



## **PORT HEDLAND WEST END**

IMPROVEMENT SCHEME NO. 1

Western Australian Planning Commission

*AS GAZETTED 18th SEPTEMBER 2020*

**IMPROVEMENT SCHEME GAZETTAL DATE: 18/9/2020**

## PORT HEDLAND WEST END

### IMPROVEMENT SCHEME NO. 1

This Improvement Scheme of the Western Australian Planning Commission consists of this Scheme Text and the Scheme Map. The Improvement Scheme should be read with the Scheme Report.

#### AMENDMENTS

AMD NO.	GAZETTAL DATE	UPDATED		DETAILS
		WHEN	BY	
New Scheme	18/9/2020	17/9/2020	MLD	New Scheme

# SCHEME DETAILS

## **PORT HEDLAND WEST END IMPROVEMENT SCHEME NO. 1**

The Western Australian Planning Commission under the powers conferred by the *Planning and Development Act 2005* makes the following Improvement Scheme.

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## Part 1 - Preliminary

### 1. Citation

This improvement scheme is referred to as Port Hedland West End Improvement Scheme No. 1 (the Scheme).

### 2. Commencement

Under section 122B(5) of the Act, this Scheme comes into operation on the day it is published in the *Gazette*.

### 3. Notes do not form part of Scheme

Notes, and instructions printed in italics, do not form part of this Scheme.

Note: The *Interpretation Act 1984* section 32 makes provision in relation to whether headings form part of the written law

### 4. Responsibility for Scheme

The Western Australian Planning Commission (the Commission) is the responsible authority for enforcement and implementation of this Scheme and the execution of any works required to be executed under this Scheme.

### 5. Scheme area

This Scheme applies to the area shown on the Scheme Map.

### 6. Contents of Scheme

In addition to the provisions set out in this document (the Scheme text), this Scheme includes the Scheme Map.

This Scheme is to be read in conjunction with Improvement Plan No. 50: Port Hedland West End and the Port Hedland West End Improvement Scheme No. 1 – Scheme Report.

### 7. Purposes of Scheme

The purposes of this Scheme are to -

- (a) set out the Commission's planning aims and intentions for the Scheme area;
- (b) set aside land as local reserves for public purposes;
- (c) zone land within the Scheme area for the purposes defined in this Scheme;
- (d) control and guide development including processes for the preparation of structure plans, activity centre plans, and local development plans;
- (e) set out procedures for the assessment and determination of development applications;
- (f) make provision for the administration and enforcement of this Scheme; and

- (g) address other matters referred to in Schedule 7 of the Act.

## **8. Aims of Scheme**

The aims of this Scheme are -

- (a) to provide a statutory planning instrument through which to implement the strategic planning framework and effectively guide the preparation of statutory plans, statutory referral documentation and policy (as may be required) to facilitate orderly and proper planning of the Scheme area;
- (b) to implement the Government response to the *Port Hedland Dust Management Taskforce Report to Government* (2016) to prohibit sensitive land uses and restrict population growth in the West End of Port Hedland by prohibiting:
  - a. new residential development; and
  - b. development intended for use either exclusively or primarily by sensitive groups within the general population including:
    - i. older people (over 65 years);
    - ii. people with pre-existing cardiovascular or respiratory disease;
    - iii. children and adults with pre-existing respiratory conditions (asthma, bronchitis, chronic obstructive pulmonary disease); and
    - iv. children.
- (c) to facilitate opportunities for investment in support of Port activities, and development of quality built form and public place design across the Scheme area and public foreshore reserve interfaces, that recognise the iconic location and heritage significance of the Port Hedland West End; and
- (d) to recognise, protect and complement the primacy of the Port.

## **9. Relationship with local laws**

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

## Part 2 - Reserves

### 10. Improvement scheme reserves

- (1) In this clause -  
**Department of Main Roads** means the department principally assisting in the administration of the *Main Roads Act 1930*;  
**Western Australian Road Hierarchy** means the document of that name available on the website maintained by the Department of Main Roads.
- (2) Improvement scheme reserves are shown on the Scheme Map according to the legend on the Scheme Map.
- (3) The objectives for each improvement scheme reserve are as follows:

**Table 1 - Reserve objectives**

Reserve name	Objectives
Landscape Interface	<ul style="list-style-type: none"> <li>• To provide a vegetated interface operating to create visual and environmental separation and delineation between port operations and urban areas within the West End.</li> <li>• To provide land for drainage functions.</li> </ul>
Primary Distributor Road	<ul style="list-style-type: none"> <li>• To set aside land required for a primary distributor road being a road classified as a Regional Distributor or Primary Distributor under the Western Australian Road Hierarchy.</li> </ul>
Local Distributor Road	<ul style="list-style-type: none"> <li>• To set aside land required for a local distributor road being a road classified as a Local Distributor under the Western Australian Road Hierarchy.</li> </ul>
Local Road	<ul style="list-style-type: none"> <li>• To set aside land required for a local road being a road classified as an Access Road under the Western Australian Road Hierarchy.</li> </ul>

## Part 3 - Zones and use of land

### 11. Zones

- (1) Zones are shown on the Scheme Map according to the legend on the Scheme Map.
- (2) The objectives of each zone are as follows -

**Table 2 - Zone objectives**

Zone name	Objectives
West End	<ol style="list-style-type: none"><li>(a) To establish a flexible zone in which new residential development and other sensitive land uses are prohibited.</li><li>(b) To provide for the development of a mix of varied land uses such as short-term accommodation, tertiary training and education facilities, offices, showrooms and hospitality establishments.</li><li>(c) To promote and provide for tourism opportunities including varied short-term accommodation styles and associated uses, retail and service facilities where those facilities will not impact detrimentally on the surrounding or wider area.</li><li>(d) To encourage the location of tourist facilities so that they may benefit from existing cultural, heritage and port attractions, natural features and urban facilities.</li><li>(e) To provide for a broad range of port related industrial, service, storage and logistical activities which do not generate nuisances detrimental to the amenity of the surrounding or wider area district.</li><li>(f) To achieve high quality built form and public place design.</li><li>(g) Seek to manage possible impacts on local area amenity arising from noise, dust and odour within the zone.</li></ol>



## 12. Zoning table

The zoning table for this Scheme is as follows -

**Table 3 - Zoning Table**

<b>USE AND DEVELOPMENT CLASS</b>	<b>West End</b>
Abattoir	X
Agriculture - extensive	X
Agriculture - intensive	X
Amusement parlour	D
Ancillary dwelling	X
Animal establishment	A
Animal husbandry - intensive	X
Art gallery	D
Bed and breakfast	D
Betting agency	D
Brewery	A
Bulky goods showroom	D
Caravan park – short-term	D
Caretaker's dwelling	X
Car park	D
Child care premises	X
Cinema/theatre	D
Civic use *	D(X)
Club premises *	D(X)
Commercial vehicle parking	D
Community purpose *	D(X)
Consulting rooms *	D(X)
Convenience store	D
Corrective institution	X
Educational establishment - Primary	X
Educational establishment - Secondary	X
Educational establishment - Tertiary	D
Exhibition centre	D
Family day care	X
Fast food outlet	D
Fuel depot	A
Funeral parlour	D

Garden centre	D
Holiday accommodation	D
Holiday house	D
Home business	D
Home occupation	D
Home office	D
Home store	D
Hospital	X
Hotel	D
Industry	D
Industry - cottage	X
Industry - extractive	X
Industry - light	D
Industry - primary production	X
Industry - Rural	X
Liquor store – large	D
Liquor store – small	D
Lunch Bar	D
Marina	X
Marine Filling Station	X
Market	D
Medical centre *	D(X)
Mining operations	X
Motel	D
Motor vehicle, boat or caravan sales	D
Motor vehicle repair	D
Motor vehicle wash	D
Nightclub	D
Office	D
Park home park	X
Place of worship	D
Reception centre	D
Recreation - private	D
Renewable energy facility	D
Repurposed dwelling	X
Residential Aged Care Facility	X
Residential Building	X
Residential - single house	X
Residential - grouped dwelling	X
Residential - multiple dwelling	X
Resource recovery centre	D
Restaurant/cafe	D
Restricted premises	D
Road house	D
Rural home business	X
Rural pursuit/hobby farm	X

Second hand dwelling	X
Service station	D
Serviced apartment	D
Shop	D
Small bar	D
Tavern	D
Telecommunications infrastructure	D
Tourist development	D
Trade display	D
Trade supplies	D
Transport depot	D
Tree farm	X
Veterinary centre	D
Warehouse/storage	D
Waste disposal facility	X
Waste storage facility	A
Winery	X
Workforce accommodation	D

\* **Note** – The use will be prohibited (X) where primarily occupied by susceptible people:

- Older people (over 65 years);
- People with pre-existing cardiovascular or respiratory disease;
- Children and adults with pre-existing respiratory conditions (asthma, bronchitis, chronic obstructive pulmonary disease); and
- Children.

