION.....	23
44	AIMS AND OBJECTIVES.....	23
45	DEVELOPMENT STANDARDS.....	23
DIVISION 4: LOCAL CENTRE ZONE.....		25
46	APPLICATION.....	25
47	AIMS AND OBJECTIVES.....	25
48	DEVELOPMENT STANDARDS.....	25
DIVISION 5: NEIGHBOURHOOD MIXED USE ZONE.....		27
49	APPLICATION.....	27
50	AIMS AND OBJECTIVES.....	27
51	DEVELOPMENT STANDARDS.....	27
DIVISION 6: TOWN CENTRE ZONE.....		29
52	APPLICATION.....	29
53	AIMS AND OBJECTIVES.....	29

54	DEVELOPMENT STANDARDS .....	29
	DIVISION 6A: TOWN CENTRE DEVELOPMENT ZONE .....	31
54A	APPLICATION .....	31
54B	AIMS AND OBJECTIVES .....	31
54C	REQUIREMENT FOR LOCAL DEVELOPMENT PLANS .....	32
54D	COMMUNITY CONSULTATION AND DESIGN FORUM .....	32
54E	CONTENT OF LOCAL DEVELOPMENT PLAN .....	32
54F	PROCESS FOR ADOPTING LOCAL DEVELOPMENT PLAN .....	32
54G	OPERATION OF LOCAL DEVELOPMENT PLAN .....	33
54H	APPLICATION FOR REVIEW .....	33
54I	AMENDMENTS TO LOCAL DEVELOPMENT PLAN .....	33
54J	DEVELOPMENT STANDARDS .....	34
54K	DEVELOPMENT BONUSES .....	34
	DIVISION 7: PLACES OF CULTURAL HERITAGE SIGNIFICANCE .....	35
55	DECLARATION OF PLACES OF CULTURAL HERITAGE SIGNIFICANCE .....	35
56	HERITAGE AGREEMENTS .....	35
57	VARIATIONS TO STANDARDS .....	35
58	HERITAGE LIST .....	36
59	DECLARATION OF A heritage AREA .....	36
	DIVISION 8: TREE PRESERVATION .....	37
60	INTERPRETATION .....	37
61	TREE PRESERVATION ORDER .....	37
62	NOTICE OF A TREE PRESERVATION ORDER .....	37
63	DESTRUCTION OF TREES .....	37
64	LOCAL GOVERNMENT'S CONSENT FOR DESTRUCTION OF TREES .....	37
65	REGISTER OF TREE PRESERVATION ORDERS .....	38
65A	VARIATIONS TO STANDARDS .....	38
	DIVISION 9: CONTROL OF ADVERTISING .....	40
67	NEED FOR DEVELOPMENT APPROVAL .....	40
68	EXISTING AND EXEMPTED ADVERTISEMENTS .....	40
69	NOTICES AFFECTING THE DISPLAY OF ADVERTISEMENTS .....	40
	<b>PART 6: CAR PARKING</b> .....	<b>41</b>
70	CAR PARKING .....	41
70	(A) END OF TRIP BICYCLE FACILITIES .....	42

71	JOINT USE OF PARKING.....	42
72	DESIGN REQUIREMENTS FOR PARKING.....	42
73	LANDSCAPING AND OTHER DESIGN MATTERS.....	42
74	VEHICULAR ACCESS.....	43
75	CASH IN LIEU OF CAR PARKING.....	43
76	CARPARKING REQUIREMENTS.....	44
77	CARPARKING BAY DIMENSIONS FOR NON-RESIDENTIAL DEVELOPMENT.....	45
<b>PART 7: MISCELLANEOUS</b>		<b>46</b>
78	PLANNING POLICIES.....	46
79	AGREEMENTS AND DEALINGS WITH LAND.....	47
80	DELEGATION.....	47
81	COMPENSATION.....	47
82	ELECTION TO PURCHASE AND VALUATION.....	47
82A	ADDITIONAL MATTERS TO DO WITH SUBTRACTED AREAS.....	48
<b>PART 8: ENFORCEMENT</b>		<b>49</b>
83	NOTICES.....	49
84	AUTHORISED ENTRY.....	49
85	OFFENCES.....	49
SCHEDULE 1: DEFINITIONS.....		50
SCHEDULE 2: ADDITIONAL USES.....		61
SCHEDULE 3: APPLICATION FOR DEVELOPMENT APPROVAL.....		66
SCHEDULE 4: NOTICE OF THE LOCAL GOVERNMENT'S DECISION.....		67
SCHEDULE 5: ADDITIONAL INFORMATION SHEET FOR ADVERTISEMENT APPROVAL.....		68
SCHEDULE 6: NOTICE OF PUBLIC ADVERTISEMENT OF APPLICATION FOR DEVELOPMENT APPROVAL.....		69
SCHEDULE 7: END OF TRIP FACILITIES FOR BICYCLE USERS.....		71
SCHEDULE 8: APPROVED LOCAL DEVELOPMENT PLANS WITHIN THE TOWN CENTRE DEVELOPMENT ZONE.....		74

**Comment [D2]:** Structure Plans –Part 4 of Deemed Provisions

**Comment [D3]:** Activity Centre Plans - Part 5 of Deemed Provisions

**Comment [D4]:** Local Development Plans – Part 6 of Deemed Provisions

## **PART 1: INTRODUCTORY**

### **1. TITLE**

This Town Planning Scheme may be referred to as the City of Subiaco Town Planning Scheme No. 4

### **2 COMMENCEMENT**

This Scheme commences on the gazettal date.

*NOTE: The "gazettal date" is defined in Schedule 1.*

### **3 SCHEME DOCUMENTS**

(1) This Scheme comprises the following documents:

- (a) the Scheme Text; and
- (b) the Scheme Map.

(2) If there is any inconsistency between the Scheme Map and the Scheme Text, the latter is to prevail.

### **4 SCHEME AREA**

This Scheme applies to the Scheme area which covers all the municipal district of the City of Subiaco apart from the area, illustrated on the Scheme Map, comprising the land that is in the redevelopment area for the purposes of the *Metropolitan Redevelopment Authority Act 2011*.

*NOTE:*

- 1. *Parts of the Scheme area are also subject to other planning laws such as the Metropolitan Region Scheme (see clause 8) and minor town planning schemes (see clause 9).*
- 2. *The development of any land within the redevelopment area requires approval under section 47 of the Metropolitan Redevelopment Authority Act 2011.*

### **5 RESPONSIBLE AUTHORITY**

The authority responsible for administering this Scheme is the City.

*NOTE: The "City" is defined in Schedule 1.*

### **6 PURPOSES OF SCHEME**

The purposes of the Scheme are to —

- a) set out the local government's planning aims and intentions for the Scheme area;
- b) set aside land as reserves for public purposes;
- c) zone land within the Scheme area for the purposes defined in the Scheme;
- d) control and guide land use and development;
- e) set out procedures for the assessment and determination of planning applications;
- f) make provision for the administration and enforcement of the Scheme; and
- g) address other matters set out in the Seventh Schedule to the *Planning and Development Act 2005*.

INSERT AMEND NO 24 GG 1/3/16

## 7 OBJECTIVES AND INTENTIONS

The general planning objectives of this Scheme are:

- a) to protect and enhance the health, safety and general welfare of the City's community and the social, physical and cultural environment;
- b) to cater for the diversity of demands, interests and lifestyles by facilitating and encouraging the provision of a wide range of choices in housing, employment, education, leisure, transport and access opportunities;
- c) to foster and control the use and development of land in an effective, efficient and environmentally sustainable manner according to precinct planning principles;
- d) to ensure planning at the local level is consistent with the Metropolitan Region Scheme and wider regional planning objectives;
- e) to promote the development of a sense of local community and recognise the right of the community to participate in the evolution of their locality;
- f) to coordinate and ensure that development is of a high quality and is completed in an efficient and environmentally responsible manner which:
  - i) makes optimum use of the City's infrastructure and resources;
  - ii) promotes an energy-efficient environment; and
  - iii) respects the natural environment.
- g) to promote and safeguard the special character and cultural heritage of the City by:
  - i) identifying, conserving and enhancing those places which are of significance to the City's cultural heritage;
  - ii) encouraging development that is in harmony with the cultural heritage value of an area; and
  - iii) promoting public awareness of cultural heritage generally.
- h) to work in a cohesive and coordinated manner with existing and future local government strategies to provide detailed planning mechanisms to implement the objectives of both the Scheme and strategy.
- i) to provide a mechanism for the future integration of the Subiaco Redevelopment Area into the Scheme area and to create a Town Centre with synergy.

## 8 RELATIONSHIP WITH OTHER LAWS

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

## 9 RELATIONSHIP WITH THE METROPOLITAN REGION SCHEME

The Scheme is complementary to the Metropolitan Region Scheme and the provisions of the Metropolitan Region Scheme continue to have effect.

**NOTE:** *The authority responsible for implementing the Metropolitan Region Scheme is the Western Australian Planning Commission.*

## 10 MINOR TOWN PLANNING SCHEMES

- (1) The local government administers the following minor town planning schemes that continue to have effect:
  - (a) City of Subiaco Town Planning Scheme No.2: Jolimont Special Area Scheme.
- (2) Unless the contrary intention appears, a reference in any of the minor town planning schemes mentioned in subclause (1) to the City of Subiaco Town Planning Scheme No.3 is to be taken to refer to this Scheme.

**NOTE:** *Section 45 of the Metropolitan Redevelopment Authority Act 2011 provides that any town planning scheme ceases to apply on the day on which the redevelopment scheme comes into operation.*

## 11 REPEALS

The following written laws are repealed:

Name	Date of Publication in the Government Gazette
City of Subiaco Town Planning Scheme No. 3	30 October 1984

**NOTE:** *The repeal of a scheme extends to any amendments to that scheme (see section 33 of the Interpretation Act 1984).*

## 12 DEFINITIONS

- (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.
- (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
  - (a) in any other case the definition in the Dictionary prevails.
- (3) Notes and instructions printed in italics do not form part of the Scheme.

INSERT AMEND NO 24 GG 1/3/16

## PART 2: LAND USE

### 13 ZONES

- (1) The Scheme area is classified and divided into the zones with the exception of land identified under clause 18 (reserve land) as shown on the Scheme Map.
- (2) The zones are delineated and depicted on the Scheme Map according to the legend thereon.
- (3) The zones are as follows:
  - Residential
  - Local Centre
  - Commercial/Residential
  - Neighbourhood Mixed Use
  - Town Centre

### 14 ZONING TABLE

- (1) The Zoning Table indicates, subject to the provisions of the Scheme, the use permitted in the Scheme Area in the various zones. The permissibility of any use is determined by cross-reference between the list of uses in the Use Class column on the lefthand side of the Zoning Table and the list of zones at the top of the Zoning Table.
- (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 taking into consideration whether the nature of the use is consistent with the planning objectives of the Scheme and the planning policies with respect to that zone;
  - "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 26 and taking into consideration whether the nature of the use is consistent with the planning objectives of the Scheme and the planning policies with respect to that zone;
  - "X" means a use that is not permitted by the Scheme.

INSERT AMEND NO 24 GG 1/3/16

- (3) Where a number occurs with a symbol in the cross reference in the Zoning Table, for example (1), the permissibility of that use may be determined by reference to the meaning of the numerical figure as shown below the table.
- (4) Where in the Zoning Table a particular use is mentioned it is deemed to be excluded from any other Use Class which by its more general means might otherwise include such particular use.
- (5) If the use of land for a particular purpose is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the interpretation of one of the Use Class categories, the local government may:
  - (a) determine that the use is consistent with the planning objectives of the particular zone and is therefore permitted;
  - (b) determine, by absolute majority, that the proposed use may be consistent with the planning objectives of the zone and require the advertising procedure set out in Clause 26 to be complied with before considering an application; or
  - (c) determine that the use is not consistent with the planning objectives of the particular zone and is therefore not permitted.
- (6) Unless otherwise exempted, a use includes all ancillary activities that would normally be necessary for the proper functioning of the predominant use.

INSERT AMEND NO 24 GG 1/3/16

**TABLE 1 - ZONING TABLE**

USE CLASSES	RESIDENTIAL R15 AND R20	RESIDENTIAL R30, R35, R40, R50, R60 INSERT AMEND NO 25 GG 18/9/15	RESIDENTIAL R80	TOWN CENTRE	COMMERCIAL/RESIDENTIAL	NEIGHBOURHOOD MIXED USE	LOCAL CENTRE	TOWN CENTRE DEVELOPMENT ZONE INSERT AMEND NO 18 GG 28/10/14
Aged or Dependent Persons Dwelling	D	D	D	D	D	D	D	
Amusement Centre	X	X	X	A	X	X	X	
Amusement Facility	X	X	D	P	P	P	P	
Ancillary Dwelling	P	P	P	D	D	D	D	
Animal establishment	X	X	X	X	X	A	X	
Auction mart	X	X	X	D	A	A	A	
Bed & Breakfast	A	A	A	A	A	A	A	
Betting Agency INSERT AMEND NO 12 GG 23/10/09	X	X	X	P	D	A	A	
Child Care Service INSERT AMEND NO 8 GG 09/01/09	A	A	A	D	A	A	A	
Cinemas/Theatre	X	X	X	P	D	X	X	
Civic Use	X	X	X	P	D	D	X	
Club Premises	X	X	X	A	A	X	X	
Communications Antennae (Commercial)	X	X	X	D	A	A	X	
Communications Antennae (Domestic) INSERT AMEND NO 2 GG 22/10/04	P	P	P	P	P	P	P	
Community Purpose	X	X	X	P	D	D	X	
Consulting Rooms INSERT AMEND NO 2 GG 22/10/04 INSERT AMEND NO 8 GG 09/01/09	X(4)	X(4)	X(4)	D	D	D	D	
Convenience Store	X	X	X	A	A	A	X	
Dry Cleaning Premises	X	X	X	P	D	D	D	
Dwelling : Grouped INSERT AMEND NO 2 GG 22/10/04	P	P	P	D	D	D	D	
Dwelling : Multiple INSERT AMEND NO 2 GG 22/10/04	X	P(1)	P	D	D	D	D	
Dwelling : Single	P	P	P	P	P	P	P	
Dwelling : Single Bedroom INSERT AMEND NO 2 GG 22/10/04	P	P	P	D	D	D	D	
Educational Establishment	A(1)	A(1)	X	D	D	A	X	
Exhibition Centre INSERT AMEND NO 2 GG 22/10/04	X	X	X	P	P	P	P	
Fast Food Outlet INSERT AMEND NO 7 GG 11/07/08	X	X	X	D	A	A	X	
Fish Shop	X	X	X	D	X	A	X	
Funeral Parlour	X	X	X	D	D	X	X	
Health Studio	X	X	X	D	D	D	X	
Home Occupation INSERT AMEND NO 2 GG 22/10/04	P	P	P	P	P	P	P	
Home Office INSERT AMEND NO 2 GG 22/10/04	P	P	P	P	P	P	P	
Home Business INSERT AMEND NO 2 GG 22/10/04	D	D	D	P	P	P	P	
Hospital	X	X	X	X	A	X	X	
Hotel	X	X	X	D	A	A	X	
Industry	X	X	X	A	A	A	A	
Industry : Light	X	X	X	A	A	A	A	
Industry : Hazardous/Noxious	X	X	X	X	X	X	X	
Industry - Service INSERT AMEND NO 2 GG 22/10/04	X	X	X	D	D	D	D	
Laundromat	X	X	X	D	D	D	D	
Local Shop	X	X	A	P	P	P	P	
Lodging House	X	X	A	A	A	X	X	
Massage Rooms	X	X	X	D	A	A	X	
Market	X	X	X	A	A	A	A	
Medical Centre INSERT AMEND NO 2 GG 22/10/04	X	X	X	D	P	P	P	
Motel	X	X	X	D	A	A	X	
Motor vehicle, boat or caravan sales	X	X	X	A	A	A	X	
Motor vehicle repair	X	X	X	A	A	A	X	
Motor vehicle wash	X	X	X	A	A	A	X	

REFER TO SCHEDULE 8

USE CLASSES	RESIDENTIAL R15 AND R20	RESIDENTIAL R30, R35, R40, R50, R60 INSERT AMEND NO 25 GG 18/9/15	RESIDENTIAL R80	TOWN CENTRE	COMMERCIAL/RESIDENTIAL	NEIGHBOURHOOD MIXED USE	LOCAL CENTRE	TOWN CENTRE DEVELOPMENT ZONE INSERT AMEND NO 18 GG 28/10/14
Night Club	X	X	X	A	X	X	X	REFER TO SCHEDULE 8
Nursing Home	A	A	A	A	A	A	A	
Offices INSERT AMEND NO 2 GG 22/10/04 INSERT AMEND NO 8 GG 09/01/09	X(4)	X(4)	X(4)	D	P	D	D	
Open Air Display	X	X	X	D	D	D	D	
Parking Station	A	A	A	A	A	A	A	
Place of Public Worship	A	A	A	A	A	A	A	
Reception Centre	X	X	X	D	A	A	X	
Recreation - Private INSERT AMEND NO 2 GG 22/10/04	D	D	D	D	D	D	D	
Research & Development INSERT AMEND NO 8 GG 09/01/09	X(3)	X(3)	X	D	D	D	X	
Restaurant	X	X	A	P	D	D	D	
Retirement Village	X	D	D	X	D	D	X	
Service Station	X	X	X	A	A	A	X	
Serviced Apartments	X	D	P	D	P	D	X	
Shop	X	X	X	P	D	P	P	
Showroom	X	X	X	D	D	D	D	
Small Bar INSERT AMEND No 10 GG 21/12/07	X	X	X	D	A	A	X	
Special (licensed) Facility INSERT AMEND NO 2 GG 22/10/04	X	X	X	D	A	A	X	
Tavern	X	X	X	D	A	A	X	
Telecommunications Infrastructure	D	D	D	D	D	D	D	
Veterinary Clinic/Hospital INSERT AMEND NO 2 GG 22/10/04	X	X	X	D	D	D	X	
Warehouse	X	X	X	D	D	D	X	

- A(1) "A" only in respect of relevant residential zones within the University Precinct 13, "X" in respect of all other residential zones.
- P(1) "P" where permitted by Table 1 of the R-Codes, "X" in all other cases.
- X(3) "A" only in respect of relevant residential zones within the University Precinct 13 for Research and Development related to the University of Western Australia, "X" in all other cases.
- X(4) The local government may consider the above as an "A" use only in respect of land and buildings registered on the City's Heritage List as per Clause 58 of the Scheme. "X" use in respect of all other land and buildings.  
INSERT AMEND NO 24 GG 1/3/16

## 15 NON-CONFORMING USES

Comment [D5]: See Part 8 Clause 64 for Advertising extensions to NCU

- (1) Unless specifically provided, this Scheme does not prevent —
  - (a) the continued use of any land, or any structure or building on land, for the purpose for which it was being lawfully used immediately before the commencement of this Scheme; or
  - (b) the carrying out of development on land if —
    - (i) before the commencement of this Scheme, the development was lawfully approved; and
    - (ii) the approval has not expired or been cancelled.
- (2) Subclause (1) does not apply if —
  - (a) the non-conforming use of the land is discontinued; and
  - (b) a period of 6 months, or a longer period approval by a local government, has elapsed since the discontinuance of the non-conforming-use.
- (3) Subclause (1) does not apply in respect of a non-conforming use of land if, under Part 11 of the Act, the local government —
  - (a) purchases the land; or
  - (b) pays the compensation to the owner of the land in relation to the non-conforming use.
- (4) A person must not, without development approval —
  - (a) alter or extend a non-conforming use of land; or
  - (b) erect, alter or extend a building used for, or in conjunction with, a non-conforming use; or
  - (c) repair, rebuild, alter or extend a building used for a non-conforming use that is destroyed to the extent of 75% or more of its value; or
  - (d) change the use of land from a non-conforming use to another non-conforming use.
- (5) An application for development approval for the purposes of this clause must be advertised in accordance with clause 64 of the deemed provisions.
- (6) A local government may only grant development approval for a change of use of land referred to in subclause (4)(d) if, in the opinion of the local government, the proposed use —
  - (a) is less detrimental to the amenity of the locality than the existing non-conforming use; and
  - (b) is closer to the intended purpose of the zone in which the land is situated.
- (7) The local government may prepare a register of land within the Scheme area that is being used for a non-conforming use.
- (8) A register prepared by the local government must set out the following
  - (a) a description of each area of land that is being used for a non-conforming use;
  - (b) a description of any building on the land;
  - (c) a description of the non-conforming use;
  - (d) the date on which any discontinuance of the non-conforming use is noted.
- (9) If the local government prepares a register under subclause (7) the local government —
  - (a) must ensure that the register is kept up-to-date; and
  - (b) must make a copy of the register available for public inspection during business hours at the offices of the local government; and
  - (c) may publish a copy of the register on the website of the local government.
- (10) An entry in the register in relation to the land that is being used for a non-conforming use is evidence of the matters set out in the entry, unless the contrary is proved.

INSERT AMEND NO 24 GG 1/3/16

## 16 REGISTER OF NON-CONFORMING USES

DELETED BY AMEND NO 2 GG 22/10/04

Comment [KH6]: This section has been deleted

## 17 ADDITIONAL USES

Notwithstanding anything contained in the Zoning Table, the land specified in Schedule 2 may, subject to compliance with any conditions specified in the Schedule with respect to the land, be used for the purpose set against the land. The use so specified is in addition to the other uses permitted in the zone in which the land is situated unless any of those uses are excluded or modified by a condition specified in that Schedule.

INSERT AMEND NO 2 GG 22/10/04

## PART 3: RESERVES

### 18 RESERVES

Certain land within the Scheme area is shown on the Scheme Map and classified into either:

- (a) a Metropolitan Region Scheme reserve; or
- (b) a City of Subiaco Scheme reserve.

### 19 REGIONAL RESERVES

- (a) The lands shown as "Regional Reserves" on the Scheme Map are lands reserved under the Metropolitan Region Scheme and are shown on the Scheme Map for the purposes of the Act. These lands are not reserved under the Scheme.  
INSERT AMEND NO 8 GG 09/01/09
- (b) The approval of the local government under the Scheme is not required for the commencement or carrying out of any use or development on a Regional Reserve.

**NOTE:** *The provisions of the Metropolitan Region Scheme continue to apply to such Reserves and approval is required under the Metropolitan Region Scheme from the Commission for the commencement or carrying out of any use or development on a Regional Reserve unless specifically excluded by the Region Scheme.*

### 20 PERMITTED USES FOR CITY OF SUBIACO SCHEME RESERVES

Where a City of Subiaco Scheme reserve is proposed to be developed for:

- (a) a use which gives effect to the purpose for which the land is reserved under this Scheme; or
- (b) in the case where the land is vested in a public authority, a Commonwealth agency or in the local government, a use which gives effect to the purpose for which the land may lawfully be used,

Then the local government shall not refuse development approval by reason only of the nature of the use.

**NOTE:** 1. "Public authority", "Commonwealth agency" and the "local government" are defined in Schedule 1.  
2. The local government under Part 4 grants development approval.

