

## **PART 5 – SPECIAL CONTROLS**

### **5.1 CONTROL OF ADVERTISEMENTS**

#### 5.1.1 Objectives

The objectives of the provisions for control of advertisements are:

- (a) to ensure that the visual quality and character of particular localities and transport corridors are not eroded;
- (b) to achieve advertising signs that are not misleading or dangerous to vehicular or pedestrian traffic;
- (c) to minimize the total area and impact of outdoor advertising commensurate with the realistic needs of commerce for such advertising;
- (d) to prohibit outdoor advertising which is considered to be superfluous or unnecessary by virtue of their colours, height, prominence, visual impact, size, relevance to the premises on which they are located, number and content;
- (e) to reduce and minimise clutter; and
- (f) to promote a high standard of design and presentation in outdoor advertising.

#### 5.1.2 Power to Control Advertisements

5.1.2.1 For the purpose of this Scheme and subject to subclause 5.1.5, the erection, placement and display of advertisements, and the use of land or buildings for that purpose is development within the definition of the Act requiring, except as otherwise provided, the prior approval of the Council. Planning Approval is required in addition to any licence pursuant to the Council's Signs Local Law.

5.1.2.2 Applications for Council's planning Approval pursuant to this Part shall be submitted in accordance with the provisions of Clause 6.1 of the Scheme and shall be accompanied by a completed Additional Information Sheet in the form specified by the Council from time to time giving details of the advertisement(s) to be erected, placed or displayed on the land.

### 5.1.3 Existing Advertisements

Advertisements which:

- (a) were lawfully erected, placed or displayed prior to the Gazettal Date of the Scheme; or
- (b) may be erected, placed or displayed pursuant to a licence or other approval granted by the Council prior to the approval of this Scheme:

hereinafter in this Clause referred to as “existing advertisements”, may, except as otherwise provided, continue to be displayed or be erected and displayed in accordance with the licence or approval as appropriate.

### 5.1.4 Consideration of Applications

Without limiting the generality of the matters which may be taken into account when making a decision upon an application for Planning Approval to erect, place or display an advertisement, Council shall examine each such application in the light of the objectives of the Scheme and the provisions of any Local Planning Policy relating to signs or advertisements, and with particular reference to the character and amenity of the locality within which it is to be displayed, including its historic or landscape significance and traffic safety, and the amenity of adjacent areas which may be affected.

### 5.1.5 Exemptions from the Requirement to Obtain Approval

Subject to the provisions of the Main Roads WA (Control of Signs) Regulations 1983 and notwithstanding the provisions of subclause 5.1.2, the Council’s prior Planning Approval is not required in respect of those advertisements listed in Schedule 4 which for the purpose of this clause are referred to as “exempted advertisements”. The exemptions listed in Schedule 4 do not apply to land, buildings, objects, structures and places declared pursuant to Clauses 5.2 and 5.3 of the Scheme.

### 5.1.6 Discontinuance

Notwithstanding the Scheme objectives and subclause 5.1.5, where the Council can demonstrate exceptional circumstances which cause an exempted or existing advertisement to seriously conflict with the objectives of this Clause, it may by notice in writing (giving clear reasons) require the advertiser to remove, relocate, adapt or otherwise modify the advertisement within a period of time specified in the notice.

### 5.1.7 Derelict or Poorly Maintained Advertisements

Where, in the opinion of the Council, an advertisement has been permitted to deteriorate to a point where it conflicts with the objectives of this clause or it ceases to be effective for the purpose for which it was erected or displayed, the Council may by notice in writing, require the advertiser to:

- (a) repair, repaint or otherwise restore the advertisement to a standard specified by the Council in the notice; or
- (b) remove the advertisement.

### 5.1.8 Notices

5.1.8.1 The “advertiser” shall be interpreted as any one person or any group comprised of the landowner, occupier, licensee or other person having an interest in or drawing benefit from the display of the advertisement concerned.

5.1.8.2 Any notice served in exceptional circumstances pursuant to subclause 5.1.6 or 5.1.7 shall be served upon the advertiser and shall specify:

- (a) the advertisement(s) the subject of the notice;
- (b) full details of the action or alternative courses of action to be taken by the advertiser to comply with the notice; and
- (c) the period, not being less than 60 days, within which the action specified shall be completed by the advertiser.

5.1.8.3 Any person upon whom a notice is served pursuant to this subclause may within a period of 60 days from the date of the notice appeal to the State Administrative Tribunal, and where any such appeal is lodged the effect of the notice shall be suspended until the decision to uphold, quash or vary the notice is known and shall thereafter have effect according to that decision.

### 5.1.9 Scheme to Prevail

Where the provisions of this Clause are found to be at variance with the provisions of the Council’s Signs Local Laws, the provisions of the Scheme shall prevail.

### 5.1.10 Enforcements and Penalties

The offences and penalties specified in Clause 8.10 of the Scheme shall apply to the advertiser in this Clause.

## **5.2 HERITAGE PROTECTION**

### **5.2.1 Purpose and Intent**

The purpose and intent of the heritage provisions are:

- (a) to facilitate the conservation of places of heritage value;
- (b) to ensure as far as possible that development occurs with due regard to heritage values.

### **5.2.2 Heritage List of Places, Buildings or Objects Worthy of Conservation or Preservation**

5.2.2.1 The Council shall establish and maintain a Heritage List which shall identify those places within the Scheme Area to be of cultural heritage significance and worthy of conservation under the provisions of this Scheme, together with a description of each place and the reasons for its entry.

5.2.2.2 In the preparation of the Heritage List the Council shall have regard to the Municipal Inventory prepared by the Council pursuant to Section 45 of the Heritage of Western Australia Act 1990 and will include on the List such of those entries on the Inventory it considers to be appropriate.