### 13. Interpreting zoning table

- (1) The permissibility of uses of land in the various zones in the Scheme area is determined by cross-reference between the list of use classes on the left-hand side of the zoning table and the list of zones at the top of the zoning table.
- (2) The symbols used in the zoning table have the following meanings -
  - P means that the use is permitted if it complies with all relevant development standards and requirements of this Scheme;
  - I means that the use is permitted if it is consequent on, or naturally attaching, appertaining or relating to, the predominant use of the land and it complies with all relevant development standards and requirements of this Scheme;
  - D means that the use is not permitted unless the Commission has exercised its discretion by granting development approval;
  - A means that the use is not permitted unless the Commission has exercised its discretion by granting development approval after giving notice in accordance with clause 85 of this Scheme;
  - X means that the use is not permitted by this Scheme.

Note:

  1. The development approval of the Commission may be required to carry out works on land in addition to any approval granted for the use of land. In normal circumstances one application is made for both the carrying out of works on, and the use of, land. For development on land that does not require development approval see clause 84 of this Scheme.
  2. In considering an application for development approval, the Commission will have regard to clause 88 of this Scheme.
- (3) A specific use class referred to in the zoning table is excluded from any other use class described in more general terms.
- (4) The Commission may, in respect of a use that is not specifically referred to in the zoning table and that cannot reasonably be determined as falling within a use class referred to in the zoning table -
  - (a) determine that the use is consistent with the objectives of a particular zone and is therefore a use that may be permitted in the zone subject to conditions imposed by the Commission; or
  - (b) determine that the use may be consistent with the objectives of a particular zone and give notice under clause 85 of this Scheme before considering an application for development approval for the use of the land; or
  - (c) determine that the use is not consistent with the objectives of a particular zone and is therefore not permitted in the zone.
- (5) If a use of land is identified in a zone as being a class P use, the Commission may not refuse an application for development approval for that use in that zone but

may require works that are to be undertaken in connection with that use to have development approval.

- (6) If a use of land is identified in a zone as being a class X use, the Commission must refuse an application for development approval for that use in that zone unless -
  - (a) the development approval application relates to land that is being used for a non-conforming use; and
  - (b) the Commission considers that the proposed use of the land would be less detrimental than the non-conforming use.
- (7) If the zoning table does not identify any permissible uses for land in a zone the Commission may, in considering an application for development approval for land within the zone, have due regard to any of the following that apply to the land -
  - (a) a structure plan;
  - (b) an activity centre plan;
  - (c) a local development plan;
  - (d) the objectives of the zone;
  - (e) an improvement scheme policy.

**14. Additional uses**

There are no additional uses for zoned land that apply to this Scheme.

**15. Restricted uses**

There are no restricted uses that apply to this Scheme.

**16. Special use zones**

There are no special use zones which apply to this Scheme.

**17. Non-conforming uses**

- (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 12 months, or a longer period approved by the Commission, 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 Commission -
  - (a) purchases the land; or
  - (b) pays compensation to the owner of the land in relation to the non-conforming use.

## **18. Changes to non-conforming use**

- (1) 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 use that is not permitted by the Scheme.
- (2) The Commission shall not refuse to grant development approval for the repair or rebuilding of residential properties that are non-conforming uses provided that the redevelopment would not result in an intensification or expansion of a non-conforming use should they be more than 75% destroyed by a natural disaster such as fire or a cyclone.
- (3) An application for development approval for the purposes of this clause must be advertised in accordance with clause 85 of this Scheme.
- (4) The Commission may only grant development approval for a change of use of land referred to in subclause (1)(d) if, in the opinion of the Commission, 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.

## **19. Register of non-conforming uses**

- (1) The Commission may prepare a register of land within the Scheme area that is being used for a non-conforming use.
- (2) A register prepared by the Commission 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.
- (3) If the Commission prepares a register under subclause (1) the Commission -
  - (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 Commission; and
  - (c) may publish a copy of the register on the website of the Commission.
- (4) An entry in the register in relation to 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.

## Part 4 - General development requirements

### 20. State planning policies to be read as part of Scheme

(1) The State planning policies set out in Table 4, modified as set out in clause 21, are to be read as part of this Scheme.

**Table 4- State planning policies to be read as part of Scheme**

<b>State planning policies to be read as part of Scheme</b>
State Planning Policy No. 2.6 – State Coastal Planning Policy (as amended) State Planning Policy No. 3.7 – Planning in Bushfire Prone Areas (as amended) State Planning Policy No. 4.1 – State Industrial Buffer (as amended) State Planning Policy No. 5.4 – Road and Rail Noise (as amended) State Planning Policy No. 7.0 – Design of the Built Environment (as amended) State Planning Policy No. 7.3 – Residential Design Codes (as amended)

(2) The Commission -

- (a) must make a copy of each State planning policy referred to in subclause (1) available for public inspection during business hours at the offices of the Commission; and
- (b) may publish a copy of each of those State planning policies on the website of the Commission.

### 21. Modification of State planning policies

There are no modifications to a State planning policy that, under clause 20 is to be read as part of the Scheme.

### 22. Environmental conditions

There are no environmental conditions imposed under the *Environmental Protection Act 1986* that apply to this Scheme.

### 23. General development standards and requirements

There are no general development standards and requirements that apply to this Scheme.

### 24. Additional site and development requirements for areas covered by structure plan, activity centre plan or local development plans

There are no additional site and development requirements that apply to this Scheme.

### 25. Carparking requirements

- (1) Schedule 1 sets out requirements relating to carparking.
- (2) To the extent that a requirement referred to in subclause (1) is inconsistent with a requirement in an activity centre plan, a local development plan or a State or



improvement scheme policy, the requirement referred to in subclause (1) prevails.

## 26. Variations to site and development requirements

- (1) In this clause -  

**additional site and development requirements** means requirements set out in clauses 23, 24 and 25.
- (2) The Commission may approve an application for a development approval that does not comply with an additional site and development requirement.
- (3) An approval under subclause (2) may be unconditional or subject to any conditions the Commission considers appropriate.
- (4) If the Commission is of the opinion that the non-compliance with an additional site and development requirement will mean that the development is likely to adversely affect any owners or occupiers in the general locality or adjoining the site of the development the Commission must -
  - (a) consult the affected owners or occupiers by following one or more of the provisions for advertising applications for development approval under clause 85 of this Scheme; and
  - (b) have regard to any expressed views prior to making its determination to grant development approval under this clause.
- (5) The Commission may only approve an application for development approval under this clause if the Commission is satisfied that -
  - (a) approval of the proposed development would be appropriate having regard to the matters that the Commission is to have regard to in considering an application for development approval as set out in clause 88 of this Scheme; and
  - (b) the non-compliance with the additional site and development standard will not have a significant adverse effect on the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.

## Part 5 - Terms referred to in Scheme

### 27. Meaning of words and expressions used in Scheme

A word or expression that is not defined in this Scheme —

- (a) has the meaning it has in the *Planning and Development Act 2005*; or
- (b) if it is not defined in that Act — has the same meaning as it has in the R-Codes.

### Division 1 - General definitions used in Scheme

#### 28. Terms used

If a word or expression used in this Scheme is listed in this clause, its meaning is as follows -

<b>Act</b>	means the <i>Planning and Development Act 2005</i>
<b>advertisement</b>	means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, that is used wholly or partly for the purposes of advertising, announcing or directing, and includes — <ul style="list-style-type: none"> <li>(a) any hoarding or similar structure used, or adapted for use, for the display of advertisements; and</li> <li>(b) any airborne device anchored to any land or building used for the display of advertising; and</li> <li>(c) any vehicle or trailer or other similar object placed or located so as to serve the purpose of displaying advertising</li> </ul>
<b>amenity</b>	means all those factors which combine to form the character of an area and include the present and likely future amenity
<b>Building Code</b>	means the Building Code of Australia which is volumes 1 and 2, as amended from time to time, of the National Construction Code series published by, or on behalf of, the Australian Building Codes Board
<b>building envelope</b>	means the area of land within which all buildings and effluent disposal facilities on a lot must be contained.
<b>building height</b>	in relation to a building - <ul style="list-style-type: none"> <li>(a) if the building is used for residential purposes, has the meaning given in the R-Codes; or</li> <li>(b) if the building is used for purposes other than residential purposes, means the maximum vertical distance between the natural ground level and the finished roof height directly above, excluding minor projections as that term is defined in the R-Codes.</li> </ul>
<b>cabin</b>	means a dwelling forming part of a tourist development or caravan park that is - <ul style="list-style-type: none"> <li>(a) an individual unit other than a chalet; and</li> <li>(b) designed to short-term accommodate for guests.</li> </ul>