### 21 ACQUISITION OF RESERVES AND COMPENATION

- (1) This clause applies to land that is:
  - (a) a City of Subiaco Scheme reserve; and
  - (b) not owned by or vested in a public authority, a Commonwealth agency or the local government.
- (2) Where the local government refuses development approval of land to which this clause applies on the ground that the land is reserved for public purposes or approved subject to conditions that are unacceptable to the applicant if the land is injuriously affected thereby, the owner may claim compensation for the injurious affection in accordance with the Act.  
INSERT AMEND NO 8 GG 09/01/09
- (3) Claims for compensation shall be lodged at the office of the local government not later than six months after the date of the decision of the local government refusing development approval or granting it subject to conditions that are unacceptable to the applicant.
- (4) Where compensation for injurious affection is claimed as a result of the operation of the Act, the local government may at its option elect to acquire the land so affected instead of paying compensation.  
INSERT AMEND NO 8 GG 09/01/09
- (5) A claim for compensation is to be made in the Form 4 of the Metropolitan Region Scheme addressed to the local government.

## PART 4: DEVELOPMENT APPROVAL

### 22 NEED FOR DEVELOPMENT APPROVAL

- (1) In order to give full effect to the provisions and objectives of this Scheme, all development, including a change in the use of land, except as otherwise provided in clause 23 of the Scheme, requires the prior approval of the local government in each case. Accordingly, no person shall commence or carry out any development, including a change in the use of any land, without first having applied for and obtained the development approval of the local government pursuant to the provisions of this Part.
- (2) For the purposes of this clause, a change in the classification of a licence issued in accordance with the provisions of the *Liquor Control Act 1988*, or any extension of trading in accordance with an extended trading permit granted under that Act, shall be taken to be a change of use and, therefore, development for which approval is required under sub-clause (1).
- (3) Subclause (2) shall not apply to the Ale of liquor in accordance with:
  - a) A Producer's Licence granted under Section 55 of the *Liquor Control Act 1988*;
  - b) A Wholesaler's Licence granted under Section 58 of the *Liquor Control Act 1988*; or
  - c) An Occasional Licence granted under Section 59 of the *Liquor Control Act 1998*.

**NOTE:** The provisions of Clause 27A shall apply to the determination of applications involving liquor licensing and/or extended trading permits.  
INSERT AMEND NO 2 GG 22/10/04

### 23 EXEMPTION FROM DEVELOPMENT APPROVAL

- (1) ~~The development approval of the local government is not required for the following development of land:~~
  - ~~(a) development of a Metropolitan Region Scheme reserve for the purpose for which the land is reserved under the Metropolitan Region Scheme;~~
  - ~~(b) additions or extension, to a single house which do not enlarge it by more than one half of its gross floor area, except where:
    - ~~(i) the proposal requires the exercise of discretion by the local government to vary the provisions of the R Codes or the Scheme; or~~  
INSERT AMEND NO 2 GG 22/10/04
    - ~~(ii) the single house is located in a place that has been entered in the Register of Places under the Heritage of Western Australia Act 1990; or~~
    - ~~(iii) the single house is the subject of an Order under Part 6 of the Heritage of Western Australia Act 1990; or~~  
the single house is listed in the Register of Places of Cultural Heritage Significance referred to in clause 58;  
INSERT AMEND NO 2 GG 22/10/04
    - ~~(iv) the single house is located in a conservation area declared under clause 59.~~  
INSERT AMEND NO 2 GG 22/10/04~~
  - ~~(c) building or other work carried out by the City, a public authority or a Commonwealth agency in connection with the maintenance or improvement of a public street; or~~
  - ~~(d) a home occupation unless the home occupation is being carried out otherwise than in accordance with the relevant planning policy.~~
  - ~~(e) A home office;~~
  - ~~(f) Communications antennae (domestic) – where in accordance with Planning Policy;~~
  - ~~(g) Any works which are temporary and in existence for less than 48 hours or such longer time as the local government agrees;~~
  - ~~(h) Exempted advertisements (as listed in the relevant policy/local laws);~~

**Comment [D7]:** See Part 7, Clause 61. Requirements for Development approval.  
REPLACES MOST OF THIS SECTION

**Comment [D8]:** 61(1)a

**Comment [D9]:** 61(1) b,c,d

**Comment [D10]:** Not applicable

**Comment [D11]:** Still applies

**Comment [D12]:** Not applicable

**Comment [D13]:** Still applies

**Comment [D14]:** 61(1)f

**Comment [D15]:** 61(1)g

- ~~(i) Outbuildings appurtenant to a dwelling, fences, rainwater tanks, and swimming pools and spas appurtenant to a dwelling, except where the proposal requires the exercise of a discretion by the local government to vary the provisions of the Residential Design Codes or the Scheme;~~
- ~~(j) Development for non-residential purpose involving building works that do not materially affect the external appearance of the building and do not increase the plot ratio of the building;~~
- ~~(k) Development or works by or on behalf of the City or any public authority on a City of Subiaco Scheme reserve, where such development or works are consistent with the purpose of the reserve or incidental to such purpose;~~  
INSERT AMEND NO 2 GG 22/10/04
- ~~(l) Demolition of an outbuilding where the subject outbuilding is not
 
  - ~~i) the proposal is the subject of an Order under Part 6 of the Heritage of Western Australia Act 1990; or~~
  - ~~ii) the proposal is listed in the Register of Places of Cultural Heritage Significance referred to in clause 58; or~~
  - ~~iii) the proposal is located in a place that has been entered in the Register of Places under the Heritage of Western Australia Act 1990; or~~
  - ~~iv) the proposal is located in a conservation area declared under clause 59; or~~
  - ~~v) listed on the City's Municipal Inventory~~~~  
INSERT AMEND NO 8 GG 09/01/09

Comment [D16]: Not applicable

Comment [D17]: Not applicable

Comment [D18]: Still applies

Comment [D19]: Not applicable

- NOTE:** 1. ~~The register of places of cultural heritage significance also contains a list of each area declared by the local government to be a conservation area (see clause 59).~~  
INSERT AMEND NO 2 GG 22/10/04
2. ~~Development approval is not required for:~~
- ~~(a) certain developments carried out in accordance with subdivisional approval (see section 20D of the Planning and Development Act 1928);~~
  - ~~(b) development on certain land subject to the Metropolitan Redevelopment Authority Act 2011 referred to in clause 4.~~
3. ~~"Home occupation" is defined in Schedule 1.~~
4. ~~A Building Licence is required for all works.~~

## 24 UNAUTHORISED EXISTING DEVELOPMENTS

Comment [D20]: See also Part 8 clause 65 "subsequent approval of development"

- (1) Where a development has been, or is being, carried out contrary to clause 22, a person may apply to the local government for development approval for that development.
- (2) If the local government grants development approval in respect of an application made under subclause (1), the development approval is not to be taken as:
  - (a) authorising development before the date on which the local government resolved to grant the development approval; or
  - (b) preventing action being taken in respect of the unauthorised development before the date on which the local government resolved to grant development approval.

## 25 FORM OF APPLICATION

Comment [D21]: See Part 8 Clause 62 and 63

An application for development approval is to:

- ~~(a) be made generally in the form set out in Schedule 3 of the Scheme and contain the information and material set out in the local government's planning policy for applications for development approval and be forwarded to the local government;~~
- ~~(b) be made by the owner of the land on which the development is proposed or a person authorised in writing by the owner to make an application for development approval; and~~
- ~~(c) include all information, plans and documents required, by provision of this Scheme Text, a planning policy or otherwise, to be included in an application for development approval.~~

## 26 ADVERTISING OF APPLICATIONS FOR DEVELOPMENT APPROVAL

Comment [D22]: See Part 8 Clause 64 "Advertising applications"

- (1) Where an application is made for a development approval to commence or carry out development which involves an "A" use or any other proposal deemed by the local government to warrant advertisement the local government shall not grant approval of that application unless notice of the application is first given in accordance with the provisions of subclause (5) of this clause.
- (2) ~~Notwithstanding subclause (1) in this clause, where an application is made for a development approval to commence or carry out development which involves an "A" use or other use, the local government may decide that the use is not required to be advertised in accordance with subclause (5) where:~~
  - (a) ~~the use is existing on the subject land;~~
  - (b) ~~in the opinion of local government, approval of the application will not materially add to the scale and intensity of the existing use of the land.~~

For the purpose of this clause, the local government, in determining whether an application will not materially add to the scale and intensity of the existing use of the land shall consider the following matters:

  - (i) ~~the visual appearance and scale of the development relative to adjoining properties;~~
  - (ii) ~~the impact of the development on the amenity of adjoining properties;~~
  - (iii) ~~the generation of any additional vehicular parking, traffic, noise or odour which may be created by the development; and~~
  - (iv) ~~any other matters which the local government considers to be relevant.~~
- (3) ~~Nothing in subclause (2) of this clause shall prevent the local government from determining that an application involving an "A" use or other use shall be advertised.~~
- (4) Where an application is made for development approval to commence or carry out development which involves an "D" use, or any other development which requires the approval of the local government, the local government may give notice of the application in accordance with the provisions of subclause (5).
- (5) ~~Where the local government is required or decides to give notice of an application for development approval the local government shall cause one or more of the following to be carried out at the applicant's expense:~~
  - (a) ~~notice of the proposed development to be given to the owners and occupiers who in the opinion of the local government are likely to be affected by the granting of development approval, in accordance with local government policy, stating that submissions may be made to the local government within twenty one days of the date of such notice;~~  
INSERT AMEND NO 2 GG 22/10/04
  - (b) ~~notice of the proposed development to be published in a newspaper circulated in the Scheme area stating that submissions may be made to the local government within twenty one days from the publication thereof; and~~
  - (c) ~~a sign or signs displaying notice of the proposed development to be erected in conspicuous position or positions on the land for a period of twenty one days from the date of publication of the notice referred to in paragraph (b) of this subclause.~~
- (6) ~~The notice referred to in subclause (5) (a) and (b) shall be in the form contained in Schedule 6 with such modifications, as circumstances require.~~
- (7) ~~After expiration of twenty one days from the serving of the notice of the proposed development, the publication of the notice or the erection of a sign or signs, whichever is the later, the local government shall consider and determine the application.~~

## 27 DETERMINATION OF APPLICATION: GENERAL PROVISIONS

- (1) The local government may refuse to consider an application that does not comply with the requirements of clause 25.  
INSERT AMEND NO 2 GG 22/10/04
- (2) ~~In assessing an application, the Local government:~~  
~~(a) may consult with any person or body; and~~  
~~(b) is to have regard to any written submissions lodged with the City under clause 26.~~
- ~~(3) Subject to subclause (4), the local government may:~~  
~~(a) refuse an application; or~~  
~~(b) approve an application either:~~  
~~(i) unconditionally; or~~  
~~(ii) subject to such conditions as the local government considers to be appropriate.~~
- ~~(4) Without limiting the scope of the local government's discretion to determine an application under subclause (3), the local government is to have regard to:~~  
~~(a) the provisions of this Scheme and of any written law applying within the Scheme area including the Metropolitan Region Scheme;~~  
~~(b) any relevant planning policies;~~  
~~(c) a statement of planning policy of the Western Australian Planning Commission;~~  
~~(d) any planning study approved by the local government;~~  
~~(e) any submission accompanying or relating to the application;~~  
~~(f) the orderly and proper planning of the locality;~~  
~~(g) the conservation of the amenity of the locality; and~~  
~~(h) the design, scale and relationship to existing buildings and surroundings of any proposed building or structure.~~  
~~(i) The conservation of places and areas of cultural heritage significance as referred to in clause 58 and clause 59.~~  
 INSERT AMEND NO 2 GG 22/10/04

## 27A DETERMINATION OF APPLICATIONS INVOLVING LIQUOR LICENCES

INSERT AMEND NO 2 GG 22/10/04

- (1) Prior to its determination of any application for development approval which involves the issue of a licence or ongoing extended trading permit under the *Liquor Control Act 1988*, the local government may require such additional information as it considers relevant to the determination of the application, including:
- (a) the proposed hours of operation of the proposed facility;
  - (b) the proposed use and/or occupancy of each and every component of the development, including any alfresco areas proposed to be used in conjunction with the development; and
  - (c) the measures by which the behaviour of patrons is proposed to be managed, and in particular measures to address any unruly behaviour which may take place in association with the operation of the premises.
- (2) In addition to those matters to which the local government must have regard under clause 27, the following additional matters may be considered in the determination of any application for development approval which involves the issue of a licence under the *Liquor Control Act 1988*:
- (a) the location of the proposed facility, and its potential impact on the amenity and character of the locality;
  - (b) the effect of aggregating development characterised by after-hours operation and relatively low levels of activity during normal shopping hours;
  - (c) the effect of the proposed development on the mix of activities in the locality, and the desirability of maintaining a mix of land uses characteristic of the locality;
  - (d) the duration of trading hours with reference to the amenity of the locality, the availability of public transport services and the generation of vehicular traffic; and
  - (e) any planning policy relevant to the matters specified in paragraphs (a), (b), (c) and (d).

- (3) In addition to any other discretion available under the scheme, including the discretion to refuse its consent, in its determination of any application for development approval which involves the issue of a licence under the *Liquor Control Act 1988*, the local government may impose conditions relating to any or all of the following:
- (a) hours of operation of the premises, including time restrictions on any or all activities for which areas are to be used;
  - (b) maximum number of people permitted to occupy the premises, or particular parts of the premises;
  - (c) location and extent of areas to be used for particular activities, including areas in which liquor may be consumed; and
  - (d) management agreements to address any unruly behaviour which may take place in association with the operation of the premises.

## **28 VARIATIONS TO SITE AND DEVELOPMENT STANDARDS AND REQUIREMENTS**

- (1) Except for development in respect of which the R-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;
- (2) In considering an application for planning approval under this clause, where, in the opinion of the local government, the non-compliance is likely to affect any owners or occupiers in the general locality or adjoining the site which is the subject of consideration for the non-compliance, the local government is to —
- (a) consult the affected parties by following one or more of the provisions for advertising uses under clause 64(3) of the deemed provisions; and
  - (b) have due regard to any expressed views prior to making its determination to grant the non-compliance.
- (3) The power conferred by this clause shall only be exercised if the local government:
- (a) approval of the proposed development would be appropriate having regard to the criteria set out in clause 67 of the deemed provisions; and
  - (b) the non-compliance would not be detrimental to the amenity of adjoining properties or the locality generally, and
  - (c) the non-compliance would not be detrimental to the conservation of the cultural heritage values of buildings on-site and on adjoining sites, and
  - (d) where the non-compliance concerns building height, the degree to which the proposed overall height effectively graduates the scale between existing buildings of varying heights within the locality, and
  - (e) the non-compliance will not have an adverse effect upon:
    - (i) the occupiers or users of the development,
    - (ii) the property in or the inhabitants of the locality, or
    - (iii) the likely future development of the locality, and
  - (f) any other relevant matter outlined in the local government's local planning policies.
- (4) This clause 28 does not apply to subclauses 42(1), 42(3), 45(1), 45(4), 48(4) and 51(4).
- (5) The powers conferred by clause 28 shall not apply to vary the requirements of any land use definition in Schedule 1.

INSERT AMEND NO 24 GG 1/3/16

## 29 DETERMINATION OF ADDITIONAL USE APPLICATIONS FOR DEVELOPMENT APPROVAL

- (1) Subject to subclause (2), development of the land specified in Schedule 2 for the purpose indicated in respect of that land in Schedule 2 shall conform to the requirements prescribed with respect to that land in the Schedule.
- (2) In determining an application for Development Approval with respect to land:
  - (a) specified in Schedule 2; and
  - (b) within the Residential Zone,  
the local government shall determine:
    - (i) the minimum setback from lot boundaries applicable to the land;
    - (ii) the minimum number of car parking spaces to be provided on the land; and
    - (iii) the minimum landscaped area to be provided on the land.
- (3) In determining the matters referred to in subclause (2), the local government shall have regard to:
  - (a) the setbacks from lot boundaries of any building existing on the land;
  - (b) the number of carparking spaces provided on the land;
  - (c) the amount of landscaped area provided on the land;
  - (d) the requirements prescribed with respect to land in the Residential Zone; and
  - (e) the need to preserve the amenity of residential development in the locality.”

## 30 DETERMINATION OF AN APPLICATION FOR DEMOLITION

- (1) In considering an application for or involving demolition, the local government is to have regard to the matters listed in clauses 26 and 27 and:  
INSERT AMEND NO 2 GG 22/10/04
  - (a) may defer consideration of the application until it has granted development approval for subsequent development of the relevant site.
  - (b) approve the application, subject to conditions including:
    - (i) the retention, maintenance, reinstatement or repositioning of any part of the existing building or structure;
    - (ii) where the development that has been approved has not been substantially commenced within a total period of more than six months, landscaping of or other treatment of the site is to be undertaken to the satisfaction of the local government; or
  - (c) refuse the application.

INSERT AMEND NO 2 GG 22/10/04

**NOTE 1:** *In approving any application for or involving demolition, the local government may impose such conditions as it considers appropriate, to ensure the site does not detract from the amenity of the area in which it is situated. [refer clause 27(3) and clause 30(1)(b)]*  
INSERT AMEND NO 2 GG 22/10/04

**NOTE 2:** *An applicant for development approval has a right of appeal where there has been a deemed refusal (see clause 34).*

**Comment [D24]:** Single houses and associated structures are exempt from requiring application for demolition. See Clause 61(1)e

## 31 NOTICE OF LOCAL GOVERNMENT DECISION

~~As soon as is practicable after making a decision in relation to an application, the local government is to give to the applicant, in writing, in the form set out in Schedule 4:~~

- ~~(a) notice of the approval or refusal;~~
- ~~(b) the reason or reasons for the refusal; and~~
- ~~(c) the conditions, if any, to which approval is subject.~~

**Comment [D25]:** See Clause 70

## 32 TERM OF DEVELOPMENT APPROVAL

- ~~(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.~~~~

**Comment [D26]:** See Clause 71

### 33 TEMPORARY DEVELOPMENT APPROVAL

Comment [D27]: See Clause 72

~~The local government may, in granting development approval, limit the period during which the development may be carried out where:~~

- ~~(a) it considers that development in excess of that period might adversely affect the amenity of the locality or the orderly and proper planning of the locality; or~~
- ~~(b) it considers, for any reason, that approval ought to be granted for a limited or trial period.~~

### 34 DEEMED REFUSAL

Comment [D28]: See clause 75  
"Time for Deciding application for DA"

~~(1) Subject to subclause (2) and (3), an application is taken to have been refused where notice of development approval is not given to the applicant by the local government within:~~

- ~~(a) 60 days of the receipt of the application as defined in Clause 27; or  
INSERT AMEND NO 8 GG 09/01/09~~
- ~~(b) such further time as may be agreed in writing between the applicant and the local government; or  
INSERT AMEND NO 2 GG 22/10/04~~

~~(2) Subject to subclause (3), an application in respect of any place which:~~

- ~~(a) is listed in the register of places of cultural heritage significance; or~~
  - ~~(b) is being considered, under clause 55, for the purposes of being declared to be significant and worthy of conservation;~~
  - ~~(c) local government requires to be advertised in accordance with the procedure outlined in clause 26;~~
  - ~~(d) local government requires to be referred to any other body in accordance with clause 26;~~
- ~~is taken to have been refused where notice of development approval is not given to the applicant within:~~

- ~~(i) 90 days of the receipt of the application; or~~
- ~~(ii) such further time as may be agreed in writing between the applicant and the local government.  
INSERT AMEND NO 2 GG 22/10/04~~

~~(3) Nothing in this clause prevents the local government from making a decision about an application after the expiry of the periods referred to in subclauses (1) and (2).~~

**NOTE:** *An applicant seeking development approval has a right of appeal where there has been a deemed refusal (see clause 36).  
INSERT AMEND NO 2 GG 22/10/04*

### 35 REVOCATION OF DEVELOPMENT APPROVAL FOR HOME BUSINESSES

(1) This clause applies only to a development approval of a Home Business.  
INSERT AMEND NO 8 GG 09/01/09

(2) If, in the opinion of the local government:

- (a) a condition of development approval is not being, or has not been, complied with; or
- (b) development is being or has been undertaken:
  - (i) otherwise than in accordance with the approved plans;
  - (ii) contrary to the Scheme; or
  - (iii) the relevant planning policies;

then the local government may give to the owner and occupier of the relevant land or building a notice in writing requiring the owner or occupier, or both, to comply within a specified period as determined by the local government.

(3) If the notice under subclause (2) is not complied with the local government may, without further notice to the owner or occupier, revoke its development approval.

**NOTE:** *Where development approval has been revoked under this clause, a fresh application for development approval must be submitted to and approved by the Local government before any development which was the subject of the revoked development approval can be continued or recommenced.*

## 36 APPEALS

Subject to the provisions of the Act, an applicant for development approval has a right of appeal against the exercise by the local government of discretion to:

- (a) impose a condition of development approval; or
- (b) refuse to grant development approval.

**NOTE:** *The appeal provisions are set out in Part V of the Planning and Development Act 2005.*

**Comment [D29]:** See also Clause 73  
"Scope of Development approval."

**Comment [D30]:** See also Clause 74  
"Approval subject to later approval of  
details"

## **PART 5: DEVELOPMENT REQUIREMENTS**

### **DIVISION 1: GENERAL DEVELOPMENT REQUIREMENTS**

#### **37 PRECINCTS**

- (1) The Scheme Area is divided into the precincts identified on the Scheme Map and set out in adopted precinct planning policies. Land is then assigned a zone. Zones are outlined in Part 2 of this Scheme.
  - (2) For each precinct listed below, the local government may prepare a precinct planning policy which shall be prepared and amended in accordance with the provisions of Part 2 of the deemed provisions.
    - 1 Jolimont
    - 2 Darglish
    - 3 North Subiaco
    - 4 Town Centre
    - 5 Hay Street East
    - 6 Rokeby Road South
    - 7 Civic and Cultural
    - 8 Triangle
    - 9 West Subiaco
    - 10 Shenton Park
    - 11 Queen Elizabeth II Medical Centre
    - 12 Hollywood
    - 13 University
    - 14 Centro Precinct
- INSERT AMEND NO 24 GG 1/3/16

#### **38 COMPLIANCE WITH DEVELOPMENT STANDARDS AND REQUIREMENTS**

Unless otherwise consistent with a planning approval, the development of land is to be in accordance with the standards and requirements contained in the Scheme Text, the planning policies and the R-Codes.

#### **39 RESIDENTIAL DESIGN CODES**

- (1) The local government –
  - (a) must make a copy of the R-Codes available for public inspection during business hours at the offices of the local government; and
  - (b) may publish a copy of the R-Codes on the website of the local government.
- (2) The coding of land for the purposes of the R-Codes is shown by the coding number superimposed on a particular area contained within the boundaries of the area shown on the Scheme map.
- (3) The R-Codes apply to an area if the area has a coding number superimposed on it in accordance with subclause (3).

INSERT AMEND NO 24 GG 1/3/16

## DIVISION 2: RESIDENTIAL ZONE

### 40 APPLICATION

This division applies to all areas zoned Residential in the Scheme area.

