



Draft Model Text Provisions for Structure Plans

The purpose of this Bulletin is to seek comment on draft model text provisions for structure plans. The draft provisions are included in Schedule 1 attached to this Bulletin. Following consideration of comments and finalisation, it is intended to introduce the draft provisions as regulations.

1. Background

Several local governments are currently introducing provisions into schemes which relate to the designation of Development Zones or Areas; to requirements for the preparation of structure plans (otherwise known as outline development plans or comprehensive development plans); and prescribing cost-sharing arrangements between landowners for the provision of common infrastructure. The provisions, however, vary between schemes, resulting in costs and delays to local governments in introducing such provisions; difficulties for the Commission in assessing and providing advice on the provisions; and difficulties for subdividers and developers who must interpret the provisions.

Following submissions received from the Urban Development Institute of Australia and the Australian Association of Planning Consultants, a Working Group was established to develop model provisions to deal with structure plans and cost-sharing

arrangements. The Working Group comprises representatives from the Western Australian Municipal Association, the Urban Development Institute of Australia, the Australian Association of Planning Consultants, the Western Australian Planning Commission and the Ministry for Planning.

The Working Group has so far completed draft model text provisions for structure plans. These are contained in Schedule 1 and are now released for comment. Draft provisions dealing with development contributions, guided development schemes and resumptive development schemes are currently being prepared, and it is intended to release these in separate Bulletins when they are ready for public comment.

2. Features of Draft Model Text Provisions for Structure Plans

The draft model text provisions for structure plans provide a single, streamlined process for the approval and adoption of structure plans. They are based on the special control area provisions contained in the *Model Scheme Text* (Part 6) and accordingly, adopt that clause numbering. References to other clauses are references to clauses of the *Model Scheme Text*. For example, clause 6.2.5.5 refers to 'clause 9.4 of the Scheme.' This is a reference to clause 9.4 of the *Model Scheme Text*.

Under the draft provisions, a Structure Plan may relate to a Development Area or part of a Development Area. The Development Area is to be

identified on the Scheme Map. Development Areas may correspond with Development Zones or other zones. Development Areas, however, need not necessarily follow zone and reserve boundaries and it is possible for them to overlap different zones and reserves. The provisions of the special control area apply in addition to the provisions applying to any underlying zone or reserve, and the general provisions of the Scheme.

The scope and content of Structure Plans is flexible and depends upon the planning requirements of the Development Area to which the Proposed Structure Plan relates. A Proposed Structure Plan is to include such detail as, in the opinion of the local government, is necessary to satisfy the planning requirements of the Development Area. A list of details that may be included in a Structure Plan is contained in clause 6.2.4.4.

Subdivision and development in a Development Area is to generally be in accordance with the Structure Plan that applies to that Development Area.

A Proposed Structure Plan may be prepared and submitted by a landowner, landowners or prepared by the local government. A Proposed Structure Plan must be advertised, adopted by the local government and approved by the Western Australian Planning Commission.

In an effort to simplify the process for making a Structure Plan, the Commission is not required to endorse the local government's determination that a Proposed

Structure Plan is satisfactory for advertising. However, a decision of the local government not to advertise a Proposed Structure Plan, to seek modifications before advertising or a deemed refusal to advertise may be considered by the Commission at the proponent's request. An appeal to the Town Planning Appeal Tribunal or the Minister for Planning lies from the decision of the Commission on the issue of advertising. This avoids the proponent having to go through a time consuming and costly appeal process at the advertising stage when the issues that are the subject of the dispute have not yet been considered by the Commission.

A Structure Plan is operative once it has been both adopted by the local government under clause 6.2.5.15 and approved by the Commission. Minor changes or departures from a Structure Plan may be adopted by the local government and notified to the Commission. Other changes or departures must go through the same process as the making of a Structure Plan itself.

A detailed area plan may be prepared and submitted under clause 6.2.7 to enhance, elaborate and expand on the details or provisions contained in a Proposed Structure Plan or Structure Plan, as an alternative to development approval under clause 2.5 of the *Residential Planning Codes* or for any other planning purpose. In fact, clause 6.2.7 may operate whether or not a Structure Plan or Proposed Structure Plan exists. A detailed area plan may include information considered relevant by the local government and a list of potential details is contained in clause 6.2.7.3. A right of appeal exists from the local government's decision regarding approval of a detailed area plan, or variation or modification to a detailed area plan.