<b>chalet</b>	means a dwelling forming part of a tourist development or caravan park that is - (a) a self-contained unit that includes cooking facilities, bathroom facilities and separate living and sleeping areas; and (b) designed to provide short-term accommodation for guests.
<b>commencement day</b>	means the day this Scheme comes into effect under section 87(4) of the Act.
<b>commercial vehicle</b>	means a vehicle, whether licenced or not, that has a gross vehicle mass of greater than 4.5 tonnes including - (a) a utility, van, truck, tractor, bus or earthmoving equipment; and (b) a vehicle that is, or is designed to be an attachment to a vehicle referred to in paragraph (a).
<b>Commission</b>	means the Western Australian Planning Commission as established under the provisions of the <i>Planning and Development Act 2005</i>
<b>conservation</b>	means conservation as defined in the <i>Heritage Act 2018</i> section 4.
<b>cultural heritage significance</b>	has meaning given in the <i>Heritage Act 2018</i> section 5(1)
<b>development contribution plan</b>	means a development contribution plan, prepared in accordance with the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> Part 7, that applies to land in the Scheme area
<b>floor area</b>	has meaning given in the Building Code.
<b>frontage</b>	in relation to a building - (a) if the building is used for residential purposes, has the meaning given in the R-Codes; or (b) if the building is used for purposes other than residential purposes, means the line where a road reserve and the front of a lot meet and, if a lot abuts 2 or more road reserves, the one to which the building or proposed building faces.
<b>improvement scheme report</b>	means the improvement scheme report for this Scheme prepared under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> Part 3, as amended from time to time.
<b>incidental use</b>	means a use of premises which is consequent on, or naturally attaching, appertaining or relating to, the predominant use.
<b>local government</b>	means the Town of Port Hedland.
<b>minerals</b>	has the meaning given in the <i>Mining Act 1978</i> section 8(1).
<b>net lettable area or nla</b>	means the area of all floors within the internal finished surfaces of permanent walls but does not include the following areas - (a) stairs, toilets, cleaner's cupboards, lift shafts and motor rooms, escalators, tea rooms and plant rooms, and other service areas;

	<p>(b) lobbies between lifts facing other lifts serving the same floor;</p> <p>(c) areas set aside as public space or thoroughfares and not for the exclusive use of occupiers of the floor or building;</p> <p>(d) areas set aside for the provision of facilities or services to the floor or building where those facilities are not for the exclusive use of occupiers of the floor or building</p>
<b>non-conforming use</b>	has the meaning given in the <i>Planning and Development Act 2005</i> section 172.
<b>owner</b>	<p>in relation to land, means —</p> <p>(a) if the land is freehold land —</p> <p>(i) a person whose name is registered as a proprietor of the land; and</p> <p>(ii) the State, if registered as a proprietor of the land; and</p> <p>(iii) a person who holds an interest as purchaser under a contract to purchase an estate in fee simple in the land; and</p> <p>(iv) a person who is the holder of a freehold interest in land vested in an executor or administrator under the <i>Administration Act 1903</i> section 8;</p> <p>and</p> <p>(b) if the land is Crown land —</p> <p>(i) the State; and</p> <p>(ii) a person who holds an interest as purchaser under a contract to purchase an estate in fee simple in the land.</p>
<b>plot ratio</b>	means the ratio of the floor area of a building to an area of land within the boundaries of the lot or lots on which the building is located.
<b>precinct</b>	means a definable area where particular planning policies, guidelines or standards apply.
<b>predominant use</b>	means the primary use of premises to which all other uses carried out on the premises are incidental.
<b>premises</b>	means land, buildings or part of land or a building.
<b>R-Codes</b>	means the Residential Design Codes prepared by the Western Australian Planning Commission under section 26 of the Act, as amended from time to time.
<b>region planning scheme</b>	means a region planning scheme that applies in respect of part or all of the Scheme area.
<b>reserve</b>	means land reserved under this Scheme for a public purpose.
<b>retail</b>	means the sale or hire of goods or services to the public.
<b>scheme area</b>	means the area to which this Scheme applies.

<b>sensitive land use</b>	means land use that is intended for use either exclusively or primarily by sensitive groups within the general population including: <ul style="list-style-type: none"> <li>(a) older people (over 65 years);</li> <li>(b) people with pre-existing cardiovascular or respiratory disease;</li> <li>(c) children and adults with pre-existing respiratory conditions (asthma, bronchitis, chronic obstructive pulmonary disease); and</li> <li>(d) children.</li> </ul>
<b>short-term accommodation</b>	means temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totalling more than 3 months in any 12-month period.
<b>special control area</b>	means an area identified under this Scheme as an area subject to special controls set out in this Scheme.
<b>substantially commenced</b>	means that some substantial part of work in respect of a development approved under a planning scheme or under an interim development order has been performed.
<b>wall height</b>	in relation to a wall of a building- <ul style="list-style-type: none"> <li>(a) if the building is used for residential purposes, has the meaning given in the R-Codes, or</li> <li>(b) if the building is used for purposes other than residential purposes, means the vertical distance from natural ground level of the boundary of the property that is closest to the wall to the point where the wall meets the roof or parapet.</li> </ul>
<b>wholesale</b>	means the sale of goods or materials to be sold by others.
<b>works</b>	in relation to land, means — <ul style="list-style-type: none"> <li>(a) any demolition, erection, construction, alteration of or addition to any building or structure on the land; and</li> <li>(b) the carrying out on the land of any excavation or other works; and</li> <li>(c) in the case of a place to which a Protection Order made under the Heritage Act 2018 Part 4, Division 1 applies, any act or thing that — <ul style="list-style-type: none"> <li>(i) is likely to damage the character of that place or the external appearance of any building; or</li> <li>(ii) would constitute an irreversible alteration to the fabric of any building.</li> </ul> </li> </ul>
<b>zone</b>	means a portion of the Scheme area identified on the Scheme Map as a zone for the purpose of indicating the controls imposed by this Scheme on the use of, or the carrying out of works on, land, but does not include a reserve or special control area.

## Division 2 - Land use terms used in Scheme

### 29. Land use terms used

If this Scheme refers to a category of land use that is listed in this provision the meaning of that land use is as set out below -

<b>abattoir</b>	means premises used commercially for the slaughtering of animals for the purposes of consumption as food products.
<b>aged or dependent persons dwelling</b>	has the same meaning given to the term in the R-Codes.
<b>agriculture - extensive</b>	means premises used for the raising of stock or crops including outbuildings and earthworks, but does not include agriculture - intensive or animal husbandry - intensive.
<b>agriculture - intensive</b>	means premises used for commercial production purposes, including outbuildings and earthworks, associated with any of the following - (a) the production of grapes, vegetables, flowers, exotic or native plants, or fruit or nuts; (b) the establishment and operation of plant or fruit nurseries; (c) the development of land for irrigated fodder production or irrigated pasture (including turf farms); (d) aquaculture.
<b>amusement parlour</b>	means premises - (a) that are open to the public; and (b) that are used predominantly for amusement by means of amusement machines including computers; and (c) where there are 2 or more amusement machines.
<b>ancillary dwelling</b>	has the same meaning given to the term in the R-Codes.
<b>animal establishment</b>	means premises used for the breeding, boarding, training or caring of animals for commercial purposes but does not include animal husbandry - intensive or veterinary centre.
<b>animal husbandry - intensive</b>	means premises used for keeping, rearing or fattening of alpacas, beef and dairy cattle, goats, pigs, poultry (for either egg or meat production), rabbits (for either meat or fur production), sheep or other livestock in feedlots, sheds or rotational pens, but does not include agriculture - extensive.
<b>art gallery</b>	means premises - (a) that are open to the public; and (b) where artworks are displayed for viewing or sale;
<b>bed and breakfast</b>	means a dwelling - (a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and (b) containing not more than 2 guest bedrooms.
<b>betting agency</b>	means an office or totalisator agency established under the <i>Racing and Wagering Western Australia Act 2003</i> .

<b>brewery</b>	means premises the subject of a producer's licence authorising the production of beer, cider or spirits granted under the <i>Liquor Control Act 1988</i> .
<b>bulky goods showroom</b>	means premises - (a) used to sell by retail goods and accessories including (though not limited to) the following types that are principally used for domestic purposes - (i) automotive parts and accessories; (ii) camping, outdoor and recreation goods; (iii) electric light fittings; (iv) animal supplies including equestrian and pet goods; (v) floor and window coverings; (vi) furniture, beddings, furnishings, fabrics, manchester and home wares; (vii) party supplies; (viii) office equipment and supplies; (ix) baby's and children's goods, including play equipment and accessories; (x) sporting, cycling, leisure, fitness goods and accessories; or (b) used to sell goods and accessories by retail if- (i) a large area is required for the handling, display or storage of the goods; or (ii) vehicular access is required to the premises for the purpose of collection of purchased goods, but does not include a shop.
<b>caravan park – short-term</b>	means an area of land on which caravans, or caravans and camps, are situated for short-term accommodation.
<b>caretaker's dwelling</b>	means a dwelling on the same site as a building, operation or plant, and occupied by a supervisor of that building, operation or plant.
<b>car park</b>	means premises used primarily for parking vehicles whether open to the public or not but does not include - (a) any part of a public road used for parking or for a taxi rank; or (b) any premises in which cars are displayed for sale.
<b>child care premises</b>	means premises where- (a) an education and care service as defined in the <i>Education and Care Services National Law (Western Australia) section 5 (1)</i> , other than a family day care service as defined in that section, is provided; or (b) a child care service as defined in the <i>Child Care Services Act 2007</i> section 4 is provided.
<b>cinema/theatre</b>	means premises where the public may view a motion picture or theatrical production.
<b>civic use</b>	means premises used by a government department, an instrumentality of the State or the local government for administrative, recreational or other purposes.
<b>club premises</b>	means premises used by a legally constituted club or association or other body of persons united by a common interest.