### 41 AIMS AND OBJECTIVES

- (1) The pattern of allocation of the Residential Design Codes (R Code) densities is designed to provide for development in such a way as will:
  - (a) provide sufficient land in appropriate locations for residential development to meet the needs of the anticipated population without unduly restricting the choice of sites;
  - (b) promote the health, welfare and safety of the City's inhabitants and their environment.
- (2) In considering an application for development approval in the zones to which this division applies the local government, in addition to any other matter it is required or permitted to consider, shall have regard to the following objectives:
  - (a) the provision of a wide range of different types of residential accommodation to meet the diverse needs of the community;
  - (b) the protection of residential areas from any interaction between different intensities of uses or incompatible uses which could be objectionable or detrimental to the amenity of any neighbourhood;
  - (c) the protection of residential areas from disproportionate or excessive development by regulating the density of dwellings and the finished heights of buildings;
  - (d) the protection of the privacy of indoor and outdoor living spaces of dwellings;
  - (e) the encouragement of new concepts of residential design, including the development of new types of residential accommodation and comprehensive development projects;
  - (f) to enhance the amenity of the residential neighbourhood by ensuring the protection of the privacy of residences, the street orientation of new dwellings, the adherence to solar and environmentally sound design principles and the preservation of the character of the existing housing stock.
  - (g) to ensure compatibility of the development with the established streetscape, taking into consideration setbacks, roof pitches, materials, design and landscaping;  
INSERT AMEND NO 2 GG 22/10/04
  - (h) to assist in the rejuvenation of degraded streetscape;
  - (i) to promote and encourage design that incorporates sustainability principles, including but not limited to solar passive design, energy efficiency, reduction in greenhouse gas emissions, water conservation, waste management and recycling;
  - (j) to promote and encourage design that incorporates crime prevention through environmental design principles including but not limited to, appropriate fencing, appropriate landscaping, casual surveillance of public open spaces and adequate pedestrian movement sightlines.  
INSERT AMEND NO 8 GG 09/01/09

### 42 SPECIAL APPLICATION OF RESIDENTIAL DESIGN CODES

INSERT AMEND NO 24 GG 1/3/16

The following provisions of this division constitute variations to the provisions of the Codes with respect to the residential purposes dealt with by those Codes. Unless specified within this division, all development is to be in accordance with the Codes.

- (1) **Residential Zone : R Code Density R15 and R20**
  - (a) Notwithstanding any provisions of the Residential Design Codes to the contrary, buildings on land within the Residential Zone having an R Code density of R15 or R20 shall not exceed 6.5 metres overall height and 3.6 metres wall height;
  - (b) The local government may permit a variation to subclause (a) and permit buildings of up to 9 metres overall height and 6 metres wall height, where the local government is satisfied that there is to be no undue adverse impact on adjoining residential sites or the general amenity of the locality.

INSERT AMEND NO 2 GG 22/10/04

- (2) **Residential Zone: R30, R35, R40, R50 and R60**  
 Notwithstanding any provisions of the R-Codes or adopted planning policy to the contrary, buildings on land within the residential zone having an R code density of R30, R35, R40, R50 and R60 shall not exceed 9 metres overall height and 6 metres wall height.
- (a) **Western side of Rupert Street between Bagot and Hamersley Roads, having an R Code Density R50**  
 In considering an application for development approval in this area, the local government in addition to any other aims or objectives of the Scheme and to any other matter it is required or permitted to consider, shall have regard to the following objectives:
- (i) the preservation of the amenity and existing character of the precinct and adjacent areas by ensuring that the scale of new development is consistent with the scale of existing development in the immediate locality;
  - (ii) the encouragement of development, or the protection of existing development, which will form a suitable transition between the residential development to the east and the adjoining commercial/residential development to Rokeby Road.
- (b) **Residential lots bounded by Roberts Road, Hamilton Street, York Street and Catherine Street and having an R Code Density R50**  
 In considering an application for development approval in this area, the local government in addition to any other aims or objectives of the Scheme and to any other matter it is required or permitted to consider, shall have regard to the following:
- (i) the preservation of the amenity and existing character of the precinct and adjacent areas by ensuring that new development is of a similar scale.
- INSERT AMEND NO 24 GG 1/3/16
- (3) **Residential Zone: R80**
- (a) Notwithstanding any provisions of the Residential Design Codes to the contrary, buildings on land within the Residential Zone having an R Code density of R80 shall not exceed 9 metres overall height and 6 metres wall height;
  - (b) The local government may permit a variation to subclause (a) and permit buildings up to 12 metres overall height and 9 metres wall height where the Local government is satisfied that there is to be no undue adverse impact on the adjoining residential sites or on the general amenity of the locality.  
 INSERT AMEND NO 2 GG 22/10/04
- (4) **Residential Zone: R Code Density R20/50**
- (a) This clause applies to all land with a density code R20/50.
  - (b) The local government may grant development approval to any development having a density in excess of R20 but no greater than R50, where the local government is satisfied that:
    - (i) the development provides a mixture of accommodation choices, including single and multiple bedroom dwellings, to take account of differing household composition and housing needs in the locality;  
 INSERT AMEND NO 2 GG 22/10/04
    - (ii) the development respects established streetscape qualities, including the pattern, setbacks, roofpitch and materials of other development within the street and the locality;
    - (iii) the development retains established and mature trees assessed as worthy of preservation by the City, whilst blending new landscaping into the streetscape of the neighbourhood; and  
 INSERT AMEND NO 2 GG 22/10/04
    - (iv) the development retains both the façade and a substantial part of the structure of the original residential building. For the purpose of this clause, the term 'original residential building', means the dwelling which was situated on the site at the gazettal of Amendment No.2. To avoid any doubt, the local government shall not grant approval for development having a density in excess of R20 where no original residential building exists when the application for approval is made.  
 INSERT AMEND NO 2 GG 22/10/04
  - (c) Notwithstanding any provisions of the Residential Design Codes to the contrary, buildings on land within the Residential zone having an R Code density of R20/50 shall not exceed 9 metres overall height and 6 metres overall wall height.  
 INSERT AMEND NO 2 GG 22/10/04

- (d) Unless access is provided via a right of way the local government shall not grant approval for development having a density in excess of R20 unless the lot has a frontage of at least 25 metres.  
INSERT AMEND NO 24 GG 1/3/16

**NOTE 1:** *It is important to recognise that the R50 density is a discretionary density bonus intended as an incentive to encourage the provision of a mix of accommodation and the retention of the original housing, and it should not be assumed that the upper density code will necessarily be appropriate or achievable for any particular site. In the event that there is no original building on the land, or in circumstances in which such development is not retained, the density bonus shall not apply.*  
INSERT AMEND NO 2 GG 22/10/04

**NOTE 2:** *The intent of this frontage requirement is to ensure development can be designed in such a way as to complement the streetscape by avoiding the proliferation of crossovers and the provision of narrow driveways hard against side boundaries. It is not the intention that lots should be amalgamated to take advantage of the higher density coding or that strata or survey-strata subdivision would take place prior to development.*

(5) **Non-Residential Development**

- (a) Where land is developed for non-residential purposes, 25% of the area of that land shall be developed and maintained as landscaped area in accordance with the Scheme and the approved plan.
- (b) A landscaped area provided pursuant to this clause shall include the areas of land between any street alignment and any building on the land but this subclause does not require more than 25% of the area of the land to be landscaped.
- (c) Where land is developed for non-residential purposes but a building on the land incorporates more than one dwelling, the area of the land to be developed and maintained as open space area is 50% but otherwise the provisions of this clause apply.
- (d) A non-residential building on land within the Residential Zone:
- (i) shall not have a plot ratio exceeding the maximum plot ratio prescribed with respect to a residential building on that land; and
  - (ii) shall be setback such distance from the boundaries of the lot on which it is to be erected as the local government requires as a condition of approval of the application for town planning approval relating to the building, but that distance shall not be less than the minimum set back distance prescribed for any residential building.

INSERT AMEND NO 2 GG 22/10/04

(6) **Redevelopment of non-complying sites**

- (a) Where, on the gazettal date of Amendment No.2, land is developed at a density exceeding that provided for under the relevant density coding, then provided such development has been lawfully established, the local government may permit a variation to the minimum site area requirements of the R-Codes in order to enable re-development to take place up to the same dwelling density as the existing development.
- (b) The local government may only approve a variation in accordance with the provisions of sub-clause (a) where it is satisfied that the proposed re-development would be a significant improvement on the existing development in terms of design and streetscape and would not result in any undue adverse impact on the adjoining sites or on the general amenity of the locality.
- (c) No increase in plot ratio floorspace in excess of that which had previously been lawfully established is to be permitted in relation to re-development as provided for under sub-clause (a) unless the additional floorspace is provided for under the scheme or the Residential Design Codes. Should no plot ratio be identified in the Codes, the proposed development shall meet the open space requirements of the Codes for the relevant zoning.

INSERT AMEND NO 8 GG 09/01/09

**NOTE:** *The intention of this clause is to provide for the redevelopment of sites, where the existing development does not accord with current density standards. It is anticipated that dwelling sizes would therefore remain similar to those of the original development, although some re-configuration of spaces may occur.*  
INSERT AMEND NO 2 GG 22/10/04

(7) **Tree Preservation**

Variation of the Residential Design Codes may be granted in accordance with Clause 65A of the Scheme for the purpose of preserving significant trees.

INSERT AMEND NO 2 GG 22/10/04

(8) **Plot Ratio: Centro Precinct**

Plot Ratio for development in the Centro Precinct is to comply with any adopted planning policy. Where no such policy has been adopted, plot ratio shall be as per the requirements of the Residential Design Codes.

INSERT AMEND NO 12 GG 23/10/09

## **42A DETERMINATION OF APPLICATION WHERE WALL/OVERALL HEIGHT IS NON COMPLIANT**

INSERT AMEND NO 6 GG 01/08/06

- (1) If a development is the subject of an application for planning approval and does not comply with the maximum overall height or the maximum wall height referred to in clause 42, then, despite the non-compliance, the local government may approve the application where:
- (a) the local government is satisfied that:
    - (i) the non-compliance will have no undue adverse effect on any adjoining residential land or the amenity of the locality; or
    - (ii) the wall or overall height which is non-compliant is compatible with the wall and overall heights of surrounding developments that are designed for residential purposes and are considered by the local government to enhance the streetscape;
  - (b) the wall/overall height which is non-compliant:
    - (i) meets the Acceptable Development standards of the Residential Design Codes in relation to setbacks; or
    - (ii) is necessitated by a sloping site and would be unlikely to occur if the site had been level; or
    - (iii) is the result of an irregular roof design and is unlikely to have occurred if the proposed development had a conventionally shaped roof.
- (2) For the purpose of this clause the expression “surrounding development” may be defined in a planning policy.
- (3) For the purpose of this clause a “conventionally shaped roof” means a uniform flat, pitched, hipped, or skillion roof.

## DIVISION 3: COMMERCIAL/RESIDENTIAL ZONE

### 43 APPLICATION

This division applies to all land zoned Commercial/Residential in the Scheme area.

### 44 AIMS AND OBJECTIVES

In considering an application for development approval in any Commercial/Residential Zone the local government, in addition to any other matters it is required or permitted to consider, shall have regard to the following objectives:

- (1) to develop an area with a strong recognisable identity characterised by development of a mixture of high quality commercial and residential accommodation;
- (2) to encourage small-to-medium scale mixed-use development of a type and character appropriate to Hay Street east and Rokeby Road south areas;
- (3) to encourage safe pedestrian and vehicle coexistence and/or segregation and to promote design elements with regard to car parking areas which serve to enhance the streetscape and the amenity of the locality;
- (4) to encourage retention of heritage character by reinforcing the original development patterns and the recycling of existing building stock;
- (5) to encourage pedestrian-friendly development which is orientated to the street in the traditional manner, enabling surveillance of both the street and pedestrian areas;
- (6) the protection and enhancement of the amenity and general environmental standards of existing and future development within and adjoining this zone;
- (7) to promote and encourage design that incorporates sustainability principles, including but not limited to solar passive design, energy efficiency, reduction in greenhouse gas emissions, water conservation, waste management and recycling;
- (8) to promote and encourage design that incorporates crime prevention through environmental design principles including but not limited to, appropriate fencing, appropriate landscaping, casual surveillance of public open spaces and adequate pedestrian movement sightlines.  
INSERT AMEND NO 8 GG 09/01/09

### 45 DEVELOPMENT STANDARDS

Development should have due regard to the relevant planning policies contained in the Planning Policy Manual. In addition, the following standards apply:

- (1)(a) *Plot Ratio*: Buildings are to have a maximum plot ratio of 1.0 except where a mixed-use development comprising residential uses is proposed. In this instance, the maximum plot ratio may be increased to 1.5 provided that in any development not more than 25% of the excess relevant floorspace will be used for non-residential purposes.  
INSERT AMEND NO 22 GG 22/05/15
- (1)(b) The local government may permit a variation to subclause (a) on lots fronting Hay Street east of Townshend Road and permit buildings with a maximum plot ratio of:
  - (i) 1.5 where the only uses proposed for the building are non-residential uses; and
  - (ii) 3.0 where the building contains residential uses dealt with by the Codes provided that the floor area of the building in excess of 1.5 is used solely for those residential uses and not for any other purpose where the Local government is satisfied there would be no significant adverse impact on any adjoining sites, streetscape or the amenity of the locality.  
INSERT AMEND NO 22 GG 22/05/15
- (2) *Setbacks*: Buildings are to be set back from the street alignment such distance as is determined by local government having regard to the streetscape and the building setbacks on adjacent land and in the immediate locality.
- (3) *Residential Density*: In relation to density, residential development shall not exceed the R-Codes R80 density standards.
- (4) *Building Height*:
  - (a) Except as set out in subclause (b) and (c) below, in the Commercial/Residential zone the height of a building shall not exceed 9 metres overall height and 6 metres wall height.  
INSERT AMEND NO 22 GG 22/05/15

- (b) The local government may permit a variation to subclause (a) and permit buildings of up to 12 metres overall height and 9 metres wall height on lots fronting Hay Street (except as set out in subclause (c) below), Roberts Road or Rokeby Road, where local government is satisfied that there is to be no undue adverse impact on the adjoining sites, streetscape or the amenity of the locality in general.  
INSERT AMEND NO 2 GG 22/10/04  
 INSERT AMEND NO 12 GG 23/10/09  
 INSERT AMEND NO 22 GG 22/05/15
- (c) On lots fronting Hay Street east of Townshend Road:
- (i) the overall height and wall height of a building shall not exceed 15.5 metres;
  - (ii) the local government may permit a variation to paragraph (i) and permit an overall height and wall height of up to 19 metres provided that, in the opinion of the local government, the building has a high quality design and those parts of the building above 15.5 metres, excluding balustrades and balconies, are set back a minimum of 6 metres from any street alignment and that either residential uses are incorporated into the development or two or more of the following criteria are met:
    - (A) pedestrian access is provided through the site on a permanent basis; or
    - (B) a public plaza or open space is provided on the site; or
    - (C) the building is designed and constructed to a 5 star Greenstar rating as accredited by the Australian Green Building Council or an equivalent rating system as agreed by the local government;
  - (iii) where a lot also has frontage to Churchill Avenue:
    - (A) within 5 metres of the Churchill Avenue street alignment, buildings shall not exceed 9 metres in overall height and 8.5 metres in wall height;
    - (B) between 5 metres and 34 metres from the Churchill Avenue street alignment, buildings shall not exceed 12 metres in overall height or wall height;
  - (iv) where the lot also has frontage to York Street:
    - (A) within 3 metres of the York Street alignment, buildings shall not exceed 9 metres in overall height and 8.5 metres in wall height;
    - (B) within 3 metres and 24 metres from the York Street alignment, buildings shall not exceed 12 metres in overall height or wall height."  
INSERT AMEND NO 22 GG 22/05/15
- (5) *Mixed-Use Development:* In considering an application for development approval for both non-residential and residential purposes the local government will have particular regard to measures taken to minimise conflict between the non-residential and residential uses.
- (6) *Carparking:* Carparking bays are to be provided, designed, constructed and maintained in accordance with the provisions of Part 6 of the Scheme and local government's parking policies, and the approved plan relating thereto.
- (7) *Loading and Unloading:* Areas for the loading and unloading of vehicles carrying goods or commodities to or from premises within the Commercial/Residential Zone shall be provided and maintained in accordance with the approved plan relating thereto.
- (8) *Landscaped Areas:* Landscaped areas and screening shall be provided and maintained where required by the local government and in accordance with the approved plan relating thereto.
- (9) *Crossovers:* Only one vehicle crossover per lot is permitted except where the local government is satisfied that no adverse effects on vehicular or pedestrian traffic and/or conflict will result should a variation be permitted which allows for more than one vehicular crossover to a lot. Local government is most keen to see the amalgamation of small carparking areas on individual lots together with shared vehicular crossovers in a bid to reduce vehicular and pedestrian conflict and to improve the overall streetscape.

## DIVISION 4: LOCAL CENTRE ZONE

### 46 APPLICATION

This division applies to all areas zoned Local Centre in the Scheme area.

### 47 AIMS AND OBJECTIVES

In considering an application for development approval in any Local Centre Zone the local government, in addition to any other matter it is required or permitted to consider, shall have regard to the following objectives:

- (a) the need to foster small-scale, pleasant and convenient mixed-use facilities which meet the needs of the local residential community;
- (b) to encourage high quality, pedestrian-friendly, street-orientated development compatible with the residential use of the area;
- (c) to promote and encourage design that incorporates sustainability principles, including but not limited to solar passive design, energy efficiency, reduction in greenhouse gas emissions, water conservation, waste management and recycling;
- (d) to promote and encourage design that incorporates crime prevention through environmental design principles including but not limited to, appropriate fencing, appropriate landscaping, casual surveillance of public open spaces and adequate pedestrian movement sightlines.

INSERT AMEND NO 8 GG 09/01/09

### 48 DEVELOPMENT STANDARDS

Development should have due regard to the relevant planning policies contained in the Planning Policy Manual. In addition, the following standards apply:

- (1) *Plot Ratio:* Buildings are to have a maximum plot ratio of 0.5 except where mixed-use development comprising residential uses together with non-residential uses are proposed. In this instance the maximum plot ratio may be increased to 0.75 provided that in any development not more than 25% of the excess relevant floorspace will be used for non-residential purposes.
  - (2) *Setbacks:* Buildings are to be set back from the street alignment such distance as is determined by local government having regard to the streetscape and the building setbacks on adjacent land and in the immediate locality.
  - (3) *Residential Density:* In relation to density, residential development shall not exceed the R-Codes Residential R50 Standards.
  - (4) *Building Heights:*
    - (a) Building heights are not to exceed 6.5 metres overall height and 3.6 metres wall height.
    - (b) Local government may permit a variation of this requirement to permit buildings of up to 9 metres overall height and 6 metres wall height where the local government is satisfied that there is to be no undue adverse impact on the adjoining sites, streetscape or the amenity of the locality.
- INSERT AMEND NO 2 GG 22/10/04
- (5) *Mixed-Development:* In considering an application for town planning approval of development for both non-residential and residential purposes, the local government will have particular regard to measures taken to minimise conflict between the non-residential and residential uses.
  - (6) *Carparking:* Carparking bays are to be provided, designed, constructed and maintained in accordance with the provisions of Part 6 of the Scheme and local government's parking policies, and the approved plan relating thereto.
  - (7) *Loading and Unloading:* Areas for the loading and unloading of vehicles carrying goods or commodities to or from premises within the Local Centre Zone shall be provided and maintained in accordance with the approved plan relating thereto.

- (8) *Landscaped Areas:* Landscaped areas and screening shall be provided and maintained where required by the local government and in accordance with the approved plan relating thereto.
- (9) *Crossovers:* Only one vehicle crossover per lot is permitted except where the local government is satisfied that no adverse effects on vehicular or pedestrian traffic and/or conflict will result should a variation be permitted which allows for more than one vehicular crossover to a lot. Local government is most keen to see the amalgamation of small carparking areas on individual lots together with shared vehicular crossovers in a bid to reduce vehicular and pedestrian conflict and to improve the overall streetscape.

## DIVISION 5: NEIGHBOURHOOD MIXED USE ZONE

### 49 APPLICATION

This division applies to all areas zoned Neighbourhood Mixed Use within the Scheme area.

### 50 AIMS AND OBJECTIVES

In considering an application for development approval in any Neighbourhood Mixed-Use Zone the local government, in addition to any other matter it is required or permitted to consider, shall have regard to the following objectives:

- (a) to encourage well designed and functional mixed-use areas which meet the needs of the local communities;
- (b) to promote residential as a vital and integral component of these mixed use zones;
- (c) to protect and enhance the neighbourhood area and the existing streetscape through appropriate design measures ensuring such aspects as privacy and solar access are not adversely affected by development;
- (d) the consolidation and improvement of appropriately located, efficiently operated, commercial-based centres;
- (e) the need to secure the safe movement of vehicular and pedestrian traffic within and around these nodal points without the adverse intrusion of vehicles, particularly parking associated with these centres, throughout the adjoining residential neighbourhoods;
- (f) the development of continuous 'shop-fronts' along street frontages in accordance with Main Street design principles, and avoidance of disruption caused by blank or uninteresting building facades;
- (g) to promote and encourage design that incorporates sustainability principles, including but not limited to solar passive design, energy efficiency, reduction in greenhouse gas emissions, water conservation, waste management and recycling;
- (h) to promote and encourage design that incorporates crime prevention through environmental design principles including but not limited to, appropriate fencing, appropriate landscaping, casual surveillance of public open spaces and adequate pedestrian movement sightlines.

INSERT AMEND NO 2 GG 22/10/04

INSERT AMEND NO 8 GG 09/01/09

### 51 DEVELOPMENT STANDARDS

Development should have due regard to the relevant planning policies contained within the Planning Policy Manual. In addition the following standards apply:

- (1) *Plot Ratio*: Buildings are to have a maximum plot ratio of 0.75 except where a mixed-use development comprising residential uses together with non-residential uses is proposed. In this instance, the maximum plot ratio may be increased to 1.0 provided that in any development not more than 25% of the excess relevant floorspace will be used for non-residential purposes.
- (2) *Setbacks*: Buildings are to be set back from the street alignment such distance as is determined by local government having regard to the streetscape and the building setbacks on adjacent land and in the immediate locality.
- (3) *Residential Density*: In relation to density, residential development shall not exceed the R-Codes Residential R50 Standards.
- (4) *Building Heights*:
  - (a) Building heights are not to exceed 6.5 metres overall height and 3.6 metres wall height.
  - (b) Local government may permit a variation of this requirement to permit buildings of up to 9 metres overall height, and 6 metres wall height where the local government is satisfied that there is no undue adverse impact on the adjoining residential sites, streetscape or the amenity of the locality in general.

INSERT AMEND NO 2 GG 22/10/04

- (5) *Mixed-Use Development:* In considering an application for development approval for both non-residential and residential purposes, the local government will have particular regard to measures taken to minimise conflict between the non-residential and residential uses.
- (6) *Carparking:* Carparking bays are to be provided, designed, constructed and maintained in accordance with the provisions of Part 6 of the Scheme and local government's parking policies, and the approved plan relating thereto.
- (7) *Loading and Unloading:* Areas for the loading and unloading of vehicles carrying goods or commodities to or from premises within the Neighbourhood Mixed-Use Zone shall be provided and maintained in accordance with the approved plan relating thereto.
- (8) *Landscaped Areas:* Landscaped areas and screening shall be provided and maintained where required by the local government and in accordance with the approved plan relating thereto.
- (9) *Crossovers:* Only one vehicle crossover per lot is permitted except where the local government is satisfied that no adverse effects on vehicular or pedestrian traffic and/or amenity will result should a variation be permitted which allows for more than one vehicular crossover to a lot. Local government is most keen to see the amalgamation of small carparking areas on individual lots together with shared vehicular crossovers in a bid to reduce vehicular and pedestrian conflict and to improve the overall streetscape.