5.2.2.3 In considering a proposal to include a place on the Heritage List, the Council shall:

- (a) notify in writing the owner and occupier of the place and provide them with a copy of the description referred to in sub-clause 5.2.2.1 and the reasons for the proposed entry;
- (b) invite submissions on the proposal from the owner and occupier of the place within 21 days of the date specified in the notice;
- (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.

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

5.2.2.5 The Council shall keep copies of the Heritage List with the Scheme documents for public inspection.

5.2.2.6 The Council may remove or modify the entry of a place on the Heritage List by following the procedures set out in sub-clause 5.2.2.3.

### 5.2.3 Application for Planning Approval

5.2.3.1 In dealing with any matters which may affect a place included on the Heritage List, including any application for planning approval, Council shall have regard to any heritage policy of the Council.

5.2.3.2 The Council, shall in considering any application that may affect a place included on the Heritage List, solicit the views of the Heritage Council of WA and any other relevant bodies, and take those views into account when determining the application.

5.2.3.3 Notwithstanding any existing assessment on record, Council may require a heritage assessment to be carried out prior to the approval for any development proposed on land or to structures the subject of a place included on the Heritage List.

5.2.3.4 For the purposes of Clause 6.1 of the Scheme, the term 'development' shall have the meaning as set out in the Act but shall also include, in relation to any place listed in the Heritage List any act or thing that is likely to significantly change the external character of the building, object, structure or place.

### 5.2.4 Formalities of Application

5.2.4.1 In addition to the application formalities prescribed in sub-clause 5.2.3 and any formalities or requirements associated with applications for planning approval contained in any of the provisions of the Scheme, the Council may require an application for planning approval, where the proposed development may affect a place of cultural heritage significance, to provide one or more of the following to assist the Council in its determination of the application:

- (a) street elevations drawn to a scale not smaller than 1:100 showing the proposed development and the whole of the existing development on each lot immediately adjoining the land the subject of the application, and drawn as one continuous elevation;

- (b) in addition to a site plan, a plan of the proposed development site showing existing and proposed ground levels over the whole of the land the subject of the application, and the location, type and height of all existing structures and of all existing vegetation exceeding 2 metres in height, and marking any existing structures and vegetation proposed to be removed; such plan shall be drawn to the same scale as the site plan;
- (c) a detailed schedule of all finishes, including materials and colours of the proposed development and, unless the Council exempts the applicant from the requirement or any part of it, the finishes of the existing developments on the subject lot and on each lot immediately adjoining the subject lot; and
- (d) any other information which the Council indicates that it considers relevant.

#### 5.2.5 Variations to Scheme Provisions

5.2.5.1 Where desirable to facilitate the conservation of a heritage place or to enhance heritage values, the Council may vary any provision of the Scheme provided that, where in the Council's opinion the variation of a provision is likely to affect any owners or occupiers in the general locality or adjoining the site which is the subject of consideration for variation, the Council shall:

- (a) consult the affected parties by following one or more of the provisions dealing with advertising uses pursuant to Clause 6.7; and
- (b) take into consideration any expressed views prior to making its decision to grant the variation.

5.2.5.2 In granting variations under subclause 5.2.5.1 the Council may enter into a heritage agreement under Part 4 of the Heritage of Western Australia Act 1990 with an owner who would benefit from the variation. The agreement may specify the owner's obligations and contain memorials noted on relevant Certificates of Title.

### 5.3 LANDSCAPE/ENVIRONMENT PROTECTION

#### 5.3.1 Schedule 5

5.3.1.1 Schedule 5 contains details of those places and objects within the City which the Council has classified as having significance for the purpose of protection of the landscape or environment.

5.3.1.2 If the Council at any time considers that a place or object has significance from the point of view of protection of the environment or landscape, the Council may classify the place or object accordingly and shall add details thereof to Schedule 5 by amendment to the Scheme.

5.3.1.3 If the Council at any time considers that any Schedule 5 place or object should no longer be subject to the provisions of this clause the Council may initiate an amendment to the Scheme for the deletion of the place or object from Schedule 5.

### 5.3.2 Written Consent of the Council

5.3.2.1 Notwithstanding any other provisions of the Scheme to the contrary the approval of the Council is required for the following development on or in relation to any place of landscape or environmental value listed in Schedule 5:

- (a) the clearing, excavation or filling of any land;
- (b) the felling, removal, killing or causing of irreparable damage to any tree;
- (c) the erection of any fence;
- (d) the commencement or carrying out of any renovation, modification, refitting, decoration or demolition of any building; or
- (e) the alteration or removal of any building or object or part thereof.

5.3.2.2 Without affecting the generality of the preceding paragraph and notwithstanding the provisions of subclause 6.1.3 no development shall be commenced or carried out on land listed in Schedule 5 without Planning Approval.

5.3.2.3 For the avoidance of doubt, the requirement for approval under clause 5.3.2.1 is in addition to any other requirement for approval under the Scheme.

### 5.3.3 Agreements

The Council may:

- 5.3.3.1 enter into agreements with the owners or occupiers of land on which any Schedule 5 place or object is situated for the purpose of ensuring its preservation or conservation;

- 5.3.3.2 enter into agreements with any State or Commonwealth government authority or other body in Western Australia, for the preservation or conservation of any place or object listed in Schedule 5.

#### **5.4 PURCHASE OR RESUMPTION**

The Council may purchase, or, subject to the Act, compulsorily acquire all or part of on which any Schedule 5 place or object is situated, as in the opinion of the Council is necessary for its preservation, or which the Council considers necessary for the conservation of the natural beauties of an area, for the preservation of any particular tree or trees and without limiting the generality of the foregoing for the preservation of any place or object of cultural heritage significance or other scientific interest.