<b>commercial vehicle parking</b>	means premises used for parking of one or 2 commercial vehicles but does not include - (a) any part of a public road used for parking or for a taxi rank; or (b) parking of commercial vehicles incidental to the predominant use of the land.
<b>community purpose</b>	means premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organisations involved in activities for community benefit.
<b>consulting rooms</b>	means premises used by no more than 2 health practitioners at the same time for the investigation or treatment of human injuries or ailments and for general outpatient care.
<b>convenience store</b>	means premises - (a) used for the retail sale of convenience goods commonly sold in supermarkets, delicatessens or newsagents; and (b) operated during hours which include, but may extend beyond, normal trading hours; and (c) the floor area of which does not exceed 300 m <sup>2</sup> net lettable area.
<b>corrective institution</b>	means premises used to hold and reform persons committed to it by a court, such as a prison or other type of detention facility.
<b>educational establishment - primary</b>	means premises used for the purposes of providing education including premises used for a school, or other educational institution, for children aged under 12 years.
<b>educational establishment - secondary</b>	means premises used for the purposes of providing education including premises used for a school, higher education institution, business college, academy or other educational institution for children aged from 12 years to 18 years.
<b>educational establishment - tertiary</b>	means premises used for the purposes of providing education including premises used for a school, higher education institution, business college, academy or other educational institution for adults aged 18 years and over.
<b>exhibition centre</b>	means premises used for the display, or display and sale, of materials of an artistic, cultural or historical nature including a museum.
<b>family day care</b>	means premises where a family day care service as defined in the <i>Education and Care Services National Law (Western Australia)</i> is provided.
<b>fast food outlet</b>	means premises, including premises with a facility for drive-through service, used for the preparation, sale and serving of food to customers in a form ready to be eaten - (a) without further preparation; and (b) primarily off the premises, but does not include a lunch bar.
<b>freeway service centre</b>	means premises that has direct access to a freeway and which provides all the following services or facilities and may provide other associated facilities or services but does not provide bulk fuel services — (a) service station facilities; (b) emergency breakdown repair for vehicles; (c) charging points for electric vehicles; (d) facilities for cyclists;



	<ul style="list-style-type: none"> <li>(e) restaurant, cafe or fast food services excluding the sale or consumption of alcohol under the Liquor Licensing Act 1988;</li> <li>(f) take-away food retailing without a drive-through facility;</li> <li>(g) public ablution facilities, including provision for disabled access and infant changing rooms;</li> <li>(h) parking for passenger and freight vehicles;</li> <li>(i) outdoor rest stop facilities such as picnic tables and shade areas; and</li> <li>(j) dump points for the disposal of black and/or grey water from recreational vehicles.</li> </ul>
<b>Fuel depot</b>	means premises used for the storage and sale in bulk of solid or liquid or gaseous fuel but does not include premises used – <ul style="list-style-type: none"> <li>(a) as a service station; or</li> <li>(b) for the sale of fuel by retail into a vehicle for use by the vehicle.</li> </ul>
<b>Funeral parlour</b>	means premises used – <ul style="list-style-type: none"> <li>(a) to prepare and store bodies for burial or cremation;</li> <li>(b) to conduct funeral services.</li> </ul>
<b>Garden centre</b>	means premises used for the propagation, rearing and sale of plants, and the storage and sale of products associated with horticulture and gardens.
<b>Guest house</b>	means a dwelling or part of a dwelling occupied by a person but containing rooms used to provide short-term accommodation for guests for hire or reward.
<b>Holiday accommodation</b>	means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot.
<b>Holiday house</b>	means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.
<b>Home business</b>	means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out a business, service or profession if the carrying out of the business, service or profession – <ul style="list-style-type: none"> <li>(a) does not involve employing more than 2 people who are not members of the occupier’s household; and</li> <li>(b) will not cause injury to or adversely affect the amenity of the neighbourhood; and</li> <li>(c) does not occupy an area greater than 50 m<sup>2</sup>; and</li> <li>(d) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; and</li> <li>(e) does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood; and</li> <li>(f) does not involve the presence, use or calling of a vehicle more than 4.5 tonnes tare weight; and</li> <li>(g) does not involve the use of an essential service that is greater than the use normally required in the zone in which the dwelling is located.</li> </ul>

<b>Home occupation</b>	<p>means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out an occupation if the carrying out of the occupation that –</p> <ul style="list-style-type: none"> <li>(a) does not involve employing a person who is not a member of the occupier’s household; and</li> <li>(b) will not cause injury to or adversely affect the amenity of the neighbourhood; and</li> <li>(c) does not occupy an area greater than 20 m<sup>2</sup>; and</li> <li>(d) does not involve the display on the premises of a sign with an area exceeding 0.2 m<sup>2</sup>; and</li> <li>(e) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the Internet; and</li> <li>(f) does not – <ul style="list-style-type: none"> <li>(i) require a greater number of parking spaces than normally required for a single dwelling; or</li> <li>(ii) result in an increase in traffic volume in the neighbourhood; and</li> </ul> </li> <li>(g) does not involve the presence, use or calling of a vehicle more than 4.5 tonnes tare weight; and</li> <li>(h) does not include provision for the fuelling, repair or maintenance of motor vehicles; and</li> <li>(i) does not involve the use of an essential service that is greater than the use normally required in the zone in which the dwelling is located.</li> </ul>
<b>Home office</b>	<p>means a dwelling used by an occupier of the dwelling to carry out a home occupation if the carrying out of the occupation –</p> <ul style="list-style-type: none"> <li>(a) is solely within the dwelling; and</li> <li>(b) does not entail clients or customers travelling to and from the dwelling; and</li> <li>(c) does not involve the display of a sign on the premises; and</li> <li>(d) does not require any change to the external appearance of the dwelling.</li> </ul>
<b>Home store</b>	<p>means a shop attached to a dwelling that –</p> <ul style="list-style-type: none"> <li>(a) has a net lettable area not exceeding 100 m<sup>2</sup>; and</li> <li>(b) is operated by a person residing in the dwelling.</li> </ul>
<b>Hospital</b>	<p>means premises used as a hospital as defined in the <i>Hospitals and Health Services Act 1927</i> section 2(1), but does not include a nursing home.</p>
<b>Hotel</b>	<p>means premises the subject of a hotel licence other than a small bar or tavern licence granted under the <i>Liquor Control Act 1988</i> including any betting agency on the premises.</p>
<b>Industry</b>	<p>means premises used for the manufacture, dismantling, processing, assembly, treating, testing, servicing, maintenance or repairing of goods, products, articles, materials or substances and includes facilities on the premises for any of the following purposes –</p> <ul style="list-style-type: none"> <li>(a) the storage of goods;</li> <li>(b) the work of administration or accounting;</li> <li>(c) the selling of goods by wholesale or retail;</li> <li>(d) the provision of amenities for employees;</li> <li>(e) incidental purposes.</li> </ul>

<b>Industry – cottage</b>	means a trade or light industry producing arts and crafts goods which does not fall within the definition of a home occupation and which — (a) does not cause injury to or adversely affect the amenity of the neighbourhood; (b) where operated in a residential zone, does not employ any person other than a member of the occupier’s household; (c) is conducted in an out-building which is compatible with the principal uses to which land in the zone in which it is located may be put; (d) does not occupy an area in excess of 50 square metres; and (e) does not display a sign exceeding 0.2 square metres in area;
<b>industry – extractive</b>	means premises, other than premises used for mining operations, that are used for the extraction of basic raw materials including by means of ripping, blasting or dredging and may include the following purposes – (a) the process of raw materials including crushing, screening, washing, blending or grading; (b) activities associated with the extraction of basic raw materials including wastewater treatment, storage, rehabilitation, loading, transportation, maintenance and administration.
<b>Industry – light</b>	means premises used for an industry where impacts on the amenity of the area in which the premises is located can be mitigated, avoided or managed.
<b>Industry – primary production</b>	means land used: (a) to carry out a primary production business as that term is defined in the <i>Income Tax Assessment Act 1997</i> (Commonwealth) section 995-1; or (b) for a workshop servicing plant or equipment used in primary production businesses.
<b>industry - rural</b>	means — (a) an industry handling, treating, processing or packing rural products; or (b) a workshop servicing plant or equipment used for rural purposes
<b>liquor store - large</b>	means premises the subject of a liquor store licence granted under the <i>Liquor Control Act 1988</i> with a net lettable area of more than 300 m <sup>2</sup> .
<b>liquor store - small</b>	means premises the subject of a liquor store licence granted under the <i>Liquor Control Act 1988</i> with a net lettable area of not more than 300 m <sup>2</sup> .
<b>lunch bar</b>	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.
<b>marina</b>	means - (a) premises used for providing mooring, fuelling, servicing, repairing, storage and other facilities for boats, including the associated sale of any boating gear or equipment; and (b) all jetties, piers, embankments, quays, moorings, offices and storerooms used in connection with the provision of those services.