## DIVISION 6: TOWN CENTRE ZONE

### 52 APPLICATION

This Division applies to all land zoned Town Centre within the Scheme area.

### 53 AIMS AND OBJECTIVES

In considering an application for development approval in the Town Centre Zone the local government, shall have regard to the following objectives:

- (a) to encourage the development of high quality buildings of special character commensurate with their location within the Town Centre of Subiaco;
- (b) to encourage vibrant and diverse uses, including residential, which promote the area as the Town Centre of Subiaco;
- (c) to foster greater pedestrian, cycle and public transport accessibility through appropriate design measures which promote greater pedestrian use and linkages between uses and modes of transport;
- (d) to encourage retention of the heritage character by reinforcing original development patterns and by the recycling of original building stock, and in addition, ensuring new development is appropriately designed and has due regard of the unique character of the area;
- (e) the protection of the amenity of areas adjacent to the Town Centre Zone;
- (f) to ensure the development of continuous 'shop-front' development along street frontages in accordance with Main Street design principles, and avoid disruption caused by blank or uninteresting building facades;  
INSERT AMEND NO 2 GG 22/10/04
- (g) to discourage the undue aggregation of entertainment facilities characterised by after-hours operation and by low levels of activity during normal shopping hours;  
INSERT AMEND NO 2 GG 22/10/04
- (h) to promote and encourage design that incorporates sustainability principles, including but not limited to solar passive design, energy efficiency, reduction in greenhouse gas emissions, water conservation, waste management and recycling;
- (i) to promote and encourage design that incorporates crime prevention through environmental design principles including but not limited to, appropriate fencing, appropriate landscaping, casual surveillance of public open spaces and adequate pedestrian movement sightlines.  
INSERT AMEND NO 8 GG 09/01/09

### 54 DEVELOPMENT STANDARDS

Development should have due regard to the relevant planning policies contained within the Planning Policy Manual. In addition, the following standards apply:

- (1) *Plot Ratio:* Buildings are to have a maximum plot ratio of 1.33 except where a mixed-use development comprising residential uses is proposed. In this instance, the maximum plot ratio may be increased to 2 provided that in any development not more than 25% of the excess relevant floorspace will be used for non-residential purposes.
- (2) *Setbacks:* Buildings are to be set back from the street alignment such distance as is determined by local government having regard to the streetscape and the building setbacks on adjoining land and in the immediate locality.
- (3) *Residential Density:* In relation to density, residential development shall not exceed the Codes Residential R100 Standards.  
INSERT AMEND NO 8 GG 09/01/09
- (4) *Building Heights:*
  - (a) New building facades should be of a compatible height with existing buildings and be in harmony with the existing streetscape.
  - (b) Any portion of a building situated within 3 metres of a front boundary must not exceed 9 metres in height.
  - (c) Any portion of the building situated between 3 metres and 6 metres from the front boundary must not exceed 12 metres in height.
  - (d) Any portion of the building situated more than 6 metres from the front boundary must not exceed 15 metres in height.

INSERT AMEND NO 8 GG 09/01/09

**NOTE:** *In the case of building height between 12 metres and 15 metres, a pro-rata setback is to be provided, based on a height control line drawn from the 12 metre height limit at the street frontage to the 15 metre height limit at a setback of 6 metres from the street.*

- (5) *Mixed-Use Development:* In considering an application for development approval for both non-residential and residential purposes, the local government will have particular regard to measures taken to minimise conflict between the non-residential and residential uses.
- (6) *Carparking:* Carparking bays are to be provided, designed, constructed and maintained in accordance with the provisions of Part 6 of the Scheme and local government's parking policies, and the approved plan relating thereto.
- (7) *Loading and Unloading:* Areas for the loading and unloading of vehicles carrying goods or commodities to or from premises within the Town Centre Zone shall be provided and maintained in accordance with the approved plan relating thereto.
- (8) *Landscaped Areas:* Landscaped areas and screening shall be provided and maintained where required by the local government and in accordance with the approved plan relating thereto.
- (9) *Crossovers:*
  - (a) Direct vehicle access to Rokeby Road and Hay Street will not be permitted where vehicular access to an alternative street exists. Local government may require the provision of pedestrian access from rear car parking areas to frontage streets.
  - (b) Where no other alternative means of access exists, only one single vehicular crossover to a site will be permitted. Local government is most keen to see the amalgamation of small carparking areas on individual lots together with shared vehicular crossovers in a bid to reduce vehicular and pedestrian conflict and to improve the overall streetscape.
- (10) *Building Orientation, Scale and Frontage:*
  - (a) New buildings shall be constructed at a scale that is consistent with existing development in the locality.
  - (b) Buildings, particularly to Rokeby Road and Hay Street, shall reflect the setbacks on adjoining sites, be orientated to the street, and at street level, contain activities of interest to the pedestrian (for example, retail windows).
  - (c) Awnings/verandahs are to comply with local government building requirements and are to effectively connect with and reflect existing styles within the streetscape.
  - (d) All commercial buildings shall incorporate a solid constructed facade to public streets. Undercroft parking will only be permitted where the parking area is screened from view of public streets.

INSERT AMEND NO 18 GG 28/10/14

## **DIVISION 6A: TOWN CENTRE DEVELOPMENT ZONE**

### **54A APPLICATION**

- (1) This Division applies to all land zoned 'Town Centre Development' within the Scheme Area.
- (2) The general provisions of this Division shall be read in conjunction with any specific provisions or development standards set out in Schedule 8.
- (3) The Residential Design Code AC0 shall apply to land zoned 'Town Centre Development'

### **54B AIMS AND OBJECTIVES**

In considering an application for Development Approval in the 'Town Centre Development' zone, the local government shall have regard for the following objectives:

#### **Primary Objective**

- (a) To provide for the redevelopment and revitalisation of strategically important sites within the Subiaco Town Centre.

#### **Built Form Objectives**

- (b) Position the Town Centre as a highly desirable and attractive regional destination and community hub for the City of Subiaco residents;
- (c) Retain the village feel and scale and streetscape of Rokeby Road and Hay Street incorporating key architectural elements and where possible requiring the retention of the original building fabric;.
- (d) Facilitate a residential population for the Town Centre commensurate with Subiaco's designation as a secondary centre by concentrating development on vacant and underutilised land behind the Rokeby Road and Hay Street frontages;
- (e) Encourage building design at the ground level that is highly activated and can adapt to cater for changes of use over time.
- (f) Facilitate development of a bulk and scale that respects the cultural significance of adjacent contributory buildings within the Rokeby Road and Hay Street Conservation Area, and any other recognised adjacent heritage places.

#### **Public Realm Objectives**

- (g) Extend and upgrade the existing network of arcades, lanes and places including a central public space in the centre of each key street block;
- (h) Design that incorporates sustainability and Crime Prevention through Environmental Design (CPTED) principles;
- (i) Contribute towards appropriate green infrastructure within public spaces appropriate to the urban environment;
- (j) Promote land uses at ground level that encourage vitality during the day and night; and
- (k) Ensure that the frontages of buildings are appropriate to the function of the adjoining public realm, including continuous shop fronts along streets of activity, direct street access for residential building types and provision of weather protection.

#### **Transport Objectives**

- (l) promote pedestrian and cycle use through design measures which result in improved integration between all modes of transport; and
- (m) promote transit-oriented development through increasing density near public transit and allowing for reduction in car parking requirements.

#### **Governance Objectives**

- (n) provide for the design and planning of the site to be undertaken in a collaborative process with all relevant stakeholders; and
- (o) provide a regulatory framework and mechanism that:
  - (i) allows the implementation of a defined vision for development through prescriptive, site specific form based controls, and
  - (ii) allows for site specific design response and development control in exchange for defined public benefits.

In the event of any inconsistency between the objectives of the 'Town Centre Development' zone and the objectives of the scheme, the objectives of the 'Town Centre Development' zone shall prevail to the extent of that inconsistency.

## 54C REQUIREMENT FOR LOCAL DEVELOPMENT PLANS

- (1) No development shall be commenced in the 'Town Centre Development' zone unless a local development plan which applies to the land the subject of the proposed development has first been adopted by the local government in accordance with this Division and the scheme has been amended to include the local development plan in Schedule 8;
- (2) The local development plan is a set of form based controls specific to the subject land. The local development plan shall address the matters articulated in Part 54E (1) of the Scheme;
- (3) A local development plan will take effect, upon publication of an amendment in the Government Gazette, which includes the local development plan within Schedule 8 as an approved local development plan.
- (4) All development within the 'Town Centre Development' zone must conform with the relevant adopted local development plan.

## 54D COMMUNITY CONSULTATION AND DESIGN FORUM

- (1) Prior to a proposed local development plan being formally considered for adoption by the Local government, a Design Forum which Satisfies the requirements relevant to that process set out in local government's Local Planning Policy relating to Design Forums shall be carried out for the purpose of informing the preparation and content of a proposed local development plan.
- (2) Local government may waive the requirement to undertake a Design Forum as specified in clause 54D (1) where it can be demonstrated that:
  - (a) satisfactory consultation with all relevant stakeholders has previously been undertaken within the previous 24 months prior to consideration of the local development plan; and
  - (b) the outcomes of the previous consultation are provided to local government; and
  - (c) the proposed local development plan clearly incorporates and reflects the outcomes of the consultation.

## 54E CONTENT OF LOCAL DEVELOPMENT PLAN

- (1) The local development plan shall articulate the standards and requirements for development on the subject land, and shall include details as to:
  - (a) Building height, including podium height, and any additional storeys to be set back from the podium;
  - (b) The location, orientation and design of buildings and the space between buildings;
  - (c) Maximum plot ratio;
  - (d) Location and indicative design of public spaces within the site boundaries;
  - (e) Design interface between public spaces and the ground level of the building including setbacks, surveillance, and land uses;
  - (f) Parking ratios for all applicable use classes;
  - (g) Location of services and public infrastructure;
  - (h) Vehicle access, parking and service area locations;
  - (i) Indicative locations and form of advertising signage;
  - (j) Protection of, and design response to sites or buildings with recognised heritage significance; and
  - (k) Any other relevant matters.

## 54F PROCESS FOR ADOPTING LOCAL DEVELOPMENT PLAN

- ~~(1) A local development plan may be prepared by either the local government or a landowner.~~
- ~~(2) Upon receiving a local development plan that addresses the requirements of clause 54E, the local government is to give public notice for a minimum period of 28 days in accordance with clause 26(5) of the Scheme, prior to making a determination under clause 54F (3).~~
- ~~(3) Following conclusion of the public notice period, the local government shall:
  - (i) adopt with or without modifications and initiate a scheme amendment to include the local development plan in Schedule 8 of the scheme; or
  - (ii) refuse to adopt the local development plan.~~
- ~~(4) If within 60 days of receiving an local development plan under clause 54E, or within 60 days of the conclusion of the public advertising period in 54E (2), or such longer period as may be agreed in writing between the landowner and the local government, the local government has~~

Comment [D31]: See Part 6 clauses 46-59 "Local Development Plans"

- not made one of the determinations referred to in clause 54F (3), the local government is deemed to have refused to adopt the local development plan.
- (5) ~~Once adopted by the local government, the local development plan is to be used as the basis for determining development applications with respect to the land subject to the local development plan.~~
- (6) ~~The local development plan shall commence operation on the date that a scheme amendment including the local development plan in Schedule 8 is gazetted.~~
- (7) ~~Where a proposed local development plan is submitted to the local government before the introduction of Division 6A and Schedule 8 to the Scheme and the procedures referred to in Division 6A have been followed, the local development plan may nonetheless be approved by local government and introduced into schedule 8 by way of a scheme amendment and without the requirement to further undertake the processes described in this section.~~

## 54G OPERATION OF LOCAL DEVELOPMENT PLAN

- (1) ~~The local development plan shall commence operation from the date it is included within Schedule 8 of the scheme by way of a scheme amendment being gazetted for final approval.~~
- (2) ~~If the local development plan imposes a classification on the land included in it by reference to reserves, zones, or Residential Density Codes then:~~
- ~~(a) The provisions of the local development 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 unless specifically varied in the local development plan.~~
- (3) ~~Without limiting the generality of clause 54G (2), under a local development plan:~~
- ~~(a) In the areas designated as zones, the permissibility of uses is to be set out in a Zoning Table in the local development plan as if those areas were zones under the Scheme having the same designation;~~
- ~~(b) The standards and requirements applicable to the zones and R Coding's under the Scheme apply to the areas having corresponding designations under the local development plan unless specifically stated otherwise;~~
- ~~(c) 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 the Scheme apply as if the land were correspondingly reserved under the Scheme; and~~
- ~~(d) Any other provision, standard or requirement in the local development plan is to be given the same force and effect as if it were a provision, standard or requirement of the Scheme.~~
- (4) ~~The local development 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 local development plan.~~
- (5) ~~If a provision of a local development plan which imposes a classification on the land included in it by reference to reserves, zones or Residential Design Codes is inconsistent with a provision of the Scheme, then the provision of the local development plan prevails to the extent of any inconsistency.~~
- (6) ~~If a development is the subject of an application for planning approval, and does not comply with a specific standard or requirement set out in an adopted local development plan, local government may vary any provision of the local development plan subject to satisfying the provisions and procedures of clause 28 of the Scheme. —~~

## 54H APPLICATION FOR REVIEW

- (1) ~~Any landowner within the area the subject of a proposed local development plan may seek a review of any decision made by the local government pursuant to clause 54F(3) in accordance with Part 14 of the Planning and Development Act 2005;~~

## 54I AMENDMENTS TO LOCAL DEVELOPMENT PLAN

- (1) ~~The local government may adopt a minor change to or departure from a local development plan if, in the opinion of the local government, the change or departure does not materially alter the intent of the local development plan.~~

- ~~(2) Any change to or departure from a local development plan that is not a minor change in the opinion of the local government is to follow the procedures set out in clause 54F.~~

## 54J DEVELOPMENT STANDARDS

- (1) The following standards and requirements shall apply to the 'Town Centre Development' zone:
- (a) Plot Ratio  
The maximum permitted plot ratio shall be specified in a local development plan.
  - (b) Building Heights  
The maximum permitted building height shall be specified in a local development plan.
  - (c) Setbacks  
The minimum permitted street setbacks shall be specified in a local development plan.
  - (d) Carparking  
The minimum and maximum parking requirements shall be specified in a local development plan. For the removal of doubt, clauses 70, 71 and 76 of the scheme do not apply to this zone.  
Where car parking is:
    - located at ground level; and/or
    - Located above the ground levelit shall be contained within the core of the building. Where it cannot be contained within the core and extends to a façade, that façade shall be designed and finished in a manner which does not negatively impact on the desired surrounding uses. Carparking within buildings shall not be permitted to extend to street frontages.
  - (e) Public Realm and Landscaping
    - (i) High quality, accessible public realm and landscaped areas are to be provided and maintained as required by local government.
    - (iii) Awnings and verandahs are to effectively connect with and reflect existing styles within the streetscape.
    - (iv) Buildings, particularly to Rokeby Road and Hay Street, shall be orientated to the street, and at street level, contain activities of interest to the pedestrian; and
- (2) Planning policies contained within the Planning Policy Manual shall not apply to land or development within the 'Town Centre Development' zone unless the local development plan expressly provides its applicability.
- (3) Where a development standard, requirement or any other provision contained in an adopted local development plan conflicts with any development standard, requirement or provision of the Scheme, the development standard, requirement or provision in the adopted local development plan shall prevail to the extent of the inconsistency; and

## 54K DEVELOPMENT BONUSES

- (1) Local government may consider permitting additional development bonuses in a local development plan in the form of permissible variations to standards and requirements contained in Schedule 8 where local government is satisfied that:
- (a) The proposal will provide a significant public benefit that could not otherwise be provided in the absence of a development bonus; and
  - (b) The form of development bonus will not have any significant detrimental impact on the amenity of adjoining properties.
- (2) The public benefits referenced in clause 54K (1) may include:
- (a) Improvements to the public realm beyond the extent of the development boundaries and immediate adjoining area;
  - (b) Contributions towards and improvement of transport infrastructure, where the transport infrastructure benefits the broader public;
  - (c) Green building outcomes and sustainability initiatives above the statutory requirements that provide a clear public benefit;
  - (d) Demonstrated housing diversity and affordability;
  - (e) Retention and enhancement of places of heritage significance beyond the statutory requirements to protect and maintain; or
  - (f) Retention and enhancement of places of heritage significance beyond the statutory requirements to protect and maintain

Comment [D32]: See Part 3 clauses 7-13 "Heritage Protection"

**DIVISION 7: PLACES OF CULTURAL HERITAGE SIGNIFICANCE**

**55 DECLARATION OF PLACES OF CULTURAL HERITAGE SIGNIFICANCE**

- (1) If, in the opinion of the local government, a place:
  - (a) is of cultural heritage significance or possesses special interest related to or associated with the cultural heritage; and
  - (b) should be conserved or enhanced;
 the local government may by resolution declare the place to be significant and worthy of conservation.
  
- (2) In considering a proposal to declare a place to be significant and worthy of conservation, the local government is to:
  - (a) advise the owner and occupier of the place of the proposal;
  - (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.
 INSERT AMEND NO 2 GG 22/10/04
  
- (3) Where the local government declares a place to be significant and worthy of conservation, it is to give notice of its declaration to the Heritage Council of Western Australia and the owner and occupier of the place.

**NOTE:** 1. A "place" is defined in Schedule 1. It may include works, buildings and contents of buildings.  
2. The provisions of this Part do not derogate from the provisions of the Heritage of Western Australia Act 1990.

**56 HERITAGE AGREEMENTS**

Comment [D33]: See Clause 10

~~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. A heritage agreement may be entered into whether or not the place to which it applies is listed in the register of places of cultural heritage significance.  
3. Detailed provisions relating to heritage agreements are set out in section 29 of the *Heritage of Western Australia Act 1990*.~~

**57 VARIATIONS TO STANDARDS**

Comment [KH34]: D33 See Part 3 Clause12 "Variations to local planning scheme provisions for heritage purposes"

- ~~(1) Where a development is proposed which would:
 
  - (a) conserve or enhance the whole or part of a heritage area or a place which has been declared by the local government to be significant and worthy of conservation; and
  - (b) would not adversely affect the cultural heritage significance of the heritage area or place,~~

~~the local government may grant, by way of development approval, a variation to any requirement or standard of this Scheme or the Codes as long as the variation would not adversely affect the cultural heritage significance of that, or any other, heritage area or place including the streetscape or locality in which it is located.  
INSERT AMEND NO 8 GG 09/01/09~~

- ~~(2) The local government is not to grant development approval for a development that requires the grant, under subclause (1), of a variation which might, in the local government's opinion, significantly affect an adjoining property or a property in the general locality unless:
 
  - (a) the application seeking the variation is advertised in accordance with clause 26; and
  - (b) any submissions duly received in response to that advertising are considered by the local government.~~

## 58 HERITAGE LIST

- (1) The City is to record in a Heritage List, a list of places which:
  - (a) are the subject of a declaration under Clause 55;
  - (b) are being considered for the purposes of a declaration under Clause 55; or
  - (c) are the subject of a declaration under Clause 59.
- (2) A copy of the register is to be:
  - (a) kept at the office of the City; and
  - (b) made available for public inspection during office hours.

**NOTE:** *A place recorded in the City's register of places is not necessarily included in the Heritage List established under the Heritage of Western Australia Act 1990 or vice versa.*

## 59 DECLARATION OF A HERITAGE AREA

- (1) If, in the opinion of the local government, it is necessary or appropriate to have special planning controls to conserve or enhance the cultural heritage significance of an area, the local government may, by resolution, declare that area to be a heritage area.
- (2) In considering a proposal to declare an area to be a heritage area, the local government is to advise each of the owners and occupiers of land within that area of the proposal.
- (3) The local government is to adopt for each heritage area a planning policy.
- (4) Where the local government declares an area to be a heritage area and adopts a planning policy for that area, it is to give notice of its declaration and, when available, a copy of the planning policy to:
  - (a) each of the owners and occupiers of land within that area; and
  - (b) the Heritage Council of Western Australia.

## **DIVISION 8: TREE PRESERVATION**

### **60 INTERPRETATION**

In this Part, unless the context requires otherwise:

“cut” includes prune, lop, damage, injure or, interfere with; and  
“tree” includes a group of trees or other vegetation.

### **61 TREE PRESERVATION ORDER**

- (1) The local government, having regard to a tree's:
  - (a) aesthetic quality;
  - (b) historical association;
  - (c) rarity; or
  - (d) other characteristic which in the opinion of the local government makes the tree worthy of preservation, may in accordance with this clause order the preservation and maintenance of the tree.
- (2) The local government may, from time to time, amend or repeal an order made under subclause (1).

### **62 NOTICE OF A TREE PRESERVATION ORDER**

- (1) Subject to subclause (2), where the local government proposes to order, or to amend or repeal an order, that a tree is to be preserved, the local government is to:
  - (a) give notice of the proposed order, or the proposed amendment or repeal of the order, to the owner and occupier of the land on which the tree is located; and
  - (b) invite the owner and occupier of that land to make written submissions to the local government about the proposed order, or the proposed amendment or repeal of the order, within 14 days or such further period as the local government may determine.
- (2) Where, in the opinion of the local government, there is a risk of imminent damage to a tree requiring an order to be made or amended as a matter of urgency, it may make or amend the order without notice to the owner or occupier of the land on which the tree is located.
- (3) Where the local government makes or amends an order under subclause (2), the local government, as soon as practicable, is to:
  - (a) give notice of the order or amended order to the owner and occupier of the land on which the tree is located; and
  - (b) invite the owner and occupier to make written submissions to the local government about whether the order or amended order should be retained, amended or repealed.

### **63 DESTRUCTION OF TREES**

Except with the prior written consent of the local government, given under clause 64, a person shall not:

- (a) cut, remove or otherwise destroy; or
  - (b) cause or permit to be cut, removed or otherwise destroyed, any tree which is the subject of an order, or an amended order, under this Part.
- INSERT AMEND NO 2 GG 22/10/04

### **64 LOCAL GOVERNMENT'S CONSENT FOR DESTRUCTION OF TREES**

- (1) An application for local government's consent for the purposes of clause 63 is to:
  - (a) be in writing;
  - (b) be signed by the owner or occupier of the land upon which the tree is situated;
  - (c) where the local government considers it necessary and so requires, be accompanied by a report of a tree surgeon or expert holding qualifications or having experience acceptable to the local government as to the condition of the tree; and
  - (d) specify the work proposed to be done to the tree.