The draft provisions enable Structure Plans to refer to Scheme zones and reserves. Where they do so, these in effect incorporate the provisions of the Scheme as they

apply to those particular zones and reserves. This enables the development standards and requirements of the Scheme for different forms of development (for example, residential or commercial) to be incorporated into and apply to the Structure Plan. However, where a provision of a zone or reserve contained in a Structure Plan is inconsistent with a provision of the applicable zone or reserve under the Scheme, the provisions of the Scheme prevail. As such, the zones and reserves contained in a Structure Plan, if inconsistent with the Scheme, must be incorporated into the Scheme by amendment or as part of the Scheme review process.

Except in relation to the local government's decision on detailed area plans and minor changes or departures from a Structure Plan, all appeal rights under clause 6.2.9 are in relation to determinations of the Commission. Of course, discretionary decisions of the local government are able to be appealed under section 8A of the *Town Planning and Development Act 1928*. The introduction of an appeal right from the Commission's decision following a local government decision was considered appropriate given that Structure Plans are required to be approved by the Commission. This avoids a time consuming and costly appeal process which would be unproductive before the decision of the Commission is known.

3. Information and Comment

In summary, the draft provisions set out a clear and consistent procedure for the preparation, assessment, advertising, approval and modification of Structure Plans. The draft provisions also introduce the concept of detailed area plans.

Comments are invited on the draft provisions. These should quote reference number 853/1/1/17PV and be addressed to:

**Attention: Acting Director
Policy and Legislation**
Ministry for Planning
Albert Facey House
469 Wellington Street
PERTH WA 6000

Comments should be received by 7 April 2000.

CONTACT

As part of its continuing improvements to its service to customers, clients and the public, the Ministry for Planning has established a website at the following address:

<http://www.wa.gov.au/planning>

The site contains a range of information concerning the Ministry and the Commission, including Planning Bulletins.

Schedule 1: DRAFT MODEL TEXT PROVISIONS FOR STRUCTURE PLANS

Part 6 - Special Control Areas

6.1 Operation of special control areas

- 6.1.1 The following special control areas are shown on the Scheme Map:
- (a) Development Areas shown on the Scheme Map as DA with a number and included in Schedule XX.
 - (b) Development Contribution Areas shown on the Scheme Map as DCA with a number and included in Schedule XX.
- 6.1.2 In respect of a special control area shown on a Scheme Map, the provisions applying to the special control area apply in addition to the provisions applying to any underlying zone or reserve and any general provisions of the Scheme.

6.2 Development Areas

6.2.1 Interpretation

In clause 6.2, unless the context otherwise requires:

‘Proponent’ means any owner or owners of land to which the Proposed Structure Plan relates that has or have submitted that Proposed Structure Plan;

‘Proposed Structure Plan’ means a structure plan, which may apply to either a local area or a district, that has been prepared in accordance with clause 6.2.4; and

‘Structure Plan’ means a Proposed Structure Plan that has been approved by both the Commission and adopted by the local government under clause 6.2.5.15.

6.2.2 Purpose

- (a) To identify areas requiring comprehensive planning prior to subdivision and development.
- (b) To coordinate subdivision, land use and development in areas requiring comprehensive planning.

6.2.3 Planning requirements

- 6.2.3.1 The local government requires a Structure Plan for a Development Area, or for any particular part or parts of a Development Area, before recommending subdivision or approving development of land within the Development Area.
- 6.2.3.2 Where a Structure Plan exists, the subdivision and development of land is to generally be in accordance with the Structure Plan and any associated provisions contained in Schedule XX.
- 6.2.3.3 The local government or the Commission may, as a condition of adopting or approving a Proposed Structure Plan, require a more detailed Structure Plan in future if the local government or the Commission considers that it will be necessary to provide additional detail to the proposals contained in the Proposed Structure Plan.
- 6.2.3.4 Schedule XX describes the Development Areas in more detail and sets out the purpose and particular requirements that may apply to the Development Area.

6.2.4 Preparation of Structure Plans

- 6.2.4.1 A Structure Plan may include plans and other documents.
- 6.2.4.2 A Structure Plan may, with the agreement of the local government, be prepared and implemented in stages.