<b>marina filling station</b>	means premises used for the storage and supply of liquid fuels and lubricants for marine craft.
<b>market</b>	means premises used for the display and sale of goods from stalls by independent vendors.
<b>medical centre</b>	means premises other than a hospital used by 3 or more health practitioners at the same time for the investigation or treatment of human injuries or ailments and for general outpatient care.
<b>mining operations</b>	means premises where mining operations, as that term is defined in the <i>Mining Act 1978</i> section 8 (1) is carried out.
<b>motel</b>	means premises, which may be licensed under the <i>Liquor Control Act 1988</i> - (a) used to accommodate guests in a manner similar to a hotel; and (b) with specific provision for the accommodation of guests with motor vehicles. (c)
<b>motor vehicle, boat or caravan sales</b>	means premises used to sell or hire motor vehicles, boats or caravans.
<b>motor vehicle repair</b>	means premises used for or in connection with - (a) electrical and mechanical repairs, or overhauls, to vehicles other than panel beating, spray painting or chassis reshaping of vehicles; or (b) repairs to tyres other than recapping or re-treading of tyres.
<b>motor vehicle wash</b>	means premises primarily used to wash motor vehicles.
<b>nightclub</b>	means premises the subject of a nightclub licence granted under the <i>Liquor Control Act 1988</i> .
<b>office</b>	means premises used for administration, clerical, technical, professional or similar business activities.
<b>park home park</b>	means premises used as a park home park as defined in the <i>Caravan Parks and Camping Grounds Regulations 1997</i> .
<b>place of worship</b>	means premises used for religious activities such as a chapel, church, mosque, synagogue or temple.
<b>reception centre</b>	means premises used for hosted functions on formal or ceremonial occasions.
<b>recreation - private</b>	means premises that are - (a) used for indoor or outdoor leisure, recreation or sport; and (b) not usually open to the public without charge.
<b>renewable energy facility</b>	means premises used to generate energy from a renewable energy source and includes any building or other structure used in, or in connection with, the generation of energy by a renewable resource, where energy is being produced for commercial gain. (i.e. solar farms as opposed to solar panels)

<b>repurposed dwelling</b>	means a building or structure not previously used as a single house which has been repurposed for use as a dwelling.
<b>residential aged care facility</b>	means a residential facility providing personal and/or nursing care primarily to aged or dependent persons which, as well as accommodation, includes appropriate staffing to meet the nursing and personal care needs of residents; meals and cleaning services; furnishings, furniture and equipment. This may consist of multiple components that include residential respite (short-term) care, aged or dependent persons' dwellings and a retirement village, but does not include a hospital, rehabilitation or psychiatric facility.
<b>residential building</b>	has the same meaning given to the term in the R-Codes.
<b>residential – grouped dwelling</b>	has the same meaning given to the term 'grouped dwelling' in the R-Codes.
<b>residential – multiple dwelling</b>	has the same meaning given to the term 'multiple dwelling' in the R-Codes.
<b>residential – single house</b>	has the same meaning given to the term 'single house' in the R-Codes.
<b>resource recovery centre</b>	means premises other than a waste disposal facility used for the recovery of resources from waste.
<b>restaurant/cafe</b>	means premises primarily used for the preparation, sale and serving of food and drinks for consumption on the premises by customers for whom seating is provided, including premises that are licenced under the <i>Liquor Control Act 1988</i> .
<b>restricted premises</b>	means premises used for the sale by retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of - (a) publications that are classified as restricted under the <i>Classification (Publications, Films and Computer Games) Act 1995</i> (Commonwealth); and (b) materials, compounds, preparations or articles which are used or intended to be used primarily in or in connection with any form of sexual behaviour or activity; or (c) smoking-related implements.
<b>roadhouse</b>	means premises that has direct access to a State road other than a freeway and which provides the services or facilities provided by a freeway service centre and may provide any of the following facilities or services - (a) a full range of automotive repair services; (b) wrecking, panel beating and spray-painting services; (c) transport depot facilities; (d) short-term accommodation for guests; (e) facilities for being a muster point in response to accidents, natural disasters and other emergencies and (f) dump points for the disposal of black and grey water from recreational vehicles

<b>rural home business</b>	means a dwelling or land around a dwelling used by an occupier of the dwelling to carry out a business, service or occupation if the carrying out of the business, service or occupation - (a) does not involve employing more than 2 people who are not members of the occupier's household; and (b) will not cause injury to or adversely affect the amenity of the neighbourhood; and (c) does not occupy an area greater than 200 m <sup>2</sup> ; and (d) does not involve the retail sale, display or hire of any goods unless the sale, display or hire is done only by means of the internet; and (e) does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood; and (f) does not involve the presence, use or calling of more than 3 vehicles at any one time or of a vehicle more than 30 tonnes gross weight.
<b>rural pursuit/hobby farm</b>	means any premises, other than premises used for agriculture - extensive or agriculture - intensive, that are used by an occupier of the premises to carry out any of the following activities if carrying out of the activity does not involve permanently employing a person who is not a member of the occupier's household - (a) the rearing, agistment, stabling or training of animals; or (b) the keeping of bees; or (c) the sale of produce grown solely on the premises.
<b>second hand dwelling</b>	means a dwelling that has been in a different location, and has been dismantled and transported to another location, but does not include a modular home or transportable dwelling .
<b>serviced apartment</b>	means a group of units or apartments providing - (a) self-contained short-term accommodation for guests; and (b) any associated reception or recreational facilities
<b>service station</b>	means premises other than premises used for a transport depot, panel beating, spray painting, major repairs or wrecking, that are used for - (a) the retail sale of petroleum products, motor vehicle accessories and goods of an incidental or convenience nature; or (b) the carrying out of greasing, tyre repairs and minor mechanical repairs to motor vehicles.
<b>shop</b>	means premises other than a bulky goods showroom, a liquor store large or a liquor store small used to sell goods by retail, to hire goods, or to provide services of a personal nature, including hairdressing or beauty therapy services.
<b>small bar</b>	means premises the subject of a small bar licence granted under the <i>Liquor Control Act 1988</i> .
<b>tavern</b>	means premises the subject of a tavern licence granted under the <i>Liquor Control Act 1988</i> .

<b>telecommunication infrastructure</b>	means premises used to accommodate the infrastructure used by or in connection with a telecommunications network including any line, equipment, apparatus, tower, antenna, tunnel, duct, hole, pit or other structure related to the network .
<b>tourist development</b>	means a building, or a group of buildings forming a complex, other than a bed and breakfast, a caravan park or holiday accommodation, used to provide - (a) short-term accommodation for guests; and (b) onsite facilities for the use of guests; and (c) facilities for the management of the development.
<b>trade display</b>	means premises used for the display of trade goods and equipment for the purpose of advertisement.
<b>trade supplies</b>	means premises used to sell by wholesale or retail, or to hire, assemble or manufacture any materials, tools, equipment, machinery or other goods used for any of the following purposes including goods which may be assembled or manufacture off the premises - (a) automotive repairs and servicing; (b) building including repair and maintenance; (c) industry; (d) landscape gardening; (e) provision of medical services; (f) primary production; (g) use by government departments or agencies, including local government.
<b>transport depot</b>	means premises used primarily for the parking or garaging of 3 or more commercial vehicles including - (a) any ancillary maintenance or refuelling of those vehicles; and (b) any ancillary storage of goods brought to the premises by those vehicles; and (c) the transfer of goods or persons from one vehicle to another.
<b>tree farm</b>	means land used commercially for tree production where trees are planted in blocks of more than one hectare, including land in respect of which a carbon right is registered under the <i>Carbon Rights Act 2003</i> section 5.
<b>veterinary centre</b>	means premises used to diagnose animal diseases or disorders, to surgically or medically treat animals, or for the prevention of animal diseases or disorders.
<b>warehouse/storage</b>	means premises including indoor or outdoor facilities used for - (a) the storage of goods, equipment, plant or materials; or (b) the display or the sale by wholesale of goods.
<b>waste disposal facility</b>	means premises used - (a) for the disposal of waste by landfill; or (b) the incineration of hazardous, clinical or biomedical waste.