- (2) The local government may refuse to consider an application that does not comply with subclause (1).
- (3) In respect of an application under subclause (1) the local government, subject to subclause (4), may refuse to grant or may grant, with or without any conditions it considers to be appropriate, its consent.
- (4) The local government is not to grant its consent to work which, if carried out, might result in the destruction of or permanent harm to, a tree which is the subject of an order, or amended order, under this Part unless:
  - (a) the local government receives certification that the tree is dangerous;
  - (b) it is necessary to remove the tree for the purpose of constructing or erecting a building, structure, fence or access way in respect of which development approval or a building licence has been issued by the local government; or
  - (c) the local government or a public authority considers that it is necessary to cut, remove or destroy the tree to provide a public utility or service.
- (5) Consent given by the local government under this clause is to:
  - (a) be in writing;
  - (b) specify the tree to which the consent relates;
  - (c) specify the work authorised by the consent; and
  - (d) specify the conditions, if any, to which the consent is subject.
- (6) A copy of consent by the local government under this clause is to be sent to the owner and occupier of the land on which the tree is located.

## 65 REGISTER OF TREE PRESERVATION ORDERS

- (1) The City is to record in a register of tree preservation orders, a list of the trees subject to orders under this Part.
- (2) A copy of the register is to be:
  - (a) kept at the offices of the City; and
  - (b) made available for public inspection during the office hours.

## 65A VARIATIONS TO STANDARDS

INSERT AMEND NO 2 GG 22/10/04

- (1) Where development is proposed on land which:
  - (a) is the subject of a tree preservation order made in accordance with clause 61; or
  - (b) contains a tree or trees considered by the local government to be worthy of preservation in terms of the matters to which the local government is to have regard in clause 61(1); and
  - (c) the preservation of the tree or trees would otherwise unduly restrict the reasonable development of the land;
 

the local government may grant, by way of development approval, a variation to the setback, height or open space requirements of this Scheme or the Residential Design Codes where desirable to facilitate the preservation of the trees referred to in sub-paragraphs (a) and (b).
- (2) The local government is not to grant development approval that requires a variation under subclause (1) which might, in the local government's opinion, significantly affect an adjoining property or a property in the locality unless:
  - (a) the application seeking the variation is advertised in accordance with clause 26; and
  - (b) any submissions received in response to that advertising, are duly considered by the local government.
- (3) Where the local government approves of a variation of standards in accordance with subclause (1) in respect of a tree or trees which are not the subject of a tree preservation order, action shall be taken to order the preservation of the relevant tree or trees, in accordance with the provisions of clause 61.

## 66 DEFINITIONS

DELETED AMEND NO 24 GG 1/3/16

Comment [KH35]: This section has been deleted

## DIVISION 9: CONTROL OF ADVERTISING

### 67 NEED FOR DEVELOPMENT APPROVAL

Comment [D36]: See also Clause 61(1)g, h.

A person shall not begin or continue to display an advertisement, other than an existing or exempted advertisement, without having first applied for and having obtained development approval under Part 4.

### 68 EXISTING AND EXEMPTED ADVERTISEMENTS

Unless it is subject to a notice under clause 69:

- (a) an exempted advertisement may be displayed; and
- (b) an existing advertisement may continue to be displayed in accordance with the licence or approval, if any, granted by the local government.

### 69 NOTICES AFFECTING THE DISPLAY OF ADVERTISEMENTS

- (1) Where, in the opinion of the local government, the display of an advertisement, including an exempted or existing advertisement, seriously conflicts with:
  - (a) the requirements of the Scheme;
  - (b) any relevant planning policy;
  - (c) the orderly and proper planning of a locality;
  - (d) the conservation of the amenity of a locality; and
  - (e) the design, scale and relationship of existing buildings or surroundings of the advertisement;

the local government may, by notice in writing, require the advertiser to remove, relocate, adapt or otherwise modify the advertisement within the period specified in the notice.

- (2) Where, in the opinion of the local government, an advertisement has deteriorated inappropriately having regard to the matters set out in subclause (1), or where the advertisement ceases to be effective for the purpose for which was displayed, the local government may by notice in writing require the advertiser to:
  - (a) repair, repaint or otherwise restore the advertisement to a standard specified by local government in the notice; or
  - (b) remove the advertisement.
- (3) A notice under this clause is to:
  - (a) be given to the advertiser;
  - (b) refer to the advertisement which is the subject of the notice;
  - (c) give full details of the action or alternative courses of action to be taken by the advertiser to comply with the notice; and
  - (d) specify the period, not being less than 60 days, within which the action specified is to be completed by the advertiser.
- (4) Subject to the provisions of the Act, a person on whom the notice is served under this clause has a right of appeal against the local government's decision to serve the notice.
- (5) Where in the opinion of the advertiser, an advertisement requires replacing or renewing, all changes are to be in accordance with the Scheme and the related Planning Policy.

## PART 6: CAR PARKING

### 70 CAR PARKING

- (1) Car parking shall be provided in accordance with the requirements of:
  - (a) the Residential Design Codes for residential development; and
  - (b) Table 2: Carparking Requirements.  
INSERT AMEND NO 7 GG 11/07/08
- (2) If the Scheme does not specify the number of spaces required in respect of any particular use, then the number of parking spaces to be provided shall be determined by the local government having regard to other relevant or similar uses, if any.
- (3) Where a building is used for more than one purpose, the number of carparking spaces to be provided in accordance with Table 2 or as determined by the Local government shall be calculated separately for each part of the building used for a different purpose.  
INSERT AMEND NO 7 GG 11/07/08
- (4) When the use of any land or building is changed to another use, additional parking spaces shall be provided to meet the requirements of the Scheme, unless an otherwise provided for in Clause 70(6).  
INSERT AMEND NO 7 GG 11/07/08
- (5) When any existing land or a building is redeveloped, additional parking spaces to meet the requirements of the Scheme shall be provided only in respect of any additional development and in respect of any expansion of net lettable area or enlargement of the previously approved development, but not in respect of the previously approved development or net lettable area.
  - (b) When a new development of any land occurs, parking spaces to meet the requirements of the Scheme shall be provided in respect of the new development.  
INSERT AMEND NO 7 GG 11/07/08
- (6) Where an application is made for development approval and the proposed development:
  - (a) Involves:
    - i) No change of use: or
    - ii) A change of the existing use to a use which has the same or lesser relative car parking requirement as determined by the local government having regard to Table 2: and
  - (b) the proposed development will result in no increase in the net lettable area between the proposed development and the existing development,  
  
the provisions of this Part do not apply to the proposed development.  
INSERT AMEND NO 7 GG 11/07/08
- (7) The number of car parking spaces to be provided under this Part in respect of development on land specified in the register referred to in clause 75(8), is to be reduced by the number of car parking spaces specified with respect to that land in the register.  
INSERT AMEND NO 7 GG 11/07/08  
INSERT AMEND NO 19 GG 15/01/13
- (8) In determining the extent (if any) of the concession in car parking requirements for a proposed non-residential development, the Local government is to be satisfied that the lesser car parking is reasonable taking into consideration the matters set out in clause 28 and the following matters:
  - (i) Whether a demand for car parking associated with the proposed development which is less than the requirement in Table 2 has been demonstrated; and
  - (ii) The availability and likely use of modes of transport other than the private car; and
  - (iii) The practicability and likelihood that car pooling will be employed, as a means of reducing the demand for parking; and
  - (iv) The availability and likely level of use of end-of-trip bicycle facilities; and
  - (v) The availability of public car parking in the locality including street parking; and
  - (vi) Any reduction in car parking demand due to the joint use of car spaces; and
  - (vii) Any car parking deficiency or surplus associated with the existing use of the land; and
  - (viii) Any other relevant consideration.  
INSERT AMEND NO 19 GG 15/01/13
- (9) Before making a determination under Clause 70(08), the local government may require the applicant to provide, at the applicant's expense, a traffic or transport study prepared by a suitably qualified and experienced transport planner or engineer and shall give due regard to the recommendations of such a report.  
INSERT AMEND NO 19 GG 15/01/13

## **70 (A) END OF TRIP BICYCLE FACILITIES**

INSERT AMEND NO 7 GG 11/07/08

End of trip bicycle facilities are to be provided in accordance with the standards for the respective uses set out in Schedule 7.

**NOTE:** Clause 28 deals with the Local government's decision to grant development approval to a non-complying application.

## **71 JOINT USE OF PARKING**

- (1) Parking spaces may be provided jointly by two or more owners or users of land or by one owner or user in respect of separate buildings or uses, subject to and in accordance with the requirements of this clause.
- (2) If:
  - (a) there is a shortfall between the number of the carparking spaces required by the Scheme and the number of carparking spaces to be provided by the applicant for development approval;
  - (b) the application contains a proposal for the shortfall to be provided on other land which is not the subject of the proposed development; and
  - (c) the local government is satisfied as to the matters referred to in subclause (3),then the local government may grant development approval notwithstanding the shortfall but subject to an agreement being entered into between the City and the applicant and the owner of the other land which agreement is to be prepared by the City's solicitors at the expense of the applicant, in the form of a restrictive covenant, easement or other legal instrument satisfactory to the City against that other land, in respect of the provision of the shortfall of parking spaces and any reciprocal access or circulation arrangements.  
INSERT AMEND NO 8 GG 09/01/09
- (3) The local government shall not grant development approval under this clause unless the local government is satisfied that:
  - (a) the applicant has provided evidence to the satisfaction of the local government that the peak hours of operation of the buildings or uses on the land the subject of the application and the land on which the shortfall of parking spaces is to be provided are different and do not substantially overlap; and
  - (b) the number of parking spaces to be provided on the land which is not the subject of the application, is sufficient to meet the shortfall in parking in respect of the development the subject of the application; and
  - (c) joint use of the parking facilities on the land which is not the subject of the application, will not result in any deficiency in parking for that site.  
INSERT AMEND NO 7 GG 11/07/08

## **72 DESIGN REQUIREMENTS FOR PARKING**

- (1) Car parking spaces and associated manoeuvring areas shall be designed in accordance with the specifications in Australian Standard AS 2890 Parking Facilities: Part 1 – Off – Street Parking (as amended).
- (2) Parking and manoeuvring area specifications for customers and clients is to be for short-term use, being defined by user class 3 under AS 2890 except in the case of parking spaces for people with disabilities, which are defined by user class 4.  
INSERT AMEND NO 19 GG 15/01/13

## **73 LANDSCAPING AND OTHER DESIGN MATTERS**

- (1) When considering an application that includes the provision of carparking spaces, the local government shall have regard to the suitability and adequacy of screening between the parking area and all other boundaries having regard for the impact of the facilities on adjoining properties.
- (2) In addition to landscaping, the local government shall have regard to and may impose conditions relating to the location and design of carparking spaces on site, including the extent of parking areas, the number and location of access points, manoeuvring spaces, the extent of covered spaces and loading facilities which are required to be provided on-site.  
INSERT AMEND NO 7 GG 11/07/08
- (3) Subject to clause 70(6), where the local government is satisfied that a satisfactory and binding agreement has been made between the owners or occupiers of adjoining lots for the permanent sharing of carparking spaces, the local government may reduce the number of car parking spaces required under Table 2 subject to any conditions it considers appropriate.

## 74 VEHICULAR ACCESS

A person shall not use any land for the purpose of a car park, the parking of vehicles, a loading bay or serviced ways unless the land and all accessways have been paved, drained, landscaped, marked out, sign posted and illuminated to specifications approved by the local government.

## 75 CASH IN LIEU OF CAR PARKING

- (1) If it is in conformity with a planning policy made by the local government, the local government may require or accept, as a condition of development approval, a shortfall cash payment in lieu of the provision of any car parking spaces required under the Scheme;
- (1A) The local government cannot require or accept a shortfall cash payment referred to in subclause (1) unless the local government is satisfied that public parking facilities or public transport services are available to satisfy the demands of the proposed development or that such public parking facilities are proposed to be available under a planning policy adopted by the local government.  
INSERT AMEND NO 7 GG 11/07/08
- (2) In this clause:
- |                                  |  |
|----------------------------------|--|
| “Bay Size”                       | means 27m <sup>2</sup> ;<br>INSERT AMEND NO 7 GG 11/07/08  |
| “Construction Cost”              | means the estimated cost of constructing and developing a car parking space at grade of the Bay Size as determined by an engineer or architect appointed by the City;<br>INSERT AMEND NO 7 GG 11/07/08 |
| “Land Value per m <sup>2</sup> ” | means the estimated value per square metre of land in the locality as determined by a licensed valuer appointed by the City;   |
| “Shortfall”                      | means the difference between the number of the carparking spaces required by the Scheme and the number of carparking spaces to be provided by the applicant.   |
- (3) In this clause:
- “Shortfall Cash Payment” means
- (a) the amount fixed as such in a planning policy made by the local government; or
- (b) where the local government has not made such a planning policy within the period of 12 months preceding the grant of the development approval, means an amount calculated according to the following formula:
- $$\text{Shortfall} \times [(\text{Bay Size} \times \text{Land Value per m}^2) + \text{Construction Cost}] \times 50\%$$
  
INSERT AMEND NO 7 GG 11/07/08
- (4) In deciding to fix the Shortfall Cash Payment the local government is to have regard to:
- (a) the amount calculated in accordance with the formula set out in subclause (3); and
- (b) any factors which the local government considers justify varying that amount including, without limitation, the existence of any specified area rate or service charge imposed by the local government to secure increased public parking areas.
- (5) Without limiting clause 78, the local government may make a planning policy identifying those parts of the Scheme Area in which the local government may require or accept a shortfall cash payment under subclause (1).  
INSERT AMEND NO 7 GG 11/07/08
- (6) The monies received by the City under this clause shall be paid into a reserve fund and shall only be used:
- (a) for the provision of public parking or facilities, infrastructure and services for cyclists, pedestrians and public transport users; and  
INSERT AMEND NO 7 GG 11/07/08
- (b) for reimbursing the City for any expenses incurred for the purpose of paragraph (a) including loan repayments.
- (7) An applicant may, prior to the commencement of the development which is the subject of the development approval, refer any dispute concerning the Construction Cost or the Land Value per m<sup>2</sup> for determination by a single arbitrator agreed by the parties, or failing agreement, nominated by the Minister at the request of either the applicant or the local government, to be determined in accordance with the Commercial Arbitration Act 1985.
- (8) Where a shortfall cash payment is made under subclause (1) in lieu of a number of carparking spaces, the City is to enter:
- (a) the description of the land the subject of the development approval;
- (b) the number of carparking spaces in lieu of which payment is made;  
in a register kept by the City for that purpose.  
INSERT AMEND NO 7 GG 11/07/08

## 76 CARPARKING REQUIREMENTS

Parking bays should be provided at the rate specified in the following table, unless otherwise approved by the local government. Calculated parking requirements shall be rounded to the nearest whole number.

**TABLE NO. 2 - CAR PARKING REQUIREMENTS**

INSERT AMEND NO 7 GG 11/07/08

Land Use	Number of Parking Bays
Amusement Centre, Amusement Facility	1 per 20m <sup>2</sup> net lettable area
Bank	1 per 40m <sup>2</sup> net lettable area (excluding public areas), plus 1 per 20m <sup>2</sup> net lettable area (public areas)
Bed and Breakfast Establishment	As per Residential Design Codes, plus 1 per guest bedroom
Betting Agency	1 per 20m <sup>2</sup> net lettable area
Building Society	1 per 40m <sup>2</sup> net lettable area (excluding public areas); plus 1 per 20m <sup>2</sup> net lettable area (public areas)
Child Care Premises	1 per every 2 staff members and 1 per 10 children with a minimum of 3 space
Cinema	To be calculated according to use of component areas, plus 1 per 4m <sup>2</sup> of public assembly and/or seating area
Civic Use	To be calculated according to use of component areas, plus 1 per 4m <sup>2</sup> of public assembly and/or seating area
Club Premises	To be calculated according to use of component areas, plus 1 per 4m <sup>2</sup> of public assembly and/or seating area
Community Purpose	To be calculated according to use of component areas, plus 1 per 4m <sup>2</sup> of public assembly and/or seating area
Consulting Rooms	4 per consulting room
Convenience Store	1 per 20m <sup>2</sup> net lettable area
Dry Cleaning Premises	1 per 20m <sup>2</sup> net lettable area
Educational Establishment	1 per classroom, plus 1 per 10 students (excluding primary schools)
Exhibition Centre	1 per 30m <sup>2</sup> exhibition area
Fast Food Outlet	1 per 4m <sup>2</sup> eating area (if any) with a minimum of 4 spaces (excluding queuing spaces for any drive-through facility)
Funeral Parlour	1 per 4m <sup>2</sup> seating area, or 1 per 50m <sup>2</sup> net lettable area, whichever is the greater
Health Studio	1 per 15m <sup>2</sup> net lettable area
Home Business, Home Occupation, Home Office	As per Residential Design Codes, plus spaces as required by relevant policy
Hospital	1 per 4 patients beds
Lodging House	1 per 6 beds, with a minimum of 2 spaces
Lunch Bar	1 per 20m <sup>2</sup> net lettable area
Massage Rooms	4 per consulting room
Market	1 per 20m <sup>2</sup> net lettable area
Medical Centre	3 per consulting room
Motel	To be calculated according to use of component areas, plus 1 per unit of accommodation
Motor Vehicle Repair	1 per 50m <sup>2</sup> net lettable area
Motor vehicle, boat or caravan sales	1 per 100m <sup>2</sup> display area, with a minimum of 3 spaces
Night Club	1 per 4m <sup>2</sup> of eating, drinking or lounge area
Nursing Home	1 per 8 patients beds
Office (excluding Bank, Building Society, Post)	1 per 40m <sup>2</sup> net lettable area
Open-Air Display	1 per 100m <sup>2</sup> display area
Place of Public Worship	1 per 4m <sup>2</sup> of public assembly and/or seating area
Post Office	1 per 40m <sup>2</sup> net lettable area (excluding public areas), plus 1 per 20m <sup>2</sup> net lettable area (public areas)
Reception Centre	1 per 4m <sup>2</sup> of eating, drinking or lounge area,

	plus 1 per 4m <sup>2</sup> of public assembly and/or seating area
Reception – Private	1 per 15m <sup>2</sup> net lettable area
Research and Development	1 per 40m <sup>2</sup> net lettable area
Residential Development	As per the Residential Design Codes
Restaurant	1 per 4m <sup>2</sup> of eating, drinking or lounge area
Serviced Apartments	1 per unit of accommodation
Service Station	To be calculated according to use of component areas
Shop	1 per 20m <sup>2</sup> net lettable area
Showroom	1 per 50m <sup>2</sup> net lettable area
Special (licensed) facility	To be calculated according to use of component areas
Small Bar	1 per 4m <sup>2</sup> of eating, drinking or lounge area
Storage Yard	1 per 100m <sup>2</sup> outdoor storage area
Tavern	1 per 4m <sup>2</sup> of eating, drinking or lounge area
Theatre	To be calculated according to use of component areas, plus 1 per 4m <sup>2</sup> of public assembly and/or seating area
Trade Display	1 per 50m <sup>2</sup> net lettable area
Veterinary Clinic Veterinary Hospital	4 per consulting room
Warehouse	1 per 50m <sup>2</sup> net lettable area

## 77 CARPARKING BAY DIMENSIONS FOR NON-RESIDENTIAL DEVELOPMENT

Deleted by Amd 7 GG11/7/08

Comment [KH37]: This section has been deleted

## PART 7: MISCELLANEOUS

### 78 PLANNING POLICIES

Comment [D38]: See Part 2 Clause 2-6

- (1) ~~The local government may make planning policies, which are to:~~
  - ~~(a) relate to an aspect or aspects of development control or any other matter relevant to this Scheme; and~~
  - ~~(b) apply to all or a part of the Scheme area.~~
- (2) ~~In preparing a draft planning policy, the local government is to have regard to:~~
  - ~~(a) the purpose and objectives for which land is set aside under the Scheme;~~
  - ~~(b) the orderly and proper planning of the locality;~~
  - ~~(c) the conservation of the amenity of the locality;~~
  - ~~(d) any strategies, studies or objectives adopted by local government; and~~
  - ~~(e) any other matters it considers to be relevant.~~
- (3) ~~Having prepared a draft planning policy, the local government is:~~
  - ~~(a) to advertise a summary of the draft planning policy once a week for two consecutive weeks in a newspaper circulating in the Scheme area, giving details of where the draft planning policy may be inspected, and during what period (being not less than 21 days) submissions may be made, unless the draft policy is to be advertised under clause 26 of the Scheme in which case no further advertisement is required;~~
  - ~~(b) where practicable, to notify those persons who, in the opinion of the local government, might be directly affected by the draft planning policy; and~~
  - ~~(c) to forward a copy of the draft planning policy to the Western Australian Planning Commission for its consideration and advise in cases where the local government considers that the policy may be inconsistent with other provisions of the Scheme or with state and regional planning policies.~~
- (4) ~~After the expiry of the period for submissions, the local government is to:~~
  - ~~(a) review the draft planning policy having regard to any written submissions; and~~
  - ~~(b) determine, by resolution, to adopt the draft planning policy;~~
- (5) ~~As soon as practicable after the local government makes a determination under subclause (4), details of the determination are:~~
  - ~~(a) to be advertised once in a newspaper circulating in the Scheme area;~~
  - ~~(b) where practicable, to be given to those persons directly affected by the planning policy; and~~
  - ~~(c) to be given to the Western Australian Planning Commission together with, where the local government has resolved to adopt the planning policy with one or more amendments, a copy of the amended planning policy, in the case of policies which have previously been submitted to the Commission for its consideration under subclause (3)(c).~~
- (6) ~~A copy of each planning policy, as amended, is to be kept and made available for public inspection at the offices of the local government and any other premises nominated by the local government.~~
- (7) ~~A planning policy adopted by the local government may be altered or rescinded only by following the procedures set out in this clause for making and adopting a planning policy.~~
- (8) A planning policy prepared under this clause shall be consistent with the Scheme and where any inconsistency arises the Scheme shall prevail.
- (9) Where a planning policy has been prepared and adopted in accordance with the provisions of the former Town Planning Scheme No. 3, it shall continue to have effect as a planning policy under this scheme, and may be altered or rescinded as if it were a planning policy made under this Scheme;  
INSERT AMEND NO 2 GG 22/10/04

- (10) All policies and design manuals as adopted by the Metropolitan Redevelopment Authority are deemed to be planning policies prepared under clause 78 and shall continue to apply until such time as they are amended or rescinded pursuant to clause 78. These policies shall only apply to the Centro Precinct and where there is inconsistency between a former Metropolitan Redevelopment Authority policy and an already adopted planning policy, the requirements of the former Metropolitan Redevelopment Authority policy shall prevail.

Comment [D39]: See Clause 78

## 79 AGREEMENTS AND DEALINGS WITH LAND

~~For the purpose of implementing this Scheme and ensuring compliance with it, the local government may:~~

- ~~(a) enter into any agreement with any owner, occupier or other person having an interest in land affected by this Scheme;~~  
~~(b) acquire any land within the Scheme area; and~~  
~~(c) deal with or dispose of any land, which it has acquired.~~

Comment [D40]: See clause 81-84

## 80 DELEGATION

~~The local government may, either generally or in a particular case or cases, by resolution passed by an absolute majority of the local government, delegate to:~~

- ~~(a) a Committee of the local government; or~~  
~~(b) an officer of the local government,~~

~~any power conferred or duly imposed on the local government under this Scheme.~~

**NOTE:** 1. ~~Section 58 and 59 of the Interpretation Act 1984 apply to the construction and scope of this delegation power.~~  
2. ~~Delegations made by the local government may be contained in a planning policy.~~

## 81 COMPENSATION

Except as otherwise provided, the time limit for making claims for compensation for injurious affection pursuant to 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 the Amendment in the Government Gazette.