Schedule 1: DRAFT MODEL TEXT PROVISIONS FOR STRUCTURE PLANS

- 6.2.4.3 A Structure Plan may relate to only part of a Development Area.
- 6.2.4.4 A Structure Plan is to contain such detail as, in the opinion of the local government, is required to satisfy the planning requirements of the Development Area, and, without limiting the generality of the foregoing, may include the following details:
- (a) the area to which the Structure Plan applies;
 - (b) key opportunities and constraints of the Development Area including landform, topography, hydrology, landscape, vegetation, soils, conservation and heritage values, ownership, land use, roads and public transport, and services;
 - (c) the planning context for the Development Area including the regional and neighbourhood structure, relevant strategies, Scheme provisions and policies and where appropriate, indicating how the Proposed Structure Plan is to be integrated into the surrounding area;
 - (d) proposed major land uses, in particular, residential areas, public open space, school sites, civic and community uses, commercial uses (including the location and hierarchy of commercial centres), mixed use, industrial and mixed business uses;
 - (e) the proposed indicative lot pattern and general location of any major buildings;
 - (f) estimates of future lots, dwellings, population, employment and retail floor space;
 - (g) provision for major infrastructure, including main drainage, sewerage, water supply and other key infrastructure services;
 - (h) the proposed road network and hierarchy, public transport services, and bicycle and pedestrian networks;
 - (i) the timeframe and staging of subdivision and development, and the method of implementation, including any proposals for funding by development contributions;
 - (j) details as appropriate relating to:
 - (i) vehicular access and parking;
 - (ii) the location, orientation and design of buildings and the space between buildings;
 - (iii) conservation areas;
 - (iv) heritage places; and
 - (v) special development control provisions; and
 - (k) such other information as may be required by the local government.
- 6.2.4.5 In considering a Proposed Structure Plan for part of a Development Area, the local government may require the Proponent to demonstrate how planning for the subject land may be integrated with planning for the balance of the Development Area, including how broad land uses, essential services, main movement systems and major conservation and recreation areas are to be integrated and provide information on the arrangements for implementation.

Schedule 1: DRAFT MODEL TEXT PROVISIONS FOR STRUCTURE PLANS

6.2.5 Adoption and approval of Structure Plans

- 6.2.5.1 A Proposed Structure Plan may be prepared by a Proponent or the local government. Where prepared by a Proponent, the Proposed Structure Plan is to be submitted to the local government.
- 6.2.5.2 Upon receiving a Proposed Structure Plan, the local government is to either:
- (a) determine that the Proposed Structure Plan is satisfactory for advertising;
 - (b) determine that the Proposed Structure Plan is not to be advertised until further details have been provided or modifications undertaken; or
 - (c) determine that the Proposed Structure Plan is not satisfactory for advertising and give reasons for this to the Proponent.
- 6.2.5.3 If within 60 days of receiving a Proposed Structure Plan for approval for advertising, or such longer period as may be agreed in writing between the Proponent and the local government, the local government has not made one of the determinations referred to in clause 6.2.5.2, the local government is deemed to have determined that the Proposed Structure Plan is not satisfactory for advertising.
- 6.2.5.4
- (a) Where the Proponent is aggrieved by a determination of the local government under clause 6.2.5.2(b) or (c) or clause 6.2.5.3, the Proponent may request the local government by notice in writing to forward the Proposed Structure Plan to the Commission.
 - (b) Within 21 days of receiving a notice from the Proponent under clause 6.2.5.4(a), the local government is to forward to the Commission:
 - (i) a copy of the Proposed Structure Plan;
 - (ii) details of the local government's determination including any modifications to the Proposed Structure Plan required by the local government; and
 - (iii) any other information the local government considers may be relevant to the Commission's consideration of approval of the Proposed Structure Plan for advertising.
 - (c) Upon receiving a Proposed Structure Plan in accordance with clause 6.2.5.4(b), the Commission is to make one of the determinations referred to in clause 6.2.5.2 and advise the local government and the Proponent accordingly.
 - (d) If the Commission requires modifications to the Proposed Structure Plan, the Commission is to consult with the local government prior to making its determination under clause 6.2.5.4(c).
 - (e) If within 60 days of receiving a Proposed Structure Plan under clause 6.2.5.4(b), or such longer period as may be agreed in writing between the Proponent and the Commission, the Commission has not made one of the determinations referred to in clause 6.2.5.2, the Commission is deemed to have determined that the Proposed Structure Plan is not satisfactory for advertising.