<b>waste storage facility</b>	means premises used to collect, consolidate, temporarily store or sort waste before transfer to a waste disposal facility or a resource recovery facility on a commercial scale.
<b>winery</b>	means premises used for the production of viticultural produce and associated sale of the produce.
<b>workforce accommodation</b>	means premises, which may include modular or relocatable buildings, used - (a) primarily for the short-term accommodation of workers engaged in construction, resource, agricultural or other industries on a temporary basis; and (b) for any associated catering, sporting and recreation facilities for the occupants and authorised visitors.



## **Part 6: Planning framework**

### **Division 1 – Improvement Scheme Report**

#### **30. Improvement Scheme Report**

The Improvement Scheme report provides the explanatory text in relation to the Improvement Scheme and planning framework for the Scheme area.

### **Division 2 – Improvement Scheme policies**

#### **31. Improvement Scheme policies**

- (1) The Commission may prepare an improvement scheme policy in respect of any matter related to the planning and development of the Scheme area.
- (2) An improvement scheme policy:
  - (a) may apply generally or in respect of a particular class or classes of matters specified in the policy; and
  - (b) may apply to the whole of the Scheme area or to part or parts of the Scheme area specified in the policy.
- (3) An improvement scheme policy must be based on sound planning principles and may address either strategic or operational considerations in relation to the matters to which the policy applies.
- (4) The Commission may amend or repeal an improvement scheme policy.
- (5) In making a determination under this Scheme, the Commission must have regard to each relevant improvement scheme policy to the extent that the policy is consistent with this Scheme.

#### **32. Procedure for making an improvement scheme policy**

- (1) If the Commission resolves to prepare an improvement scheme policy, the Commission must advertise the proposed policy as follows -
  - (a) publish a notice of the proposed policy in a newspaper circulating in the Local government area giving details of —
    - (i) the subject and nature of the proposed policy; and
    - (ii) the objectives of the proposed policy; and
    - (iii) where the proposed policy may be inspected; and
    - (iv) to whom, in what form and during what period submissions in relation to the proposed policy may be made;
  - (b) give notice of the proposed policy in any other way and carry out any other consultation the Commission considers appropriate.
- (2) The period for making submissions in relation to an improvement scheme policy must not be less than a period of 21 days commencing on the day on which the notice of the policy is published under subclause (1)(a).

- (3) After the expiry of the period within which submissions may be made, the Commission must -
  - (a) review the proposed policy in the light of any submissions made.
  - (b) resolve to -
    - (i) proceed with the policy without modifications; or
    - (ii) proceed with the policy with modifications; or
    - (iii) not to proceed with the policy.
- (4) If the Commission resolves to adopt the policy, the Commission must publish notice of the policy in a newspaper circulating within the Local government area.
- (5) A scheme policy has effect on publication of a notice under subclause (4).
- (6) The Commission -
  - (a) must ensure that an up-to-date copy of each improvement scheme policy made under this Scheme is kept and made available for public inspection during business hours at the offices of the Commission; and
  - (b) may publish a copy of each of those improvement scheme policies on the website of the Commission.

### **33. Procedure for amending an improvement scheme policy**

- (1) Clause 32, with any necessary changes, applies to the amendment to an improvement scheme policy.
- (2) Despite subclause (1), the Commission may make an amendment to an improvement scheme policy without advertising the amendment if, in the opinion of the Commission, the amendment is a minor amendment.

### **34. Revocation of scheme policy**

An improvement scheme policy may be revoked -

- (a) by a subsequent improvement scheme policy that -
  - (i) is prepared in accordance with this Part; and
  - (ii) expressly revokes the improvement scheme policy;or
- (b) by a notice of revocation -
  - (i) prepared by the Commission; and
  - (ii) published in a newspaper circulating in the Local government area.

## Part 7 – Heritage protection

### 35. Terms used

In this Part –

**heritage area** means an area designated as a heritage area under clause 36;

**heritage list** means a heritage list established under the Town of Port Hedland local planning scheme;

**place** has the meaning given in the *Heritage Act 2018* section 7

Note: The purpose of this Part is to provide for the identification of places and areas of heritage value so that development in the Scheme area can, as far as possible, be consistent with the conservation of heritage values.

### 36. Designation of heritage areas

- (1) If, in the opinion of the Commission, special planning control is needed to conserve and enhance the cultural heritage significance and character of an area to which this Scheme applies, the Commission may, by resolution, designate that area as a heritage area.
  - (2) If the Commission designates an area as a heritage area the Commission must adopt for the area an improvement scheme policy that sets out the following —
    - (a) a map showing the boundaries of the heritage area;
    - (b) a statement about the heritage significance of the area;
    - (c) a record of places of heritage significance in the heritage area.
  - (3) The Commission must not designate an area as a heritage area unless the Commission —
    - (a) notifies in writing each owner of land affected by the proposed designation and provides the owner with a copy of the proposed improvement scheme policy for the heritage area; and
    - (b) advertises the proposed designation by —
      - (i) publishing a notice of the proposed designation in a newspaper circulating in the Town of Port Hedland; and
      - (ii) erecting a sign giving notice of the proposed designation in a prominent location in the area that would be affected by the designation; and
      - (iii) publishing a copy of the notice of the proposed designation on the website of the Commission;
- and
- (c) carry out any other consultation the Commission considers appropriate.
- (4) Notice of a proposed designation under subclause (3)(b) must specify —

- (a) the area that is the subject of the proposed designation; and
  - (b) where the proposed improvement scheme policy for the proposed heritage area may be inspected; and
  - (c) to whom, in what form and in what period submissions may be made.
- (5) The period for making submissions in relation to the designation of an area as a heritage area must not be less than a period of 21 days commencing on the day on which the notice of the proposed designation is published under subclause (3)(b)(i).
- (6) After the expiry of the period within which submissions may be made, the Commission must —
- (a) review the proposed designation in the light of any submissions made; and
  - (b) resolve —
    - (i) to adopt the designation without modification; or
    - (ii) to adopt the designation with modification; or
    - (iii) not to proceed with the designation.
- (7) If the Commission designates an area as a heritage area the Commission must give notice of the designation to —
- (a) the Heritage Council of Western Australia; and
  - (b) each owner of land affected by the designation.
- (8) The Commission may modify or revoke a designation of a heritage area.
- (9) Subclauses (3) to (7) apply, with any necessary changes, to the amendment to a designation of a heritage area or the revocation of a designation of a heritage area.

### **37. Heritage agreements**

- (1) The Commission may, in accordance with the *Heritage Act 2018* Part 7, 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.
- (2) The Commission may not enter into an agreement with the owner or occupier of land or a building that relates to heritage matters other than in accordance with subclause (1).

### **38. Heritage assessment**

- (1) Despite any existing assessment on record, the Commission may require a heritage assessment to be carried out prior to the approval of any development proposed in a heritage area or in respect of a place entered in the heritage list.
- (2) A heritage assessment must be in a form approved by the Heritage Council of Western Australia.

**39. Variations to improvement scheme provisions for heritage purposes**

- (1) The Commission may vary any site or development requirement specified in this Scheme to —
  - (a) facilitate the conservation of a place entered in the State Register of Heritage Places under the *Heritage Act 2018* or listed in the heritage list; or
  - (b) enhance or preserve heritage values in a heritage area.
- (2) A variation under subclause (1) may be unconditional or subject to any conditions the Commission considers appropriate.
- (3) If the Commission is of the opinion that the variation of site or development requirements is likely to affect any owners or occupiers in the general locality of the place or the heritage area the Commission must —
  - (a) consult the affected parties by following one or more of the provisions for advertising uses under clause 85; and
  - (b) have regard to any views expressed prior to making its determination to vary the site or development requirements under this clause.

**40. Heritage conservation notice**

- (1) In this clause —

***heritage conservation notice*** means a notice given under subclause (2);

***heritage place*** means a place that is on the heritage list or located in a heritage area;

***properly maintained***, in relation to a heritage place, means maintained in a way that ensures that there is no actual or imminent loss or deterioration of —

- (a) the structural integrity of the heritage place; or
  - (b) an element of the heritage place that is integral to —
    - (i) the reason set out in the heritage list for the entry of the place in the heritage list; or
    - (ii) the heritage significance of the area in which it is located, as set out in a statement in the improvement scheme policy for the area adopted in accordance with clause 36(2).
- (2) If the Commission forms the view that a heritage place is not being properly maintained the Commission may give to a person who is the owner or occupier of the heritage place a written notice requiring the person to carry out specified repairs to the heritage place by a specified time, being a time that is not less than 60 days after the day on which the notice is given.
  - (3) If a person fails to comply with a heritage conservation notice, the Commission may enter the heritage place and carry out the repairs specified in the notice.