Where, in respect of any application for development approval to commence or carry out development on land reserved under this Scheme, the local government, 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, within six (6) months of the date of the relevant decision, claim compensation from the local government for injurious affection.

**NOTE:** 1. *The reference to the Act is to the Planning and Development Act 2005.*  
2. *The gazetted date is defined in Schedule 1.*

## 82 ELECTION TO PURCHASE AND VALUATION

- (1) Where compensation for injurious affection is claimed pursuant to clause 81, the local government may, at its option, elect to acquire the land so affected instead of paying compensation.
- (2) Where the local government elects to acquire the land in respect of which the claim for compensation for injurious affection is made, the local government shall give notice of that election to the claimant by notice in writing within three (3) months of the claim for compensation being made.
- (3) Where the local government elects to acquire land as provided in subclause (1), if the local government and the owner of the land are unable to agree as to the price to be paid for the land by the local government, the price at which the land may be acquired by the local government shall be the value of the land as determined in accordance with subclause (4).

- (4) The value of the land referred to in subclause (3) shall be the value thereof on the date that the local government elects to acquire the land and that value shall be determined:
- (a) by arbitration in accordance with the *Commercial Arbitration Act 1985*; or
  - (b) by some other method agreed upon by the local government and the owner of the land,

and the value shall be determined without regard to any increase or decrease, if any, in value attributable wholly or in part to this Scheme.

- (5) The local government may deal with or dispose of land acquired for a City of Subiaco Scheme reserve pursuant to the preceding subclause (4) or upon such terms and conditions as it thinks fit provided the land is used for, or preserved for, a use compatible with the use for which it was reserved.

## **82A ADDITIONAL MATTERS TO DO WITH SUBTRACTED AREAS**

- (1) The application of Regulation 5 of the Subiaco Redevelopment (Subtracted Area) Regulations 2005 is excluded in relation to any land included under Regulation 4(1) in the area to which this Scheme applies.
- (2) The application of the Regulation 5 of the Subiaco Redevelopment (Subtracted Area – Stage 2) Regulations 2006 is excluded in relation to any land included under Regulation 4(1) in the area to which this Scheme applies.

Comment [D41]: See also Part 10 Clause 78-80

## PART 8: ENFORCEMENT

### 83 NOTICES

- (1) A notice required to be given by the local government under section 10(1) of the Act is to be a 28-day notice signed by the Chief Executive Officer and sent by registered post to the owner and to any occupier or lessee of the premises affected by the notice.
- (2) The local government may recover expenses under section 10(2) of the Act in any manner in which it is from time to time entitled to recover rates levied by it under the *Local Government Act 1995*.

### 84 AUTHORISED ENTRY

- ~~(1) An officer authorised by the local government may, with any assistance required, enter at any reasonable time any building or land to determine whether the provisions of this Scheme have been or are being observed.~~
- (2) An authorised officer exercising the power of entry under subclause (1) or any other person accompanying an authorised officer who:
  - (a) finds a person committing; or
  - (b) on reasonable grounds suspects a person of having committed,breach of a provision of this Scheme, may ask that person for his or her name and address.
- (3) A person who:
  - (a) in any way opposes the exercise of an authorised officer's power of entry; or
  - (b) when asked to do so under subclause (2), refuses to state his or her name or address or states a false name or address,commits an offence.
- (4) A person who gives or is suspected of giving a false name or address to the person making the inquiry under subclause (2) may, without any other warrant, be apprehended by the person making the demand and taken before a justice to be dealt with according to law.

Comment [D42]: See Clause 79

### 85 OFFENCES

- (1) Subject to Part 4 of this Scheme, a person shall not erect, alter or add to a building or use or change the use of any land or building, or permit or suffer any land or building to be used or the use of any land or building to be changed for any purpose:
  - (a) other than a purpose permitted or approved of by the local government in the zone in which that land or building is situated;
  - (b) unless all approvals, consents or licences required by this Scheme or any other law have been granted or issued;
  - (c) unless all conditions imposed upon the grant or issue of any approval, consent or licence required by this Scheme or any other law have been and continue to be complied with; and
  - (d) unless all standards laid down and all requirements prescribed by this Scheme or determined by the local government pursuant to this Scheme with respect to that building or that use of that land or building have been and continue to be complied with.
- (2) Where the local government has granted development approval for the development of land on a condition which involves the maintenance or continuance of the state or condition of any place, area, matter or thing a person shall not use or permit or suffer the use of that land for any purpose while the state or condition of that place, area, matter or thing is not being maintained or continued in accordance with that condition.
- (3) If, in the opinion of the local government, land is being used in contravention of subclause (1) or (2) of this clause, the local government may give to the owner and occupier of the land or building a notice in writing requiring the owner or occupier, or both, to comply with the relevant provisions of the Scheme or condition of development approval within a specified period as determined by the local government.

## SCHEDULE 1: DEFINITIONS

**Absolute majority:** has the same meaning as given to it in the Local Government Act 1995.

**NOTE:** *The Local Government Act 1995 defines 'absolute majority' as: "a majority comprising enough of the members for the time being of the Council for their number to be more than 50% of the number of offices (whether vacant or not) of members of the Council."*

**75% majority:** in relation to the local government, means a majority comprising enough of the members for the time being of the local government for their number to be at least 75% of the number of offices (whether vacant or not) of members of the local government.

**Act:** means the Planning and Development Act 2005.

INSERT AMEND NO 8 GG 09/01/09

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

**Comment [D43]:**  
ADVERTISEMENT  
See Clause 1

**Advertiser:** means any one or more of the land owner, occupier, licensee or other person having an interest in or benefiting from the display of an advertisement.

INSERT AMEND NO 24 GG 1/3/16

**Amenity:** means all those factors, which combine to form the character of an area and include the present and likely future amenity.

**Amusement centre:** means any land or building, open to the public, where the predominant use is amusement by amusement machines and where there are more than two amusement machines operating within the premises.

**Amusement facility:** means any land or buildings, open to the public, used for not more than two amusement machines where such use is incidental to the predominant use.

**Amusement machine:** means any machine, game or device whether mechanical or electronic or a combination of both operated by one or more players for amusement and recreation.

**Ancillary dwelling:** has the same meaning given to it as in the R-codes.

INSERT AMEND NO 24 GG 1/3/16

**Animal establishment:** means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include a veterinary centre.

INSERT AMEND NO 24 GG 1/3/16

**Appendix:** means an appendix to the Scheme.

**Applicant:** means the owner of the subject land or a person or body authorised by the owner to make an application for planning approval or to act on any other matter involving the local government in relation to that land.

**Application:** means an application for planning approval made under Part 4 of the Scheme Text.

**Approved plan:** means any plan that:

- (a) forms part of an application for which planning approval has been granted; and
- (b) has been endorsed with the approval of the local government.

**Auction mart:** means any land or building on or in which goods are exposed or offered for sale by auction, but does not include a place used for the sale by auction of fresh food, fruit, vegetables, livestock or motor vehicles.

INSERT AMEND NO 24 GG 1/3/16

**Authorised officer:** means an officer of the local government, authorised by the local government to exercise all or some of the powers of the local government under this Scheme.

**Battle-axe lot:** means a lot having access to a public road by means of an access strip included in the Certificate of Title of that lot.

**Bed and Breakfast:** means a dwelling, used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence on a short-term commercial basis and includes the provision of breakfast.

**Betting agency:** means premises operated as a totalisator agency as defined under the Racing and Wagering Western Australia Act 2009.  
INSERT AMEND NO 24 GG 1/3/16

**Building:** means a structure erected or placed on land.

~~**Building Code of Australia:** means the Building Code of Australia (as amended).~~

**Comment [D44]:**  
BUILDING CODE  
See clause 1

**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.  
INSERT AMEND NO 24 GG 1/3/16

**Building line:** means the line between which and any public place or public reserve a building may not be erected except by or under the authority of an Act.

**Comment [D45]:**  
BUILT HERITAGE CONSERVATION  
See clause 1

**Change of use:** means when the usage of a land or building is changed from one land use to another land use with no expansion of net lettable area and with only minor building alterations  
INSERT AMEND NO 7 GG 11/07/08

**Chief Executive Officer:** means the Chief Executive Officer of the local government.  
INSERT AMEND NO 24 GG 1/3/16

**Child Care Service:** has the same meaning as is given to it in Section 198 of the Children and Community Services Act 2004 but does not include:

- (a) a child care service that is provided solely as a benefit of employment and is situated in the same premises as the persons who are employed and for whose benefit it is provided; or
- (b) a child care service that is provided solely as an ancillary service to a commercial or recreational activity and is situated in the same premises as the activity is conducted.

INSERT AMEND NO 8 GG 09/01/09

**Cinema/theatre:** means premises where the public may view a motion picture or theatrical production.

**City:** means the City of Subiaco established as a local government under the Local Government Act 1995.

**Civic use:** means premises used by a government department, an instrumentality of the Crown, or the local government, for administrative, recreational or other purpose.

**Club premises:** means any land or buildings used or designed for use 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 and which is used in conjunction with a trade or profession and shall include trailers, tractors and their attachments, buses and earthmoving machines whether self-propelled or not but shall not include a passenger car derivative as defined by the Vehicle Ales Regulations 1976 (as amended), a van, utility or light truck which is rated by the manufacturer as being suitable to carry loads of up to 1.5 tonnes.

**Commercial:** means any activity involving any form of purchase, hire or Ale of goods or services.

**Commission:** means the Western Australian Planning Commission constituted under the Act.  
INSERT AMEND NO 8 GG 09/01/09

**Commonwealth Agency:** includes a Commonwealth Minister, department, body or officer and an agency or instrumentality of the Crown in right of the Commonwealth.

**Comment [D46]:**  
COMMITTEE.  
See Clause 81.

**Communications antennae (domestic):** means any mast, antennae, aerial, Satellite dish and other associated equipment used for the reception or transmission of television or radio signals or for other electronic communications where such device is consistent with the predominant style and size of other such devices in the locality, and provided that neither its vertical nor horizontal dimensions exceed one metre.

**Communications antennae (commercial):** means any mast, antennae, aerial, Satellite dish and other associated equipment used for the reception or transmission of television or radio signals or for other electronic communications where its vertical or horizontal dimensions exceed one metre but does not include telecommunications infrastructure.

**Community purpose:** means the use of land or buildings designed or adapted primarily for the provision of educational, social and recreational facilities and services by organisations involved in activities for community benefit.

**Conservation:** has the same meaning as in the *Heritage of Western Australia Act 1990*.

**Conservation area:** means an area of heritage value having a distinctive nature, which may contain elements of only minor individual significance but heightened collective significance, and within whose boundaries controls may be necessary to retain and enhance its character.

**Consulting rooms:** means any building used in the practice of a profession by a legally qualified medical practitioner or dentist, or by a physiotherapist, a masseur, a chiropractor, a chiropodist, or a person ordinarily associated with a medical practitioner in the investigation or treatment of physical or mental injuries or ailments but does not include a hospital.

INSERT AMEND NO 12 GG 23/10/09

**Convenience store:** means any land and or buildings used for the retail sale of convenience goods being those goods commonly sold in supermarkets, delicatessens and newsagents, but including the sale of petrol and operated during hours which include, but which may extend beyond normal trading hours and providing associated parking. The buildings associated with a convenience store shall not exceed 300m<sup>2</sup> gross leasable area.

**Cultural heritage significance:** has the same meaning as in the *Heritage of Western Australia Act 1990*.

**NOTE:** *The Heritage of Western Australia Act defines "cultural heritage significance" to mean, in relation to a place: "the relative value which that place has in terms of its aesthetic, historic, scientific or social significance, for the present community and future generations".*

Comment [D47]:  
See Clause 1

**Cultural use:** means any use aimed at the improvement or refinement of people by entertainment and/or education.

**Development:** has the same meaning as is given to it in the Act.

INSERT AMEND NO 24 GG 1/3/16

**NOTE:** *Section 2(1) of the Planning and Development Act defines "development" to mean, "the development or use of any land, including any demolition, erection, construction, alteration of or addition to any building or structure on the land and the carrying on the land of any excavation or other works and, in the case of a place to which a Conservation Order made under section 59 of the Heritage of Western Australia Act 1990 applies, also includes any act or thing that:*

- (a) *is likely to change the character of that place or the external appearance of any building; or*
- (b) *would constitute an irreversible alteration of the fabric of any building".*

Comment [D48]:  
DEVELOPMENT CONTRIBUTION  
PLAN  
See clause 1

**Display:** in relation to an advertisement, includes the erection and placement of the advertisement.

INSERT AMEND NO 24 GG 1/3/16

**Dry cleaning premises:** means any land or buildings used for the cleaning of garments and other fabrics by chemical processes.

**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

INSERT AMEND NO 7 GG 11/07/08

**Exempted advertisement:** is an advertisement exempted from the requirement to obtain planning approval as listed in a planning policy.

INSERT AMEND NO 24 GG 1/3/16

**Existing advertisement:** means an advertisement that is:

- (a) lawfully displayed before the commencement of this Scheme; or
- (b) displayed under a licence or other approval granted by the local government before commencement of this Scheme.

INSERT AMEND NO 24 GG 1/3/16

**Facade:** means the exposed faces of a building towards roads or open space or the frontal outward appearance of the building.

**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.

INSERT AMEND NO 7 GG 11/07/08

**Fish shop:** means a building where wet fish and similar foods are displayed and offered for sale and for the purposes of the Scheme is considered to be a shop.

**Floor area of a building:** means

- (a) for a private residential building : the meaning outlined in the definition of plot ratio in the Codes;
- (b) for a non-private residential building : the gross total area of:
  - (i) each of the floors of a lodging house; or
  - (ii) those parts of each of the floors used for residential purposes of a hotel, a motel, a private hotel, a serviced apartment, an educational establishment, an institutional building or a hospital which accommodates members of the staff of the hospital, including the area of passages, lobbies, amenities and accessways, but shall not include the area of lift shafts, stairs, plant rooms, non-habitable floorspace in basements, private car parks and any portion of an open balcony which portion is of not more than 2.4 metres in depth provided that the longest open side of the balcony has no enclosure other than a balustrade of not more than 1.05 metres in height and to which there is no access other than by way of the tenancy of which it forms an exclusive part; and
- (c) for a non-residential building: the gross total area of each of the floors of the building including the area of carparking spaces in public fee-paying car parks but shall not include the area of private car parks, the areas of lift shafts, stairs, toilets, amenities, plant rooms and the thickness of any external walls.

**Frontage:** when used in relation to a building that is used for –

- (a) residential purposes, has the same meaning as in the R-Codes; and
- (b) purposes other than residential purposes, means the road alignment at the front of a lot and, if the lot abuts 2 or more roads, the one to which the building or proposed building faces.

INSERT AMEND NO 24 GG 1/3/16

**NOTE:** *Clause 1.3.1 of the R-Codes defines "frontage" to mean:  
"the width of a lot at the average permissible front setback line, provided that in the case of battle-axe or other irregular shaped lots, it shall be as determined by the local government."*

**Funeral parlour:** means any land or buildings occupied by an undertaker where bodies are stored and prepared for burial or cremation.

**Gazetted date:** in relation to a Scheme, means the date on which notice of the Minister's approval of the Scheme is published in the Government Gazette.

INSERT AMEND NO 24 GG 1/3/16

**Health studio:** means land and buildings designed and equipped for physical exercise, recreation and sporting activities including outdoor recreation.

**Height, building:** has the same meaning given to it in the Residential Design Codes and the term 'overall height' shall have the same meaning.

INSERT AMEND NO 2 GG 22/10/04

**Height, wall:**

- (a) in the case of any wall other than a gable wall which exceeds 9 metres in length, means the vertical distance measured at any point along the wall, from the natural ground level immediately below the wall to the upper most part of the wall;
- (b) in the case of a gable wall which exceeds 9 metres in length, means:
  - (i) the vertical distance measured at any point along the wall from the natural ground level immediately below the wall to a line which joins the points where the walls meet the eaves; plus
  - (ii) a distance equal to one third of the vertical distance between:
    - (A) the highest point of the gable wall; and
    - (B) the lowest point at which the wall meets an eave.

**NOTE 1:** *For the avoidance of doubt, for the purpose of measuring "wall height" a wall does not include any roof element.*

**NOTE 2:** *For the purpose of measuring setbacks the definition of "Height, wall" as defined by the Residential Design Codes prevails.*

**NOTE 3:** *In the majority of circumstances the uppermost part of a wall is equal to plate height.*

INSERT AMEND NO 2 GG 22/10/04

INSERT AMEND NO 6 GG 01/08/06

**Comment [D49]:**  
HERITAGE AREA  
HERITAGE LIST  
PLA CE  
HERITAGE CONSERVATION NOTICE  
HERITAGE PLACE  
PROPERLY MAINTAINED  
See Clauses 7 and/or 13

**Home business:** means a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which —

- (a) does not employ more than 2 people not members of the occupier's household;
- (b) will not cause injury to or adversely affect the amenity of the neighbourhood;
- (c) does not occupy an area greater than 50 square metres;
- (d) does not involve the retail sale, display or hire of goods of any nature;
- (e) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and
- (f) does not involve the use of an essential service of greater capacity than normally required in the zone;

INSERT AMEND NO 2 GG 22/10/04

**Home occupation:** means an occupation carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which —

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

INSERT AMEND NO 2 GG 22/10/04

**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;

INSERT AMEND NO 2 GG 22/10/04

**Hospital:** means a building in which persons are received and lodged for medical treatment or care and includes a maternity hospital.

**Hotel:** means any land or buildings providing accommodation for the public the subject of a hotel licence granted under the provisions of the *Liquor Control Act 1988* and may include a betting agency operated in accordance with the *Racing and Wagering Western Australia Act 2009* but does not include a motel, tavern or lodging house the subject of a limited hotel licence or other licence granted under that Act.

INSERT AMEND NO 24 GG 1/3/16

**Industry:** means premises used for the manufacture, dismantling, processing, assembly, treating, testing, servicing. Maintenance or repairing of goods, products, articles, materials or substances and includes premises on the same land used for —

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

incidental to any of those industrial operations.

**Industry: hazardous/noxious:** means an industry which, when in operation and when all measures proposed to minimise its impact on the locality have been employed (including measures to isolate the industry from existing or likely future development on other land in the locality), would pose a significant risk in relation to the locality, to human health, life or property, or to the biophysical environment. Examples of such industry include oil refineries and chemical plants but would generally exclude light industries

**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, will not cause any injury to, or will not adversely affect the amenity of the locality by reason of the emission of light, noise, electrical interference, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water or other waste products; and
- (b) the establishment of which will not, or the conduct of which does not, impose an undue load on any existing or proposed service for the supply or provision of water, gas, electricity, sewerage facilities, or any other like services.

**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;  
INSERT AMEND NO 2 GG 22/10/04

**Land:** shall have the same meaning given to the term in and for the purposes of the Act.

*NOTE: Section 4(1) of the Planning and Development Act 2005 defines "land" to include: "land, tenements and hereditaments and any interest therein, and also houses, buildings, and other works and structures".*

INSERT AMEND NO 24 GG 1/3/16

**Landscaped area:** means any area developed by the planting of lawns, garden beds, shrubs or trees and includes any area developed with rockeries, ornamental ponds, swimming pools, public art, barbecue areas or children's playgrounds and includes any other area approved by the local government as landscaped area.

*NOTE: Clause 1.3.1 of the R-Codes defines "landscape, landscaping or landscaped" to mean: "land developed with, or by the planting of lawns, garden beds, shrubs and trees and includes such features as rockeries, ornamental ponds, swimming pools, barbecue areas or children's playgrounds and any other such area approved of by the local government as landscaped area".*

**Laundromat:** means premises, open to the public, in which washing machines, with or without provision for drying clothes, are available for use for payment.

**Licensed Premises:** means land and buildings where alcohol is served for consumption on the premises.

INSERT AMEND NO 7 GG 11/07/08

~~**Local Development Plan:** means a statutory planning document prepared and approved under the relevant provisions of the scheme which provides for a framework for the planning and co-ordination of land use and development.~~

INSERT AMEND NO 18 GG 28/10/14

Comment [D50]: See clause 46

Comment [D51]:  
LOCAL GOVERNMENT  
LOCAL GOVERNMENT CEO  
LOCAL PLANNING STRATEGY  
See clause 1

**Local government:** means the executive body of the City of Subiaco.

**Local shop:** means a shop in which the only goods offered for sale are a combination of foodstuffs, toiletries, stationery, or goods of a similar domestic nature intended for the day-to-day consumption or use by persons living or working in the locality of the shop, and may include the preparation and Ale of food for consumption on the premises where this is incidental to the predominant use of the land.

**Lodging house:** shall have the same meaning as is given to the term in and for the purposes of the *Health Act 1911* (as amended)

*NOTE: Section 3(1) of the Health Act defines "Lodging-house" to mean "any building or structure, permanent or otherwise, and any part thereof, in which provision is made for lodging or boarding more than 6 persons, exclusive of the family or the keeper thereof, for hire or reward; but the term does not include:*

- (a) premises licensed under a publican's general licence, limited hotel licence, or wayside-house licence, granted under the Licensing Act 1911;
- (b) premises used as a boarding school approved under the Education Act 1928; or
- (c) any building comprising residential flats".

**Lot:** has the same meaning as in the Act.

INSERT AMEND NO 24 GG 1/3/16

**NOTE:** Section 2(1) of the Town Planning and Development Act defines "Lot" to mean:

"a defined portion of land depicted on a plan or diagram publicly exhibited in the public office of the Department of Land Administration, or deposited in the Office of Titles or Registry of Deeds and for which a separate Crown Grant or Certificate of Title has been or can be issued; or depicted on a subdivisional plan or diagram, whether so exhibited or deposited or not, but which is, whether before or after the coming into operation of the Town Planning and Development Act 1956, approved by the Commission and includes the whole of the land the subject:

- (a) of a Crown Grant issued under the Land Act 1933; or
- (b) of a certificate of title issued under the Transfer of Land Act 1893; or
- (c) of a survey into a lot pursuant to a direction given under section 17 of the Land Act 1933; or
- (d) of a part-lot shown on a plan of subdivision or diagram deposited in the Department of Land Administration, Office of Titles, or Registry of Deeds; or
- (e) of a conveyance registered under the Registration of Deeds Act 1856".

**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.

INSERT AMEND NO 7 GG 11/07/08

**Market:** means premises used for the display and sale of goods from stalls by independent vendors.

INSERT AMEND NO 7 GG 11/07/08

**Massage rooms:** means premises primarily used by a masseur or which primarily provide therapeutic massage or similar services.

**Medical centre:** means premises, other than a hospital, used by three 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);

INSERT AMEND NO 2 GG 22/10/04

INSERT AMEND NO 7 GG 11/07/08

**Metropolitan Region Scheme:** means the Metropolitan Region Scheme made pursuant to the Act as published in the *Government Gazette* of August 9 1963 and as amended from time to time.