Schedule 1: DRAFT MODEL TEXT PROVISIONS FOR STRUCTURE PLANS

- 6.2.5.5 Where the local government, or the Commission under clause 6.2.5.4, has determined that the Proposed Structure Plan is satisfactory for advertising, the local government is to:
- (a) advertise, or require the Proponent to advertise, the Proposed Structure Plan for public inspection by one or more of the methods of advertising proposals for development as set out in clause 9.4 of the Scheme; and
 - (b) give notice or require the Proponent to give notice in writing to:
 - (i) all landowners affected by the Proposed Structure Plan; and
 - (ii) such public authorities and other persons as the local government nominates,
- and such advertisement and notice are to explain the scope and purpose of the Proposed Structure Plan, when and where it may be inspected, and invite submissions to the local government by a specified date being at least 21 days from the date of the notice and advertisement.
- 6.2.5.6 Within 7 days of determining that a Proposed Structure Plan is satisfactory for advertising, the local government is to forward a copy of the Proposed Structure Plan to the Commission.
- 6.2.5.7 The local government is to consider all submissions received and within 60 days of the latest date specified in the notice under clause 6.2.5.5 is to either:
- (a) adopt the Proposed Structure Plan with or without modifications; or
 - (b) refuse to adopt the Proposed Structure Plan and give reasons for this to the Proponent.
- 6.2.5.8 If within the 60 day period, or such further time as may be agreed in writing between the Proponent and the local government, the local government has not made one of the determinations referred to in clause 6.2.5.7, the local government is deemed to have refused to adopt the Proposed Structure Plan.
- 6.2.5.9 Within 21 days of the local government making its determination under clause 6.2.5.7, or deemed refusal under clause 6.2.5.8, the local government is to forward to the Commission:
- (a) a summary of all submissions and comments received by the local government in respect of the Proposed Structure Plan, and the local government's decisions or comments in relation to these;
 - (b) the local government's recommendation to the Commission to approve, modify or refuse to approve the Proposed Structure Plan; and
 - (c) any other information the local government considers may be relevant to the Commission's consideration of the Proposed Structure Plan.
- 6.2.5.10 The Commission is to either:
- (a) approve the Proposed Structure Plan with or without modifications; or
 - (b) refuse to approve the Proposed Structure Plan and give reasons for its decision to the Proponent and the local government.

Schedule 1: DRAFT MODEL TEXT PROVISIONS FOR STRUCTURE PLANS

- 6.2.5.11 If within 60 days of receiving the information referred to in clause 6.2.5.9, or such further time as may be agreed in writing between the Proponent and the Commission, the Commission has not made one of the determinations referred to in clause 6.2.5.10, the Commission is deemed to have refused to approve the Proposed Structure Plan.
- 6.2.5.12 If the Commission approves the Proposed Structure Plan, it is to notify the local government and the Proponent of its decision within 14 days of the date of the Commission's decision.
- 6.2.5.13 If the Commission requires modifications to the Proposed Structure Plan, the Commission is to consult with the local government prior to approving the Proposed Structure Plan under clause 6.2.5.10.
- 6.2.5.14 If the local government, following consultation with the Commission, is of the opinion that any modification to the Proposed Structure Plan is substantial, the local government may:
- (a) readvertise the Proposed Structure Plan; or
 - (b) require the Proponent to readvertise the Proposed Structure Plan
- and, thereafter, the procedures set out in clause 6.2.5.5 onwards are to apply.
- 6.2.5.15 As soon as practicable after receiving notice of the approval of the Proposed Structure Plan by the Commission, the local government is to adopt the Proposed Structure Plan and forward a copy of the Structure Plan to:
- (a) the Proponent;
 - (b) the Commission; and
 - (c) any other appropriate person or public authority which the local government thinks fit.
- 6.2.5.16 A Structure Plan is to be kept at the local government's administrative offices, and is to be made available for inspection by any member of the public during office hours.

6.2.6 Change or Departure from Structure Plan

- 6.2.6.1 The local government may adopt a minor change to or departure from a Structure Plan if, in the opinion of the local government, the change or departure does not materially alter the intent of the Structure Plan.
- 6.2.6.2 (a) The local government is to forward a copy of the minor change or departure to the Commission within 10 days from the date of adopting the minor change or departure.
- (b) If the Commission considers that the change or departure adopted by the local government under clause 6.2.6.1 materially alters the intent of the Structure Plan, then the Commission:

Schedule 1: DRAFT MODEL TEXT PROVISIONS FOR STRUCTURE PLANS

- (i) may require the local government to follow the procedures set out in clause 6.2.5 in relation to the change or departure; and
- (ii) is to notify the local government of this requirement within 10 days.

6.2.6.3 Any change to or departure from a Structure Plan that is not within clause 6.2.6.1 is to follow the procedures set out in clause 6.2.5.

