

PART 6 – DEVELOPMENT AND USE OF LAND

6.1 APPLICATION FOR PLANNING APPROVAL

- 6.1.1 The Council’s Planning Approval is required for any development on or partly on any land zoned or reserved under the Scheme other than development referred to in subclause 6.1.3, and with those exceptions no person shall commence or carry out any development unless the Council’s approval has first been obtained.
- 6.1.2 Any application for Planning Approval shall be made by way of the form prescribed under the Metropolitan Region Scheme for such purpose or by way of Form 1 of the Scheme or other form as determined by Council from time to time. The application shall be submitted to the Council in duplicate together with such plans and other information as the Council reasonably requires.
- 6.1.3 The Council’s prior Planning Approval on land zoned by the Scheme is not required if the development consists of:
- (a) the erection of a boundary fence;
 - (b) the erection on a lot of a single house which will be the only building on that lot and where a dwelling is a permitted (“P”) use in the zone in which that lot is situated. For the purposes of this subparagraph the term “single house” does not include the erection of a mast or antenna where either its vertical or horizontal dimension exceeds two metres, the erection of which requires prior Planning Approval;

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

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

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

Where the application for Council’s approval consists solely of an application relating to a single house for the Council to exercise its discretion under the R Codes or where required by the provisions of a

Structure Plan prepared and adopted under Part 9 of the Scheme or a policy prepared and adopted under Clause 8.11 of the Scheme, the application may be in the form of that required for a Building Licence application.

- (c) the use of any buildings or land within the curtilage of a dwelling for any purpose incidental to the enjoyment by the occupants of the dwelling as such;
- (d) the carrying out of any works on, in, or under a street or road by a public authority acting pursuant to the provisions of any statute.
- (e) the carrying out of any building or works that affect only the interior of a building (excluding an increase in floorspace) and which do not materially affect the external appearance of the building except where the building is:
 - (i) located in a place that has been registered in the Register of Places under the Heritage of Western Australia Act 1990;
 - (ii) the subject of an Order under Part 6 of the Heritage of Western Australia Act 1990;
 - (iii) included on the Heritage List under clause 5.2.2.
- (f) the carrying out of works urgently necessary in the public safety or for the safety or security of plant or equipment or for the maintenance of essential services;
- (g) the conducting of a Home Business – Category 1.
 - (h) the demolition of any building or structure except where the building or structure is:
 - (i) located in a place that has been entered into the Register of Places under the Heritage of Western Australia Act 1990;
 - (ii) the subject of an Order under Part 6 of the Heritage of Western Australia Act 1990;
 - (iii) included on the Heritage List under clause 5.2.2;
 - (iv) located in an area that will in the opinion of Council affect a place included on the Heritage List pursuant to clause 5.2.2.
 - (i) any works that are temporary and in existence for less than 48 hours or such longer time as the local government agrees;
 - (j) any of the exempted classes of advertisements listed in Schedule 4 of the Scheme, except in respect of a place included on the Heritage List or which in the opinion of Council will affect such a place; and
 - (k) the parking of one commercial vehicle, in accordance with clause 4.15
 - (l) the parking of one recreational vehicle, in accordance with clause 4.16

- (m) A satellite dish, aerial or radio equipment, in accordance with the City's Local Planning Policy and as defined and listed in both Table 1 as 'Communications Antenna – Domestic' and Schedule 1 as 'Communications Antenna' within the Scheme.

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

- (a) affected by a gazetted notice of a resolution by the Commission under clause 32 of the Metropolitan Region Scheme; or

- (b) within an area duly declared by the Commission to be a Planning Control Area.

6.2 APPLICATION FOR APPROVAL OF USE

6.2.1 For the purpose of the Scheme the commencement, carrying out or change of a use on land shall be a development notwithstanding that it does not involve the carrying out of any building or other works.

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

- (a) which is specifically proposed and referred to in the application; or

- (b) which is normally associated with and follows as the most usual consequence of the carrying out or completion of the building or other work.

6.3 PROCEDURES FOR DEALING WITH APPLICATIONS RECEIVED

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

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

- (a) wholly zoned or reserved by the Scheme; or

- (b) partly within a regional reserve and partly zoned or reserved by the Scheme; or

- (c) affected by a gazetted notice of resolution made by the Commission under clause 32 of the Metropolitan Region Scheme, or

- (d) within or partly within a Planning Control Area duly declared by the Commission

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

- (i) one copy of the application and supporting papers submitted by the applicant shall, within seven days of receipt of the application, be forwarded by the Council to the Commission for determination by the Commission pursuant to the provisions of the Scheme and the Metropolitan Region Scheme or the Act; and
- (ii) the Council shall retain the other copy of the application and supporting papers and determine the application in accordance with the provisions of the Scheme.
- (iii) the Council may, within 42 days of receipt of that application (or such further period as the Commission may allow) forward to the Commission its recommendation as to the manner in which the application should be determined.

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

- (a) the Council shall retain one copy of the application and refer the other copy to the Commission for determination of the application pursuant to the Metropolitan Region Scheme;
- (b) if it is reasonable in the circumstances for the Council to make determination as to the part of the proposed development which is on the land zoned or reserved by the Scheme, the Council shall deal with that part of the application in accordance with subclauses 6.3.2 and 6.3.3 but where appropriate the council may express any approval it gives to be subject to the approval of the Commission;
- (c) if it is not reasonable in the circumstances for the Council to make a determination as to the part of the development which is on the land zoned or reserved by the Scheme the Council may delay its determination of the application as to that part until the determination of the Commission is made known to it.