- (4) The expenses incurred by the Commission in carrying out repairs under subclause (3) may be recovered as a debt due from the person to whom the notice was given in a court of competent jurisdiction.
- (5) The Commission may —
  - (a) vary a heritage conservation notice to extend the time for carrying out the specified repairs; or
  - (b) revoke a heritage conservation notice.
- (6) A person who is given a heritage conservation notice may apply to the State Administrative Tribunal for a review, in accordance with Part 14 of the Act, of a decision —
  - (a) to give the notice; or
  - (b) to require repairs specified in the notice to be carried out; or
  - (c) to require repairs specified in the notice to be carried out by the time specified in the notice.

## Part 8 – Structure plans

### 41. Term used: structure plan

In this Part —

**structure plan** means a plan for the coordination of future subdivision and zoning of an area of land.

### 42. When a structure plan may be prepared

A structure plan in respect of an area of land in the Scheme area may be prepared if the Commission considers that a structure plan for the area is required for the purposes of orderly and proper planning.

### 43. Preparation of structure plan

(1) A structure plan must —

- (a) be prepared in a manner and form approved by the Commission; and
- (b) include any maps, information or other material required by the Commission; and
- (c) unless the Commission otherwise agrees, set out the following information —
  - (i) the key attributes and constraints of the area covered by the plan including the natural environment, landform and the topography of the area;
  - (ii) the planning context for the area covered by the plan and the neighbourhood and region within which the area is located;
  - (iii) any major land uses, zoning or reserves proposed by the plan;
  - (iv) estimates of the future number of lots in the area covered by the plan and the extent to which the plan provides for dwellings, retail floor space or other land uses;
  - (v) the population impacts that are expected to result from the implementation of the plan;
  - (vi) the extent to which the plan provides for the coordination of key transport and other infrastructure;
  - (vii) the proposed staging of the subdivision or development covered by the plan.

(2) The Commission may prepare a structure plan in the circumstances set out in clause 42.

(3) A person may make an application to the Commission for a structure plan prepared by the person in the circumstances set out in clause 42 to be assessed and advertised if the person is —

- (a) a person who is the owner of any or all of the land in the area to which the plan relates; or
- (b) an agent of a person referred to in paragraph (a).

**44. Action by Commission on receipt of application**

- (1) On receipt of an application for a structure plan to be assessed and advertised, the Commission —
    - (a) must consider the material provided by the applicant and advise the applicant in writing —
      - (i) if the structure plan complies with clause 43(1); or
      - (ii) if further information from the applicant is required before the structure plan can be accepted for assessment and advertising;

and

  - (b) must give the applicant an estimate of the fee for dealing with the application in accordance with the *Planning and Development Regulations 2009* regulation 48.
- (2) The structure plan is to be taken to have been accepted for assessment and advertising if the Commission has given written notice to the applicant of its decision, including giving the applicant an estimate of the fee and the applicant has paid the fee.

**45. Advertising structure plan**

- (1) The Commission must, within 28 days of preparing a structure plan or accepting an application for a structure plan to be assessed and advertised —
  - (a) advertise the proposed structure plan in accordance with subclause (2); and
  - (b) seek comments in relation to the proposed structure plan from any public authority or utility service provider that the Commission considers appropriate.
- (2) The Commission must advertise the structure plan in one or more of the following ways —
  - (a) by giving notice of the proposed structure plan to owners and occupiers who, in the opinion of the Commission, are likely to be affected by the approval of the structure plan, including a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is given to the person;
  - (b) by publishing a notice of the proposed structure plan in a newspaper circulating in the Scheme area including a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is published;
  - (c) by publishing a notice of the proposed structure plan on the Commission's website including a statement that submissions may be made to the



Commission by a specified day being a day not less than 14 days from the day on which the notice is published;

- (d) by erecting a sign or signs in a conspicuous place on the land the subject of the proposed structure plan giving notice of the proposed plan for a period of not less than 14 days and not more than 28 days from the day on which the sign is erected including on each sign a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the sign is erected.
- (3) The Commission —
    - (a) must make a structure plan advertised under subclause (2) and the material accompanying it available for public inspection during business hours at the offices of the Commission; and
    - (b) may publish the structure plan and the material accompanying it on the website of the Commission.

#### **46. Consideration of submissions**

- (1) The Commission —
  - (a) must consider all submissions made to the Commission within the period specified in a notice advertising the structure plan; and
  - (b) may consider submissions made to the Commission after that time; and
  - (c) may request further information from a person who prepared the structure plan; and
  - (d) may advertise any modifications proposed to the structure plan to address issues raised in submissions.
- (2) If a Commission makes a decision under subclause (1)(d) the Commission must take any steps the Commission considers appropriate to advertise the proposed modification to the structure plan.
- (3) Modifications to a structure plan may be advertised on more than one occasion.

#### **47. Decision of Commission**

- (1) Subject to the provisions of this Part, the Commission must consider the plan and may —
    - (a) approve the structure plan; or
    - (b) require the person who prepared the structure plan to —
      - (i) modify the plan in the manner specified by the Commission; and
      - (ii) resubmit the modified plan to the Commission for approval;
- or
- (c) refuse to approve the structure plan.

- (2) Before making a decision under subclause (1), the Commission may, if the Commission considers that major modifications have been made to the structure plan since it was advertised, readvertise the structure plan in the manner specified by the Commission.
- (3) The Commission must give the local government and any person who prepared the proposed structure plan written notice of its decision to approve or to refuse to approve a structure plan.

**48. Structure plan may provide for later approval of details of subdivision**

- (1) The Commission may approve a structure plan that provides for further details of a proposed subdivision included in the plan to be submitted to, and approved by, the Commission before the subdivision is approved under Part 10 of the Act.
- (2) The Commission may only approve a structure plan referred to in subclause (1) if the Commission is satisfied that the further matters that are to be approved would not result in a substantial departure from the plan.

**49. Review**

A person who prepared a structure plan may apply to the State Administrative Tribunal for a review, in accordance with the Planning and Development Act 2005 Part 14, of a decision by the Commission not to approve the structure plan.

**50. Publication of structure plan approved by Commission**

If the Commission approves a structure plan the Commission must publish the structure plan in any manner the Commission considers appropriate.

**51. Effect of structure plan**

- (1) When considering applications for development approval or subdivision approval in an area that is covered by an approved structure plan, the Commission is to have due regard to, but is not bound by, the structure plan when deciding the application.
- (2) The Commission may approve an application for development approval or subdivision approval in an area referred to in clause 42 as being an area for which a structure plan may be prepared, but for which no structure plan has been approved by the Commission, if the Commission is satisfied that —
  - (a) the proposed development or subdivision does not conflict with the principles of orderly and proper planning; and
  - (b) the proposed development or subdivision would not prejudice the overall development potential of the area.

**52. Duration of approval**

- (1) The approval of a structure plan has effect for a period of 10 years commencing on the day on which the Commission approves the plan, or another period determined by the Commission, unless —
  - (a) the Commission earlier revokes its approval; or

- (b) an amendment to the Scheme that covers the area to which the structure plan relates takes effect in accordance with section 87 of the Act.
- (2) The Commission may extend the period of approval of a structure plan if there are no changes to the terms of the plan or the conditions attached to the approval.
- (3) The Commission may revoke its approval of a structure plan if the Commission considers that the structure plan cannot be effectively implemented because of a legislative change or a change in a State planning policy.

**53. Amendment of structure plan**

- (1) A structure plan may be amended by the Commission at the request of the local government or a person who owns land in the area covered by the plan.
- (2) The procedures for making a structure plan set out in this Part, with any necessary changes, are to be followed in relation to an amendment to a structure plan.
- (3) Despite subclause (2), the Commission may decide not to advertise an amendment to a structure plan if, in the opinion of the Commission, the amendment is of a minor nature.
- (4) An amendment to a structure plan does not extend the period of approval of the plan unless, at the time the amendment is approved, the Commission agrees to extend the period.

## Part 9 – Activity centre plans

### 54. Terms used

In this Part —

**activity centre** means an area of land identified by the Commission as an activity centre;

**activity centre plan** or **activity centre structure plan** means a plan for the coordination of the future subdivision, zoning and development of an activity centre.

### 55. When activity centre plan may be prepared

An activity centre plan in respect of an area of land in the Scheme area may be prepared if the Commission considers that an activity centre plan for the area is required for the purposes of orderly and proper planning.