INSERT AMEND NO 8 GG 09/01/09

**Minister:** means the Minister for Planning or the Minister of the Western Australian Government responsible for town planning.

**Motel:** means a building, group of buildings or place used to accommodate patrons in a manner similar to a hotel or lodging house but in which special provision is made for the accommodation of patrons with motor vehicles.

INSERT AMEND NO 12 GG 23/10/09

**Motor vehicle, boat or caravan sales:** means premises used to sell or hire motor vehicles, boats or caravans.

INSERT AMEND NO 7 GG 11/07/08

**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.

INSERT AMEND NO 7 GG 11/07/08

**Motor vehicle wash:** means a structure or structures where the primary use is the washing or cleaning of motor vehicles.

INSERT AMEND NO 24 GG 1/3/16

**Municipal Inventory:** means the Municipal Inventory, as amended from time to time, prepared by the local government pursuant to section 45 of the Heritage of Western Australia Act 1990 (as amended).

**Natural Ground level:** has the same meaning given to it as in the R-codes.

INSERT AMEND NO 24 GG 1/3/16

**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;

INSERT AMEND NO 2 GG 22/10/04

**New development:** means new development of an effectively vacant site, or when existing development is substantially altered prior to new development.

INSERT AMEND NO 7 GG 11/07/08

**Night club:** means any land or buildings used for entertainment and/or eating facilities and to which a licence under the provisions of the Liquor Control Act 1988 has been granted.

INSERT AMEND NO 24 GG 1/3/16

**Non-complying application:** applications which do not comply with Scheme requirements and which may be approved through the process identified in clause 28.

INSERT AMEND NO 22 GG 22/05/15

**Non-conforming use:** has the same meaning as it has in the Act.

INSERT AMEND NO 8 GG 09/01/09

**Nursing home:** means any building used for the accommodation and care of aged and disabled persons.

**Office:** means premises used for administration, clerical, technical, professional or other business activities.

**Open-air cinema:** means premises where the public may view a motion picture within in an unenclosed structure.

INSERT AMEND NO 18 GG 28/10/14

**Open-air display:** means the use of land as a site for the display and/or Ale of goods and equipment.

~~**Owner:** in relation to any land includes the Crown and every person who jointly or severally whether at law or in equity:~~

~~is entitled to the land for an estate in fee simple in possession; or~~

~~is a person to whom the Crown has lawfully contracted to grant the fee simple of the land; or~~

~~is a lessor or licensee from the Crown; or~~

~~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 thereof, whether as a beneficial owner, trustee, mortgagee in possession, or otherwise.~~

**Comment [D52]:**  
OWNER  
See clause 1

**Parking station:** means any land or building or part of a building open to the public generally for the parking of vehicles for which payment of a fee or charge may be required, and includes the use of the land or building for that purpose but does not include:

- (a) parking provided for the sole use of tenants of the building where the parking bays are not metered or ticketed bays; or
- (b) any premises in which cars are displayed solely for sale or lease

INSERT AMEND NO 24 GG 1/3/16

**Permeability:** means, in terms of public space, the capacity to access a given point from alternative routes for all modes of traffic including pedestrian. The term relates to both visual and physical access.

INSERT AMEND NO 24 GG 1/3/16

~~**Place:** has the same meaning as it has in the *Heritage of Western Australia Act 1990*.~~

**Comment [D53]:**  
PLACE  
See clause 7

**Plot ratio:** means in the case of –

- (a) residential dwellings has the same meaning as in the R-Codes;
- (b) for all other development, means the ratio of the floor area of a building to the area of land within the boundaries of the lot on which that building is located, including the floor area of basements where more than 50% of the basement storey is above ground level but shall not include lift shafts, stairs or stair landings, machinery rooms, air conditioning, equipment rooms, non-habitable floor space in basements, areas used exclusively for the parking of wheeled vehicles at or below ground level or common lobbies.

INSERT AMEND NO 24 GG 1/3/16

**Precinct:** means a definable area where particular planning policies, guidelines or standards apply.

**Precinct planning policy:** means a planning policy setting out the planning intentions for a particular precinct.

**Predominant use:** is the primary use of premises to which all other uses carried out on that land is subordinate, incidental or ancillary.

**Public authority:** shall have the same meaning given to it in and for the purposes of the Act.

**NOTE:** Section 2(12) of the Act defines "public authority" to mean:  
"a Minister of the Crown acting in his official capacity, a State Government department, State trading concern, State instrumentality, State public utility and any other person or body, whether corporate or not, who or which, under the authority of any Act, administers or carries on for the benefit of the State, a social service or public utility".

INSERT AMEND NO 24 GG 1/3/16

**Public utility:** means any work or undertaking constructed or maintained by a public authority or the local government as may be required to provide water, sewerage, electricity, gas, drainage, communications or other similar services.

**Public work:** has the same meaning as it has in the Public Works Act 1902.

INSERT AMEND NO 24 GG 1/3/16

**Public worship, place of:** means any land or buildings used primarily for religious activities but does not include an institution for primary, secondary, or higher education, or a residential training institution.

**Reception centre:** means any land or buildings used by parties 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;

INSERT AMEND NO 2 GG 22/10/04

**Redevelopment:** means when existing development is renovated or remodelled or when additional development is added to an existing development.

INSERT AMEND NO 7 GG 11/07/08

**Research and Development:** means the scientific and industrial research and development, production and assembly of proto-type products associated with such research.

**Reserve:** means any land reserved for a public purpose.

**Restaurant:** means premises where the predominant use is the sale and consumption of food and drinks on the premises and where seating is provided for patrons, and includes a restaurant licensed under the *Liquor Control Act 1988* but does not include Hotel, Tavern, Small Bar, Licensed Premises or Night Club.

INSERT AMEND NO 24 GG 1/3/16

**Retail:** means the sale or hire of goods or services to the public.

**Retail floor area:** means the floor area of each of the floors of a building used for the display or sale of goods, but does not include floor areas used for concealed storage, food preparation, a workshop or a toilet.

**Retirement village:** means a development containing accommodation for aged persons together with ancillary facilities.

**Comment [D54]:**  
PREMISES  
See clause 1

**Comment [D55]:**  
REGIONAL PLANNING SCHEME  
See clause 1

**Comment [D56]:**  
RESERVE  
See clause 1

**Roof top bar:** means licensed premises on the roof top of a building. The category of license and scale of facility is to be governed by the options available under the TPS No.4 and as regulated by the *Liquor Control Act 1988*.

INSERT AMEND NO 18 GG 28/10/14

**Service station:** means any land or buildings used for the retail sale of petroleum products and motor vehicle accessories and for carrying out greasing, tyre repairs, minor mechanical repairs to motor vehicles but does not include a transport depot, panel beating, spray painting, major repairs or wrecking.

**Comment [D57]:**  
SCHEME AREA  
See clause 1

**Serviced Apartments:** means a building or buildings, which include self-contained units, for temporary accommodation of less than 3 months.

INSERT AMEND NO 8 GG 09/01/09

**Shop:** means any building wherein goods are kept, exposed or offered for sale by retail, or within which services of a personal nature are provided (including a hairdresser, beauty therapist or manicurist) but does not include a showroom, fast food outlet, any premises involving the sale of petrol, or any other premises specifically defined elsewhere in this part.

**NOTE:** *The Interpretation Act 1984 defines "sell" to include barter, exchange, offer to sell and expose for sale".*

**Showroom:** means premises used to display, sell by wholesale or retail, or hire, automotive parts and accessories, camping equipment, electrical light fittings, equestrian supplies, floor coverings, furnishings, furniture, household appliances, party supplies, swimming pools or goods of a bulky nature.

**Sign:** means a notice, message or display by means of a freestanding or fixed sign or hoarding.

**Small Bar:** means licensed premises on land or buildings used for the onsite consumption of alcohol where -

- a) the maximum accommodation of the building is equal to or less than 120 persons; and
- b) may not sell packaged liquor for consumption off the premises.

INSERT AMEND NO 10 GG 21/12/07

**Special (licensed) facility:** means a facility established for the purposes in section 46 of the *Liquor Control Act 1988* or for another purpose in respect of which the relevant Liquor Licensing Authority in Western Australia grants a Specific Purpose Licence within the meaning of that Act;

INSERT AMEND NO 24 GG 1/3/16

**Comment [D58]:**  
SPECIAL CONTROL AREA

**Storage yard:** means any land used for the open-air storage of goods.

**Storey:** means that portion of a building which is situated between the top of any floor and the top of the floor next above it and if there is no floor above it, that portion between the top of the floor and the ceiling above it but does not include any portion of a building used solely for car parking and having 50% or more of its volume below natural ground level.

**Street alignment:** means the boundary between the land comprising a street and the land abutting it, but, where a new street alignment is prescribed, means the boundary between that land and that new street alignment.

**Streetscape:** means the total visual impression gained from any one location within a street including the natural and man-made elements; and is made up of the appearance of and the relationships between buildings in terms of design, scale, materials, colours, finishes, signs, external furniture, paving materials for roads, footpaths and landscaping.

**Studio dwellings:** means a residential dwelling for the purposes of human habitation on a permanent basis by a single person or no more than two persons and with a maximum plot ratio area of 50m<sup>2</sup>.

INSERT AMEND NO 18 GG 28/10/14

**Comment [D59]:**  
STRUCTURE PLAN  
See clause 14

~~**Substantially commenced:** means that work or development the subject of planning approval has been begun by the performance of some substantial part of that work or development;~~

INSERT AMEND NO 2 GG 22/10/04

**Comment [D60]:**  
SUBSTANTIALLY COMMENCED  
See clause 1

**Sustainable Development:** means development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

**Tavern:** means premises licensed as a tavern under the *Liquor Control Act 1988* and used to sell liquor for consumption on the premises.

INSERT AMEND NO 24 GG 1/3/16

**Telecommunications infrastructure:** means any part of 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.

~~**The Codes:** means the Residential Design Codes, noted in Part B of the Western Australian Planning Commission Statement of Planning Policy No. 1.~~  
INSERT AMEND NO 8 GG 09/01/09

**Comment [D61]:**  
R-CODES  
RESIDENTIAL DESIGN CODES  
See clause 1

**Trade display:** means premises used for the display of trade goods and equipment for the purpose of advertisement.  
INSERT AMEND NO 7 GG 11/07/08

**University Accommodation Facility:** means a facility –  
a) whose predominant purpose is to accommodate –  
1. students while studying at a tertiary education institution; and  
2. staff of the tertiary institution or visiting staff to a tertiary education institution;  
b) that is designed and managed to facilitate the predominant purpose;  
c) that is typically provides students with a principal place of residence for 3 months or more;  
d) that may have shared facilities, such as a communal living room, kitchen and amenities; and  
e) that may, when not being fully utilised for the predominant purpose, accommodate single-purpose groups of people on a short term basis;  
but does not include Lodging House, or Boarding House.  
INSERT AMEND NO 16 GG 31/12/10

**Vehicle:** has the same meaning as in the *Road Traffic Act 1974*.  
INSERT AMEND NO 24 GG 1/3/16

**Veterinary clinic:** means a building in which a veterinary surgeon or veterinarian treats the minor ailments of domestic animals and household pets as patients but in which animals or pets do not remain overnight, and may include a dispensary of medications incidental thereto.

**Veterinary hospital:** means a building used in connection with the treatment of animal injuries and ailments, and includes the care and accommodation of animals during or after such treatment.

**Warehouse:** means a building wherein goods are stored and may be offered for sale by wholesale.

**Wholesale:** means the sale of goods or materials to be sold by others.

~~**Zone:** means a portion of the Scheme area shown on the map by distinctive colouring, patterns, symbols, hatching, or edging for the purpose of indicating the restrictions imposed by the Scheme on the use and development of land, but does not include reserved land.~~

**Comment [D62]:**  
WORKS  
See clause 1

**Comment [D63]:**  
ZONE  
See clause 1

## SCHEDULE 2: ADDITIONAL USES

Refer Clause 17

INSERT AMEND NO 2 GG 22/10/04

1	2	3	4	5	6	7	
ITEM NO.	PARTICULARS OF LAND				ADDED USE CLASS PERMITTED	DEVELOPMENT REQUIREMENTS	
	STREET NAME	STREET NO.	LOT NO.	LOCATION NO.		MAXIMUM PLOT RATIO	REQUIREMENTS OTHER THAN PLOT RATIO
1 (A5)	PARK STREET	203, 205, 207	51	P223	OFFICE	0.58	<ul style="list-style-type: none"> <li>REFER TO CLAUSE 29</li> </ul>
2 (A5)	PARK STREET	1-3/211	52	P223	OFFICE	0.55	<ul style="list-style-type: none"> <li>REFER TO CLAUSE 29</li> </ul>
3 (A7)	HAMERSLEY ROAD	119	PT 6/7	P252	OFFICE	0.55	<ul style="list-style-type: none"> <li>THE OFFICE IS REQUIRED TO BE CONTAINED WITHIN THE EXISTING BUILDING</li> </ul>
4 (A7)	HAMERSLEY ROAD	125	5/PT6	P252	OFFICE	0.55	<ul style="list-style-type: none"> <li>THE OFFICE IS REQUIRED TO BE CONTAINED WITHIN THE EXISTING BUILDING</li> </ul>
5 (A3)	HAY STREET	567	11	DAG 168	OFFICE	0.5	<ul style="list-style-type: none"> <li>REFER TO CLAUSE 29</li> </ul>
6 (A2)	HAY STREET	589	53	-	OFFICE	0.5	<ul style="list-style-type: none"> <li>REFER TO CLAUSE 29</li> </ul>
7 (A1)	HAY STREET	611	51	S2103	SHOWROOM/ WAREHOUSE	0.5	<ul style="list-style-type: none"> <li>REFER TO CLAUSE 29</li> </ul>
8 (A6)	BAGOT ROAD	2	100	P408	OFFICE	1.5	<ul style="list-style-type: none"> <li>REFER TO CLAUSE 29</li> </ul>

1	2	3	4	5	6	7	
ITEM NO.	PARTICULARS OF LAND				ADDED USE CLASS PERMITTED	DEVELOPMENT REQUIREMENTS	
	STREET NAME	STREET NO.	LOT NO.	LOCATION NO.		MAXIMUM PLOT RATIO	REQUIREMENTS OTHER THAN PLOT RATIO
9 (A8)	BAGOT ROAD	225-227	25/26	P239	OFFICE/COMMERCIAL	1.25	<p><u>PLOT RATIO</u></p> <ul style="list-style-type: none"> <li>TOTAL PLOT RATIO OF 1.25 (WHOLE SITE) OF WHICH NO MORE THAN 0.3 (425M<sup>2</sup>) SHALL BE USED FOR NON-RESIDENTIAL PURPOSES.</li> </ul> <p><u>REQUIREMENTS OTHER THAN PLOT RATIO</u></p> <ul style="list-style-type: none"> <li>THAT THE CHURCH AND DUPLEX COTTAGES BE RETAINED. IN THE EVENT THAT THE BUILDINGS ARE IRREVOCABLY DAMAGED OR DEMOLISHED, THE SITE WILL REVERT TO A PURELY RESIDENTIAL R50 ZONING.</li> <li>THAT THE EXISTING CONFIGURATION OF THE BUILDINGS ON THE SITE, FRAMING THE 'SQUARE' OF OPEN SPACE, BE MAINTAINED TO THE ATISFACTION OF LOCAL GOVERNMENT.</li> <li>THAT THE CHURCH HALL BE RECONSTRUCTED TO THE ATISFACTION OF LOCAL GOVERNMENT.</li> <li>MINIMUM TOTAL SITE OPEN SPACE OF 40% (INCLUDING COURTYARDS AND BALCONIES).</li> <li>MAXIMUM HEIGHT TO MATCH THAT OF EXISTING CHURCH BUILDING.</li> <li>LOCAL GOVERNMENT TO GRANT CONCESSION ON PARKING REQUIRED (TO BE DETERMINED UPON DEVELOPMENT APPROVAL).</li> </ul>

1	2	3	4	5	6	7		
ITEM NO.	PARTICULARS OF LAND			LOCATION NO.	ADDED CLASS PERMITTED	USE	DEVELOPMENT REQUIREMENTS	
	STREET NAME	STREET NO.	LOT NO.				MAXIMUM PLOT RATIO	REQUIREMENTS OTHER THAN PLOT RATIO
10(A4)	CHURCHILL AVENUE	21	52	P214	OFFICE		0.5	<ul style="list-style-type: none"> <li>• A MAXIMUM OF 90M<sup>2</sup> GLA OFFICE SPACE PERMITTED</li> <li>• THAT THE EXISTING SINGLE RESIDENCE IS RETAINED</li> <li>• REFER TO CLAUSE 29</li> </ul>
11(A4)	THOMAS STREET	69	53	P214	CONSULTING ROOMS		0.5	<ul style="list-style-type: none"> <li>• THAT THE EXISTING SINGLE RESIDENCE IS RETAINED</li> <li>• REFER TO CLAUSE 29</li> </ul>
12(A4)	THOMAS STREET	73	54	P214	OFFICE			<ul style="list-style-type: none"> <li>• THAT THE EXISTING SINGLE RESIDENCE IS RETAINED</li> <li>• REFER TO CLAUSE 29</li> </ul>
13(A4)	THOMAS STREET	75	PT90/91	P214	OFFICE			<ul style="list-style-type: none"> <li>• THAT THE EXISTING SINGLE RESIDENCE IS RETAINED</li> <li>• REFER TO CLAUSE 29</li> </ul>
14(A4)	THOMAS STREET	77	92	P214	OFFICE			<ul style="list-style-type: none"> <li>• THAT THE EXISTING SINGLE RESIDENCE IS RETAINED</li> <li>• REFER TO CLAUSE 29</li> </ul>
15 (A9)	RAILWAY ROAD	315	P537		OFFICE		AS PER EXISTING DEVELOPMENT	<ul style="list-style-type: none"> <li>• REFER ALSO TO CLAUSE 29</li> </ul>
16(A10) INSERT AMEND NO 5 GG 29/09/06	ROBERTS ROAD	187 & 193	25, 26 & 27		OFFICE CONSULTING ROOMS	&	0.65	<ul style="list-style-type: none"> <li>• CONSERVATION OF ORIGINAL DWELLING ON LOTS 26 &amp; 27.</li> <li>• REFER ALSO TO CLAUSE 29</li> </ul>
17(A11) INSERT AMEND NO 5 GG 29/09/06	ROBERTS ROAD	305	6		OFFICE CONSULTING ROOMS	&	0.65	<ul style="list-style-type: none"> <li>• REFER ALSO TO CLAUSE 29</li> </ul>
18(A12) INSERT AMEND NO 5 GG 29/09/06	TOWNSEND ROAD	22	24		OFFICE CONSULTING ROOMS	&	0.55	<ul style="list-style-type: none"> <li>• CONSERVATION OF ORIGINAL DWELLING</li> <li>• REFER ALSO TO CLAUSE 29</li> </ul>
19(A13) INSERT AMEND NO 5 GG	ONslow ROAD	164 - 190	67,66,65,64,63,62,61 & 60		OFFICE CONSULTING ROOMS	&	0.65	<ul style="list-style-type: none"> <li>• MAXIMUM BUILDING HEIGHT OF 10 METRES AND 7 METRE WALL HEIGHT WHERE LOCAL GOVERNMENT IS</li> </ul>

29/09/06							<p>ATISFIED THAT THERE IS NO UNDUE ADVERSE IMPACT ON ADJOINING RESIDENTIAL SITES OR THE GENERAL AMENITY OF THE LOCALITY.</p> <ul style="list-style-type: none"> <li>• MAXIMUM STREET SETBACK OF 2 METRES.</li> <li>• MINIMUM REAR SETBACK OF 6 METRES FOR THAT PORTION OF THE BUILDING WITH A WALL HEIGHT EXCEEDING 4 METRES.</li> <li>• PARKING AND VEHICULAR ACCESS LIMITED TO THE REAR OF THE PROPERTY OFF ROW.</li> <li>• EXISTING CROSSOVERS AT FRONT TO BE REMOVED</li> <li>• REFER ALSO TO CLAUSE 29</li> </ul>
20 INSERT AMEND NO 14 GG 16/07/10 AMEND NO 21 GG 28/10/14	COOPER STREET	10	2		LODGING HOUSE	1.5	<ul style="list-style-type: none"> <li>• MAXIMUM BUILDING HEIGHT OF 14.5 METRES WHERE THE LOCAL GOVERNMENT IS ATISFIED THERE IS NO UNDUE ADVERSE IMPACT ON ADJOINING RESIDENTIAL SITES OR THE GENERAL AMENITY OF THE LOCALITY.</li> <li>• MINIMUM OF 35% OPEN SPACE</li> <li>• REFER ALSO TO CLAUSE 29</li> </ul>
A21 INSERT AMEND NO 16 GG 31/12/10	CAPORN STREET	1-4/116, 13, 15A, 15B, 17, 19, 21, 23, 25, 27	91, 92, 93, 94, 95, 96, 97, 98, 99		UNIVERSITY ACCOMMODATION FACILITY	0.85	<ul style="list-style-type: none"> <li>• MAXIMUM BUILDING HEIGHT OF 12.8 METRES AND 11.8 METRE WALL HEIGHT WHERE DEVELOPMENT IS SET BACK 20 METRES OR MORE FROM A STREET OR PROPERTY BOUNDARY</li> <li>• MAXIMUM BUILDING HEIGHT OF 9.9 METRES AND 8.9 METRE WALL HEIGHT WHERE DEVELOPMENT IS SET BACK LESS THAN 20 METRES FROM A STREET</li> <li>• MAXIMUM BUILDING HEIGHT OF 7.0 METRES AND 6.0 METRE WALL HEIGHT WHERE DEVELOPMENT IS SET BACK LESS THAN 10 METRES FROM A PROPERTY BOUNDARY</li> </ul>
	EVERETT STREET	12, 1- 6/14, 7- 12/16, 18, 20, 22, 26, 28, 30	90, 89, 88, 87, 86, 85, 84,				

			83, 82				<ul style="list-style-type: none"> <li>• STREET SETBACK TO BE A MINIMUM OF 4 METRES FOR A 10 METRES DISTANCE FROM THE EASTERN PROPERTY BOUNDARY, UNLESS EXISTING DWELLINGS ALONG THIS BOUNDARY ARE RETAINED</li> <li>• MINIMUM OF 1 AND MAXIMUM OF 2 CAR BAYS PER 10 BEDS</li> <li>• THAT DEVELOPMENT ON THE SITE SHALL BE CONSISTENT WITH THE OPEN SPACE, PRIVACY AND DESIGN FOR CLIMATE REQUIREMENTS FOR THE RESIDENTIAL R50 ZONING OF THE RESIDENTIAL DESIGN CODES.</li> </ul>
--	--	--	-----------	--	--	--	---

Note: Item Number in brackets indicates Map reference number.

Comment [D64]:  
REPLACED WITH FORM IN CLAUSE  
86(1) OF DEEMED PROVISIONS

# SCHEDULE 3: APPLICATION FOR DEVELOPMENT APPROVAL

INSERT AMEND NO 8 GG 09/01/09

## CITY OF SUBIACO

### APPLICATION FOR DEVELOPMENT APPROVAL

Please circle which approval is being sought and fill out the appropriate sections of this form.