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

6.4 REFERRAL TO OTHER AUTHORITIES

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

6.5 DEEMED REFUSAL

6.5.1 Notwithstanding the provisions of clause 6.9.1 (d):

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

6.5.2 Notwithstanding that the application for planning approval may be deemed to have been refused, the Council may issue a decision in respect of the application at any time after the expiry of the periods specified in those clauses 6.5.1 (a) and 6.5.1 (b) respectively, and that decision shall be valid and effective as from the date of determination.

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

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

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

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

6.6.3 “A” Uses – The use is not permitted unless the Council has exercised its discretion and has granted planning approval after having regard to the provisions of clause 6.8 giving special notice in accordance with clause 6.7.

6.6.4 “X” Uses – The council shall refuse to approve any application for planning approval which involves an “X” Use unless the use complies with clause 3.15.

6.7 PUBLIC NOTICE

6.7.1 Notification of “A” Uses

Before considering an application for planning approval involving an “A” use, the Council shall:

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

(b) give notice to ratepayers and/or occupiers likely to be affected by the granting of the approval; such notice shall be in writing supplying at least the information referred to in item (a) of this subclause, and allowing a like time after receipt of the notice for objections to be lodged with the Council; and may

(c) use any other methods or media considered appropriate to ensure widespread notice of the proposal;

6.7.2 Notification of “D” Uses

Before considering an application for planning approval involving a “D” use, the Council may give notice in accordance with subclause 6.7.1 (a), or (b), or (c), or a combination of these methods.

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

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

6.8 MATTERS TO BE CONSIDERED BY COUNCIL

6.8.1 The Council when considering an application for Planning Approval shall have due regard to the following:

- (a) interests of orderly and proper planning and the preservation of the amenity of the relevant locality;
- (b) any relevant submissions by the applicant;
- (c) any Agreed Structure Plan prepared under the provisions of Part 9 of the Scheme;
- (d) any planning policy of the Council adopted under the provisions of clause 8.11;
- (e) any other matter which under the provisions of the Scheme the Council is required to have due regard;
- (f) any policy of the Commission or its predecessors or successors or any planning policy adopted by the Government of the State of Western Australia;
- (g) any relevant proposed new town planning scheme of the Council or amendment or proposed Metropolitan Region Scheme Amendment insofar as they can be regarded as seriously entertained planning proposals;
- (h) the comments or wishes of any public or municipal authority received as part of the submission process;
- (i) the comments or wishes of any objectors to or supporters of the application;
- (j) any previous decision made by the Council in circumstances which are sufficiently similar for the previous decision to be relevant as a precedent, provided that the Council shall not be bound by such precedent; and
- (k) any other matter which in the opinion of the Council is relevant.

6.8.2 In addition to the matters referred to in the preceding subclause of this clause, the Council when considering whether or not to approve a “D” or “A” use application shall have due regard to the following (whether or not by implication or otherwise they might have required consideration under the preceding subclauses of this clause):

- (a) the nature of the proposed use and its relationship to the use of other land within the locality;
- (b) the size, shape and character of the parcel of land to which the application relates and the nature and siting of any proposed building;
- (c) the nature of the roads giving access to the subject land;

- (d) the parking facilities available or proposed and the likely requirements for parking, arising from the proposed development;
- (e) any relevant submissions or objections received by the Council; and
- (f) such other matters as the Council considers relevant, whether of the same nature as the foregoing or otherwise.

6.9 POWER TO DETERMINE APPLICATIONS FOR PLANNING APPROVAL

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

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

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

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

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

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

6.10 COMPLIANCE WITH CONDITIONS

- 6.10.1 If the Council, or the State Administrative Tribunal on appeal from a decision of the Council, or any other decision making authority grants its approval of any development subject to conditions, no person shall use any land or building affected by the conditions or suffer or permit them to be used, or otherwise commence or carry out or suffer or permit the commencement or carrying out of any development on land otherwise than in accordance with the conditions.
- 6.10.2 The Council may, on application in writing from the owner of land in respect of which planning approval has been granted, revoke or amend the planning approval, prior to the commencement of the use or development subject of the planning approval.

6.11 APPROVALS ON APPEAL

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

6.12 APPROVAL OF EXISTING DEVELOPMENTS

- 6.12.1 The Council may give planning approval to a development already commenced or carried out regardless of when it was commenced or carried out. Such approval shall have the same effect for all purposes as if it had been given prior to the commencement or carrying out of the development, but provided that the development complies with the provisions of the Scheme as to all matters other than the provisions requiring Council's approval prior to the commencement of development.
- 6.12.2 An application to the Council for planning approval under subclause 6.12.1 shall be made on such form as the Council provides from time to time.
- 6.12.3 A development which was not permissible under the Scheme at the time it was commenced or carried out may be approved if at the time of approval under this subclause it is permissible.
- 6.12.4 The approval by the Council of an existing development shall not affect the power of the Council to take appropriate action for a breach of the Scheme or the Act in respect of the commencement of the development without approval.