6.2.7. Detailed area plans

- 6.2.7.1 (a) (i) The local government or the Commission may, by notice in writing, require a person to prepare and submit to the local government a detailed area plan within the time specified in the notice.
- (ii) A person may prepare and submit to the local government a detailed area plan.
- (b) A detailed area plan is to relate to a particular lot or lots and may be prepared and submitted:
- (i) to enhance, elaborate or expand on the details or provisions contained in a Proposed Structure Plan or a Structure Plan;
 - (ii) in place of a development approval required to comply with clause 2.5 of the *Residential Planning Codes*; or
 - (iii) for any other planning purpose.
- (c) The local government is to:
- (i) approve with or without conditions; or
 - (ii) refuse to approve
- the detailed area plan.
- (d) If within 60 days of receiving a detailed area plan under clause 6.2.7.1(a), or such longer period as may be agreed in writing between the person and the local government, the local government has not made one of the determinations referred to in clause 6.2.7.1(c), the local government is deemed to have refused to approve the detailed area plan.
- (e) The local government is to forward a copy of the detailed area plan to the Commission within 10 days of approving the detailed area plan.
- (f) The local government's refusal to approve a detailed area plan under clause 6.2.7 is not a valid reason for the local government to refuse to adopt or the Commission to refuse to approve a Proposed Structure Plan under clause 6.2.5.
- 6.2.7.2 Unless clause 6.2.7.1(b)(ii) applies, once approved by the local government, the detailed area plan is to be used as the basis for:
- (a) making recommendations to the Commission on subdivision applications; and
 - (b) determining development applications
- with respect to the land subject to the detailed area plan.

Schedule 1: DRAFT MODEL TEXT PROVISIONS FOR STRUCTURE PLANS

- 6.2.7.3 A detailed area plan may include details as to:
- (a) building envelopes;
 - (b) distribution of land uses within a lot;
 - (c) private open space;
 - (d) services;
 - (e) vehicular access, parking, loading and unloading areas, storage yards and rubbish collection closures;
 - (f) the location, orientation and design of buildings and the space between buildings;
 - (g) advertising signs, lighting and fencing;
 - (h) landscaping, finished site levels and drainage;
 - (i) protection of sites of heritage, conservation or environmental significance;
 - (j) special development controls and guidelines; and
 - (k) such other information considered relevant by the local government.

- 6.2.7.4 (a) An approved detailed area plan may be modified or varied with the approval of the local government, but where there is a related Structure Plan, such modifications or variations are to conform with the intent of any related Structure Plan.
- (b) The local government is to forward a copy of the modification or variation to the detailed area plan to the Commission within 10 days of approving the modification or variation.

6.2.8 Operation of Structure Plan

6.2.8.1 A Structure Plan commences operation on the date it is adopted by the local government pursuant to clause 6.2.5.15.

6.2.8.2 Subject to clause 6.2.8.5, if a Structure Plan imposes a classification on the land included in it by reference to reserves, zones, or *Residential Planning Codes* then:

- (a) the provisions of the Structure 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 to the Development Area.

6.2.8.3 Without limiting the generality of clause 6.2.8.2, under a Structure Plan:

- (a) in the areas designated as zones, the permissibility of uses is to be the same as set out in the Zoning Table as if those areas were zones under the Scheme having the same designation;
- (b) the standards and requirements applicable to the zones and R Codings under the Scheme apply to the areas having corresponding designations under the Structure Plan;

Schedule 1: DRAFT MODEL TEXT PROVISIONS FOR STRUCTURE PLANS

- (c) the planning approval procedures including the procedures for the approval of uses and developments under the Scheme are to apply as if the land were correspondingly zoned or reserved under the Scheme;
- (d) 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 clauses 11.5 and 11.6 inclusive apply as if the land were correspondingly reserved under the Scheme; and
- (e) any other provision, standard or requirement in the Structure Plan is to be given the same force and effect as if it were a provision, standard or requirement of the Scheme.

6.2.8.4 A Structure 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 Structure Plan.

6.2.8.5 If a provision of a Structure Plan which imposes a classification on the land included in it by reference to reserves, zones or *Residential Planning Codes* is inconsistent with a provision of the Scheme, then the provision of the Scheme prevails to the extent of any inconsistency.

6.2.9 Appeal

6.2.9.1 The Proponent may appeal, in accordance with Part V of the Town Planning Act, any:

- (a) determination or decision made by the Commission;
- (b) requirement imposed by or modification sought by the Commission; or
- (c) determinations deemed to have been made by the Commission under clauses 6.2.5.4 or 6.2.5.11

in the exercise of the Commission's powers under clause 6.2.

6.2.9.2 The Proponent may appeal, in accordance with Part V of the Town Planning Act, any decision made by the local government under clause 6.2.6.1.

6.2.9.3 A person who has submitted a detailed area plan under clause 6.2.7 may appeal, in accordance with Part V of the Town Planning Act, any decision made by the local government under clauses 6.2.7.1 or 6.2.7.4.