#### Development Approval

#### Home Business

PROCESSING OF THIS APPLICATION WILL NOT PROCEED UNTIL ALL FEES DEPOSITS ARE PAID.  
In accordance with the Local Government (Miscellaneous Provisions) Act Section 374(1) and 377(4)

#### PROPERTY DETAILS:

Lot No. .... House/Street No. .... Location No. .... Diagram or Plan .....  
Certificate of Title: Vol. .... Folio .... Lot Area (m<sup>2</sup>) .....  
Title Encumbrances (eg, easements, restrictive covenants) .....  
Street Name ..... Suburb .....  
Nearest Street Intersection ..... Assessment No. ....

#### OWNER'S DETAILS

Name .....  
Address ..... Post Code .....  
Phone (work) ..... (home) ..... Fax .....  
Contact Person .....  
Signature ..... Date .....  
Signature ..... Date .....  
*The signature of the landowner(s) or authorised representative of the landowner(s) is required for all applications.*  
This application will not proceed without that signature

#### APPLICANT DETAILS: (to be completed only if different from the owner)

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

#### DEVELOPMENT DETAILS:

Existing ..... Building/Land ..... Use .....  
Description of proposed development or land use .....  
Approx. Cost of Development ..... Est. Date of Completion .....

#### OFFICE USE ONLY

Property File No. ....  
Accepting Officer's initial: .....  
Date Received: .....  
**NOTES:**  
.....  
.....  
.....

## SCHEDULE 4: NOTICE OF THE LOCAL GOVERNMENT'S DECISION

[cl. 31]Planning and Development Act 2005

City of Subiaco

Determination on Application For Planning Approval

Owner:

Address:

Applicant:

Address:

Description of proposed development:

Location: Lot (Street Number) Street, Suburb

Application date: Received on:

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 two (2) years, or such other period as specified in the approval after the date of the determination, the approval shall lapse and be of no further effect.

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

Note 3: If an applicant is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with Part 14 of the Planning and Development Act 2005. An application must be made within 28 days of the determination.

Note 4: This planning decision is confined to the authority of the Planning and Development Act 2005 and the City of Subiaco Town Planning Scheme No. 4. This decision does not remove the obligation of the applicant and/or property owner to ensure that all other required local government approvals are first obtained, all other applicable state and federal legislation is complied with, and any restrictions, easements or encumbrances are adhered to.

Signed:

Dated:

.....

.....

INSERT AMEND NO 24 GG 1/3/16

# SCHEDULE 5: ADDITIONAL INFORMATION SHEET FOR ADVERTISEMENT APPROVAL

Comment [D65]: REPLACED WITH FORM IN CLAUSE 86(2) OF DEEMED PROVISIONS

## ~~CITY OF SUBIACO TOWN PLANNING SCHEME NO.4 ADDITIONAL INFORMATION SHEET FOR ADVERTISEMENT APPROVAL~~

~~(To be completed in addition to the Form of Application)~~

(1) Name of Landowner(s):

(2) Name of Advertiser/Applicant:

(3) Address for correspondence:

(4) Telephone Number:

(5) Description of property upon which advertising device is to be displayed:

(6) Details of proposed advertising device:

(a) Width: \_\_\_\_\_ Depth: \_\_\_\_\_

(b) Colours to be used:

(c) Height above ground level (to top of advertisement):

(d) State type of structure upon which the advertising device is to be erected (ie, free standing, wall mounted, other):

(e) Illuminated: \_\_\_\_\_ YES/NO

\_\_\_\_\_ If yes, state whether steady, moving, flashing, alternating, digital, animated, scintillating, etc.

(7) Period of time for which advertising device is required:

(8) Details of signs (if any) to be removed if this application is approved:

~~A photograph supports application or impression of the premises/property showing superimposed therein the position of the proposed advertising device.~~

Signature of Advertiser/Applicant \_\_\_\_\_ Date \_\_\_\_\_

**SCHEDULE 6: NOTICE OF PUBLIC ADVERTISEMENT OF APPLICATION  
FOR DEVELOPMENT APPROVAL**

Comment [D66]: REPLACED WITH  
FORM IN CLAUSE 86(3) OF DEEMED  
PROVISIONS

**~~CITY OF SUBIACO TOWN PLANNING SCHEME NO.4~~**

**~~NOTICE OF PUBLIC ADVERTISEMENT OF APPLICATION  
FOR DEVELOPMENT APPROVAL~~**

~~It is HEREBY NOTIFIED for public information and comment that the City of Subiaco has received an application for development approval to develop land for the purpose described hereunder:~~

**~~LAND DESCRIPTION:~~**

~~LOT NO..... STREET NO.....  
STREET:.....  
SUBURB:.....  
PROPOAL:.....~~

~~Details of the proposal are available for inspection at the local government offices. Comments on the proposal may be submitted to the local government in writing before close of business on the ..... day of ..... 200...~~

~~.....  
CHIEF EXECUTIVE OFFICER~~

~~.....  
DATE~~

ADOPTION

Adopted by Resolution of the Local government of the CITY OF SUBIACO at the meeting of the Local government held on 31 August 1999.

---

**Mayor** **Date 28/2/2001**

---

**Chief Executive Officer** **Date 28/02/01**

*Adopted by resolution of the Local government of the City of Subiaco at a Ordinary Meeting of the Local government held on the 5th day of December, 2000 and the seal of the Municipality was pursuant to that resolution, hereunto affixed in the presence of:*

---

Mayor

---

Chief Executive Officer

This Scheme Text is to be read in conjunction with the approved maps of the Scheme described in clause 3 of the Scheme and to which formal approval was given by the Hon. Minister for Planning on the 15th day of March 2001.

RECOMMENDED:

---

Chairperson of the Western Australian Planning Commission

Date: \_\_\_\_\_

APPROVED:

---

Hon. Minister for Planning & Infrastructure

Date: \_\_\_\_\_

## SCHEDULE 7: END OF TRIP FACILITIES FOR BICYCLE USERS

INSERT AMEND NO 7 GG 11/07/08

Land Use	Employee/ Resident Spaces	Class	Visitor/Shopper Spaces	Class
Amusement Centre, Amusement Facility	1 per 300m <sup>2</sup> net lettable area	1 or 2	2 plus 1 per 50m <sup>2</sup> net lettable area	3
Bank	1 per 200m <sup>2</sup> net lettable area	2	2	3
Bed and Breakfast Establishment	Nil	N/A	Nil	N/A
Betting Agency	1 per 200m <sup>2</sup> net lettable area	1 or 2	1 per 750m <sup>2</sup> net lettable area	3
Building Society	1 per 200m <sup>2</sup> net lettable area	2	2	3
Child Care Premises	1	2	Nil	N/A
Cinema	1 per 300m <sup>2</sup> net lettable area	1 or 2	2 plus 1 per 1500m <sup>2</sup> net lettable area	3
Civic Use	1 per 500m <sup>2</sup> net lettable area	1 or 2	4 plus 2 per 200m <sup>2</sup> net lettable area	3
Club Premises	1 per 500m <sup>2</sup> net lettable area	1 or 2	4 plus 2 per 200m <sup>2</sup> net lettable area	3
Community Purpose	1 per 500m <sup>2</sup> net lettable area	1 or 2	4 plus 2 per 200m <sup>2</sup> net lettable area	3
Consulting Rooms	1 per 8 consulting rooms	2	1 per 4 consulting rooms	3
Convenience Store	1 per 300m <sup>2</sup> net lettable area	1 or 2	1 per 500m <sup>2</sup> net lettable area	3
Dry Cleaning Premises	1 per 300m <sup>2</sup> net lettable area	1 or 2	1 per 500m <sup>2</sup> net lettable area	3
Educational Establishment	1 per 5 pupils over year 4	2	Nil	N/A
Exhibition Centre	1 per 1500m <sup>2</sup> net lettable area	2	2 plus 1 per 1500m <sup>2</sup> net lettable area	3
Fast Food Outlet	1 per 100m <sup>2</sup> net lettable area	1 or 2	1 per 50m <sup>2</sup> net lettable area	3
Funeral Parlour	1 per 750m <sup>2</sup> net lettable area	1 or 2	1 per 1000m <sup>2</sup> net lettable area	3
Health Studio	1 per 400m <sup>2</sup> net lettable area	1 or 2	1 per 200m <sup>2</sup> net lettable area	3
Home Business, Home Occupation, Home Office	Spaces as required by relevant policy			
Hospital	1 per 15 patients beds	1	1 per 30 patients beds	3
Hotel	1 per 300m <sup>2</sup> net lettable area	1 or 2	Nil	N/A
Industry - Light	1 per 1000m <sup>2</sup> net lettable area	1 or 2	1 per 1000m <sup>2</sup> net lettable area	3
Industry - Service	1 per 300m <sup>2</sup> net lettable area	1 or 2	1 per 500m <sup>2</sup> net lettable area	3
Laundromat	1 per 300m <sup>2</sup> net lettable area	1 or 2	1 per 500m <sup>2</sup> net lettable area	3
Library	1 per 500m <sup>2</sup> net lettable area	1 or 2	4 plus 2 per 200m <sup>2</sup> net lettable area	3

Local Shop	1 per 300m <sup>2</sup> net lettable area	1 or 2	1 per 500m <sup>2</sup> net lettable area	3
Lodging House	1 per 6 beds	1 or 2	Nil	N/A
Lunch Bar	1 per 300m <sup>2</sup> net lettable area	1 or 2	1 per 500m <sup>2</sup> net lettable area	3
MasAge Rooms	1 per 8 consulting rooms	2	1 per 4 consulting rooms	3
Market	1 per 300m <sup>2</sup> net lettable area	1 or 2	1 per 500m <sup>2</sup> net lettable area	3
Medical Centre	1 per 8 consulting rooms	2	1 per 4 consulting rooms	3
Motel	1 per 40 units of accommodation	1 or 2	Nil	N/A
Motor Vehicle Repair	1 per 750m <sup>2</sup> net lettable area	1 or 2	1 per 1000m <sup>2</sup> net lettable area	3
Motor vehicle, boat or caravan Ales	1 per 750m <sup>2</sup> net lettable area	1 or 2	1 per 1000m <sup>2</sup> net lettable area	3
Night Club	1 per 25m <sup>2</sup> eating, drinking or lounge area	2	2 plus 1 per 1500m <sup>2</sup> net lettable area	3
Nursing Home	1 per 7 patients beds	1	1 per 60 patients beds	3
Office (excluding Bank, Building Society, Post Office)	1 per 200m <sup>2</sup> net lettable area	1 or 2	1 per 750m <sup>2</sup> net lettable area	3
Open-Air Display	1 per 750m <sup>2</sup> net lettable area	1 or 2	1 per 1000m <sup>2</sup> net lettable area	3
Place of Public Worship	1 per 500m <sup>2</sup> net lettable area	1 or 2	4 plus 2 per 200m <sup>2</sup> net lettable area	3
Post Office	1 per 200m <sup>2</sup> net lettable area	2	2	3
Reception Centre	1 per 750m <sup>2</sup> net lettable area	1 or 2	2 plus 1 per 1500m <sup>2</sup> net lettable area	3
Recreation - Private	1 per 400m <sup>2</sup> net lettable area	1 or 2	1 per 200m <sup>2</sup> net lettable area	3
Research and Development	1 per 750m <sup>2</sup> net lettable area	1 or 2	1 per 1000m <sup>2</sup> net lettable area	3
Residential Development	Nil	N/A	Nil	N/A
Restaurant	1 per 25m <sup>2</sup> eating, drinking or lounge area	2	2	3
Serviced Apartments	1 per 750m <sup>2</sup> net lettable area	1 or 2	Nil	N/A
Service Station	To be calculated according to use of component areas			
Shop	1 per 300m <sup>2</sup> net lettable area	1 or 2	1 per 500m <sup>2</sup> net lettable area	3
Showroom	1 per 750m <sup>2</sup> net lettable area	1 or 2	1 per 1000m <sup>2</sup> net lettable area	3
Special (licensed) facility	To be calculated according to use of component areas			
Storage Yard	1 per 750m <sup>2</sup> net lettable area	1 or 2	1 per 1000m <sup>2</sup> net lettable area	3
Tavern	1 per 25m <sup>2</sup> eating, drinking or lounge area	2	2 plus 1 per 1500m <sup>2</sup> net lettable area	3

Theatre	1 per 300m <sup>2</sup> net lettable area	1 or 2	2 plus 1 per 1500m <sup>2</sup> net lettable area	3
Trade Display	1 per 750m <sup>2</sup> net lettable area	1 or 2	1 per 1000m <sup>2</sup> net lettable area	3
University Accommodation Facility INSERT AMEND NO 16 GG 31/12/10	1 bay per 3.5 beds (with half of the bays being secured)	N/A	Nil	N/A
Veterinary Clinic, Veterinary Hospital	1 per 8 consulting rooms	2	1 per 4 consulting rooms	3
Warehouse	1 per 750m <sup>2</sup> net lettable area	1 or 2	1 per 1000m <sup>2</sup> net lettable area	3

Class 1 refers to fully enclosed individual lockers that provide a high level of security.

Class 2 refers to locked compounds fitted with class 3 facilities, with communal access using duplicate keys or electronic swipe cards, and which provide a medium level of security.

Class 3 refers to facilities to which the bicycle frame and wheels can be locked, and which provides a low level of security."

**SCHEDULE 8: APPROVED LOCAL DEVELOPMENT PLANS WITHIN THE TOWN CENTRE DEVELOPMENT ZONE**

**Use Class Table**

BASEMENT USES	
Permitted	Parking Station
Discretionary	All other P, D and A uses listed in the Town Centre Zone
Prohibited	Industry, Industry: Light and all other X uses listed in the Town Centre Zone
GROUND FLOOR USES	
Permitted	Local Shop Shop Convenience Store Cinema/Theatre Consulting Rooms Office Restaurant Amusement Centre Amusement Facility
Discretionary	All other P, D and A uses listed in the Town Centre Zone Small Bar
Prohibited	Industry: Light and all other X uses listed in the Town Centre Zone
UPPER FLOOR USES	
Permitted	Dwelling (all categories) Home Office Office Cinema/Theatre Motel Serviced Apartments Amusement Centre Amusement Facility
Discretionary	All other P, D and A uses listed in the Town Centre Zone Small Bar Roof Top Bar Open Air Cinema
Prohibited	Industry: Light and all other X uses listed in the Town Centre Zone

## LOT 19 ROBERTS ROAD AND LOT 22 ROKEBY ROAD, SUBIACO

### Status

This site is deemed to have satisfied the requirements outlined in Division 6A for the preparation and adoption of a local development plan and is exempt from any further requirements listed under this division. A local development plan which is included within Schedule 8 of the scheme has been adopted and has effect.

The local development plan should be used as a basis to determine future development applications over the site however, variations to the local development plan may be supported by local government, where it can be demonstrated that the vision and objectives for the site can still be achieved.

### Vision

To transform the current Pavilion market site into an outstanding mixed use development that contributes to the vitality and appeal of the Subiaco Town Centre.

### Objectives

The objectives for the development of Lot 19 Rokeby Road and Lot 22 Rokeby Road are to:

- (a) Enhance the resident, workforce and visitor population for Subiaco and leverage the advantages of the site's train station proximity;
- (b) Result in mixed use development that maintains the retail streetscape and experience;
- (c) Provide a range of high street retail and supporting commercial opportunities that strengthen the diversity and appeal of the Subiaco retail offer;
- (d) Ensure building height where included does not detract from the streetscape and retail shopping experience;
- (e) Result in a high quality public domain with seating and pedestrian spaces that activate the site and increase the general level of activity along Rokeby Road and the neighbouring environs;
- (f) Result in building form and aesthetic that respects existing heritage and more contemporary redevelopment of adjoining sites;
- (g) Provide a diversity of residential housing that contributes to living options in the Town Centre and Subiaco more broadly;
- (h) Encourage a collaborative "win-win" process between the landowners, the City of Subiaco and immediate stakeholders that can accelerate the redevelopment of the site by involving the broad community in the process;
- (i) Provide a form based development control for the site to create something original and iconic for the site;
- (j) Provide vibrancy and activity as a place where people want to go as a regional destination offering a diverse range of experiences;
- (k) Promote sense of community and celebrate and maintain the character of Subiaco;
- (l) Activate local nodes and strengthen the main street appeal; and
- (m) Provide parking accessibility for a range of people and city visitors; and

### Specific Building Requirements

The following standards and requirements apply and shall be read in conjunction with the following Figures:

- (a) Public Domain  
In order to promote permeability and pedestrian amenity, the following additional connections shall be provided as part of the development of the site in accordance with Figure 1 of the local development plan and as follows:
  - (i) A new covered arcade linking from the corner of Rokeby and Roberts through to the lane behind the Rokeby frontage connection right through to Seddon Street;
  - (ii) A widened and extended laneway behind the Rokeby Road frontage completing the connection from Seddon Street through to Roberts Road ; and
  - (iii) A new laneway on the eastern boundary connecting Roberts Road to Seddon Street;
- (b) Landuse permissibility shall be in accordance with the zoning table and the approved local development plan that forms part of this Schedule.

- (c) Plot Ratio for development on the site shall be measured over the entire site and is permitted to a ratio of 5:1. Floorspace below ground level does not contribute to plot ratio. Car parking or parking station facilities, above or below ground, does not contribute to plot ratio.
- (d) Building Heights shall be measured in storeys as specified in the local development plan that forms part of this Schedule.
- (e) Setback requirements to individual streets are as specified in the local development plan that forms part of this Schedule.
- (f) Landscaping is to be provided in accordance with clause 6.3.2 of the Residential Design Codes.
- (g) Access to parking shall be from Roberts Road. Sight lines at vehicle access points are to be in accordance with clause 6.3.5 of the Residential Design Codes.
- (h) Minimum Car Parking Requirements for Dwellings are specified below:
  - minimum of 0.33 bays and a maximum of 0.5 bays per studio dwelling;
  - minimum of 0.5 bays and a maximum of 0.75 bays per 1 bed dwelling;
  - minimum of 1.0 bays and a maximum of 1.5 bays per 2 bed dwelling; and
  - minimum of 1.25 bays and a maximum of 1.5 bays per 3 bed dwelling.
- (i) Minimum Car Parking Requirements for Serviced Apartments and Motel are specified:
  - minimum of 0.5 bays per apartment.
- (j) Car Parking Requirements for Retail, Small Bar, Restaurant, Amusement Centre, Amusement Facility, Consulting Room, Fast Food Outlet, Health Studio and Theatre are specified below:
  - a fixed rate of 1 bay per 20m<sup>2</sup> of eating, drinking or lounge area (excluding uncovered or outdoor areas, which are exempt from providing parking)
- (k) Car Parking Requirements for Offices are specified below:
  - A fixed rate of 1 bay per 70m<sup>2</sup> net lettable area.
- (l) Visitor parking is not required.
- m) Street Facades along Rokeby Road shall be designed to reflect the rhythm of the street including the provision of:
  - (i) 4-7m wide continuous shop front detailing including;
  - (ii) 400-500mm dado or decorative treatment;
  - (iii) 3.0 – 3.5m high awnings;
  - (iv) low key street furniture;
  - (v) under awning panel signage;
  - (vi) Rokeby Road – the facade design on levels 1 and 2 shall include a vertical element that reinforces the 4-7m wide shop front rhythm at ground level.
  - (vii) Rokeby Road – elements of the building above level 2 are to be in accordance with clause 6.2.1 of the Residential Design Codes; and
  - (viii) All other street and public space frontages are to be in accordance with clause 6.2.1 of the Residential Design Codes.

## Provision of Specific Public Benefits

The local development plan includes the following public benefits which shall be provided when the site is developed:

- (a) Public Realm
  - (i) Full hard and soft landscaping of public realm connections/laneways;
  - (ii) 50% contribution to full hard and soft landscaping of Seddon Place as it adjoins the Pavilion site;
- (b) Transport Infrastructure
  - (i) Public use of all basements parking (excluding resident, serviced apartments and office components);
  - (ii) Dedicating 2 bays on Roberts Road for a car share operator;
  - (iii) Bicycle parking at a rate of 0.2 bicycle bays per residential unit plus 5% of the total number of non-residential parking spaces provided.
  - (iii) Shower and end of trip facilities to be provided for cyclists and building occupants as per City of Subiaco Local Planning Policy End of Trip Facilities (Originally adopted 23 June 2009).
  - (iv) For all non-residential uses, up to 25% of the required parking spaces provided may be designated and labelled for small cars in accordance with AS 2890.1; and
  - (v) In addition to the car parking requirements for all other uses, a minimum of 10% or ten parking spaces (whichever is greater) are designed and labelled for mopeds and/or motorbikes, in accordance with AS 2890.1
- (c) Housing Diversity and the provisions of a mix of housing types comprising:
  - (i) Minimum 10 % studio dwellings;
  - (ii) Minimum 25 % one bedroom dwellings;
  - (iii) Minimum 20 % two bedroom dwellings; and
  - (iv) Minimum 2 % three bedroom dwellings.



FIGURE 1 - MASTERPLAN

1. Pavilion Arcade
  2. Market Lane
  3. Merchant Lane
  4. Seddon Place
  5. 5 Storey Rokeby Corner:
  6. 7 Storey Roberts Road:
  7. 6 Storey Podium:
  8. 16 Storey Building
- - - - - Boundary  
↔ Primary Vehicle Access (Shared Movement)  
- - - - - Pedestrian Movement  
↔ Servicing



FIGURE 2 - LANDUSE

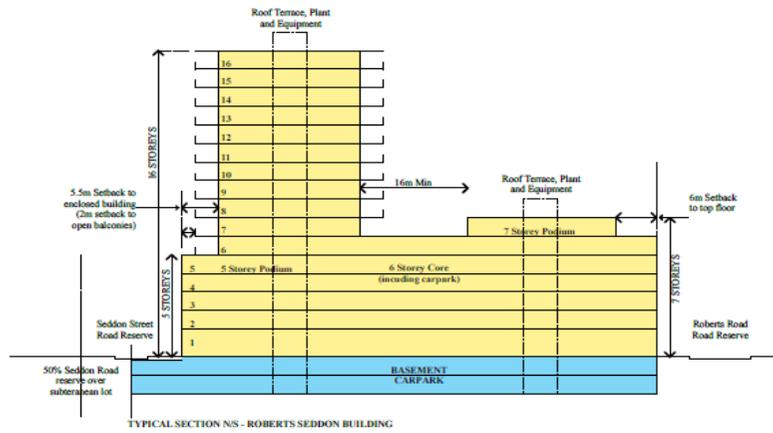
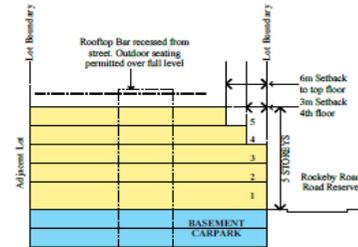
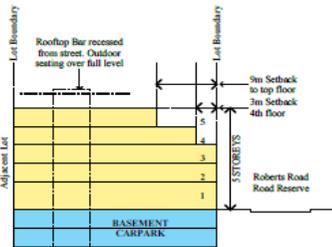


FIGURE 3 - BUILDING FORM



LOCAL DEVELOPMENT PLAN - LOT 19 ROBERTS ROAD & 22 ROKEBY ROAD, SUBIACO