### 56. Preparation of activity centre plan

(1) An activity centre plan must —

- (a) be prepared in a manner and form approved by the Commission; and
- (b) include any maps, information or other material required by the Commission; and
- (c) unless the Commission otherwise agrees, set out the following information —
  - (i) the key attributes and constraints of the area covered by the plan including the natural environment, landform and the topography of the area;
  - (ii) the planning context for the area covered by the plan and the neighbourhood and region within which the area is located;
  - (iii) any major land uses, zoning or reserves proposed by the plan;
  - (iv) estimates of the future number of lots in the area covered by the plan and the extent to which the plan provides for dwellings, retail floor space or other land uses;
  - (v) the population impacts that are expected to result from the implementation of the plan;
  - (vi) the extent to which the plan provides for the coordination of key transport and other infrastructure;
  - (vii) the proposed staging of the subdivision or development covered by the plan;
  - (viii) the standards to be applied for the buildings, other structures and works that form part of the development or subdivision to which it applies;
  - (ix) arrangements for the management of services for the development or subdivision;

- (x) the arrangements to be made for vehicles to access the area covered by the plan.
- (2) The Commission may prepare an activity centre plan in the circumstances set out in clause 55.
- (3) A person may make an application to the Commission for an activity centre plan prepared by the person in the circumstances set out in clause 55 to be assessed and advertised if the person is —
  - (a) a person who is the owner of any or all of the land in the area to which the plan relates; or
  - (b) an agent of a person referred to in paragraph (a).

**57. Action by Commission on receipt of application**

- (1) On receipt of an application for an activity centre plan to be assessed and advertised, the Commission —
  - (a) must consider the material provided by the applicant and advise the applicant in writing —
    - (i) if the activity plan complies with clause 56(1); or
    - (ii) if further information from the applicant is required before the activity centre plan can be accepted for assessment and advertising;and
  - (b) must give the applicant an estimate of the fee for dealing with the application in accordance with the *Planning and Development Regulations 2009* regulation 48.
- (2) The activity centre plan is to be taken to have been accepted for assessment and advertising if the Commission has given written notice to the applicant of its decision, including giving the applicant an estimate of the fee and the applicant has paid the fee.

**58. Advertising activity centre plan**

- (1) The Commission must, within 28 days of preparing an activity centre plan or accepting an application for an activity centre plan to be assessed and advertised —
  - (a) advertise the proposed activity centre plan in accordance with subclause (2); and
  - (b) seek comments in relation to the proposed activity centre plan from any public authority or utility service provider that the Commission considers appropriate.
- (2) The Commission must advertise the activity centre plan in one or more of the following ways —

- (a) by giving notice of the proposed activity centre plan to owners and occupiers who, in the opinion of the Commission, are likely to be affected by the approval of the activity centre plan, including a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is given to the person;
  - (b) by publishing a notice of the proposed activity centre plan in a newspaper circulating in the Scheme area including a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is published;
  - (c) by publishing a notice of the proposed activity centre plan by electronic means in a form approved by the Commission including a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is published;
  - (d) by erecting a sign or signs in a conspicuous place on the land the subject of the proposed activity centre plan giving notice of the proposed plan for a period of not less than 14 days from the day on which the sign is erected including on each sign a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the sign is erected.
- (3) The Commission —
- (a) must make an activity centre plan advertised under subclause (2) and the material accompanying it available for public inspection during business hours at the offices of the Commission; and
  - (b) may publish the activity centre plan and the material accompanying it on the website of the Commission.

**59. Consideration of submissions**

- (1) The Commission —
- (a) must consider all submissions made to the Commission within the period specified in a notice advertising a proposed activity centre plan; and
  - (b) may consider submissions made to the Commission after that time; and
  - (c) may request further information from a person who prepared the activity centre plan; and
  - (d) may advertise any modifications proposed to the activity centre plan to address issues raised in submissions.
- (2) If the Commission makes a decision under subclause (1)(d) the Commission must take any steps the Commission considers appropriate to advertise the proposed modification to the activity centre plan.
- (3) Modifications to an activity centre plan may be advertised on more than one occasion.

## **60. Decision of Commission**

- (1) Subject to the provisions of this Part, the Commission must consider a proposed activity centre plan and may —
  - (a) approve the activity centre plan; or
  - (b) require the person who prepared the activity centre plan to —
    - (i) modify the plan in the manner specified by the Commission; and
    - (ii) resubmit the modified plan to the Commission for approval;or
  - (c) refuse to approve the activity centre plan.
- (2) Before making a decision under subclause (1), the Commission may, if the Commission considers that major modifications have been made to the activity centre plan since it was advertised, readvertise the activity centre plan.
- (3) The Commission must give the local government and any person who prepared the proposed activity centre plan written notice of its decision to approve or to refuse to approve an activity centre plan.

## **61. Activity centre plan may provide for later approval of details of subdivision or development**

- (1) The Commission may approve an activity centre plan that provides for —
  - (a) further details of a subdivision included in the plan to be submitted to, and approved by, the Commission before the subdivision is approved under Part 10 of the Act; or
  - (b) further details of development included in the plan to be submitted to, and approved by, the Commission before the development commences.
- (2) The Commission may only approve an activity centre plan referred to in subclause (1) if the Commission is satisfied that the further matters that are to be approved would not result in a substantial departure from the plan.

## **62. Review**

A person who prepared an activity centre plan may apply to the State Administrative Tribunal for a review, in accordance with the *Planning and Development Act 2005* Part 14, of a decision by the Commission not to approve the activity centre plan.

## **63. Publication of activity centre plan approved by Commission**

If the Commission approves an activity centre plan the Commission must publish the activity centre plan in any manner the Commission considers appropriate.

## **64. Effect of activity centre plan**

- (1) When considering applications for development approval or subdivision approval in an area that is covered by an activity centre plan that has been approved, the Commission is to have due regard to, but is not bound by, the activity centre plan when deciding the application.

- (2) The Commission may approve an application for development approval or subdivision approval in an area referred to in clause 55 as being an area for which an activity centre plan may be prepared, but for which no activity centre plan has been approved by the Commission, if the Commission is satisfied that —
  - (a) the proposed development or subdivision does not conflict with the principles of orderly and proper planning; and
  - (b) the proposed development or subdivision would not prejudice the overall development potential of the area.

**65. Duration of approval**

- (1) The approval of an activity centre plan has effect for a period of 10 years commencing on the day on which the Commission approves the plan, or another period determined by the Commission, unless —
  - (a) the Commission earlier revokes its approval; or
  - (b) an amendment to the Scheme that covers the area to which the activity centre plan relates takes effect in accordance with section 87 of the Act.
- (2) The Commission may extend the period of approval of an activity centre plan if there are no changes to the terms of the plan or the conditions attached to the approval.
- (3) The Commission may revoke its approval of an activity centre plan if the Commission considers that the activity centre plan cannot be effectively implemented because of a legislative change or a change in a State planning policy.

**66. Amendment of activity centre plan**

- (1) An activity centre plan may be amended by the Commission at the request of the local government or a person who owns land in the area covered by the plan.
- (2) The procedures for making an activity centre plan set out in this Part, with any necessary changes, are to be followed in relation to an amendment to an activity centre plan.
- (3) Despite subclause (2), the Commission may decide not to advertise an amendment to an activity centre plan if, in the opinion of the Commission, the amendment is of a minor nature.
- (4) An amendment to an activity centre plan does not extend the period of approval of the plan unless, at the time the amendment is approved, the Commission agrees to extend the period.



## Part 10 — Local development plans

### 67. Term used: local development plan

In this Part —

**local development plan** means a plan setting out specific and detailed guidance for a future development including one or more of the following —

- (a) site and development standards that are to apply to the development;
- (b) specifying exemptions from the requirement to obtain development approval for development in the area to which the plan relates.

### 68. When local development plan may be prepared

A local development plan in respect of an area of land in the Scheme area may be prepared if —

- (a) the Commission has identified the preparation of a local development plan as a condition of approval of a plan of subdivision of the area; or
- (b) a structure plan requires a local development plan to be prepared for the area; or
- (c) an activity centre plan requires a local development plan to be prepared for the area; or
- (d) the Commission considers that a local development plan is required for the purposes of orderly and proper planning.

### 69. Preparation of local development plan

- (1) A local development plan must —
  - (a) be prepared in a manner and form approved by the Commission; and
  - (b) include any maps or other material considered by the Commission to be necessary; and
  - (c) set out the following information —
    - (i) the standards to be applied for the buildings, other structures and works that form part of the development to which it applies;
    - (ii) details of the arrangements to be made for vehicles to access the area covered by the plan.
- (2) The Commission may prepare a local development plan in the circumstances set out in clause 68.
- (3) A person may make an application to the Commission for a local development plan prepared by the person in the circumstances set out in clause 68 to be assessed and advertised if the person is —
  - (a) a person who is the owner of any or all of the land in the area to which the plan relates; or
  - (b) an agent of a person referred to in paragraph (a).

## **70. Action by Commission on receipt of application**

- (1) On receipt of an application for a local development plan to be assessed and advertised, the Commission —
  - (a) must consider the material provided by the applicant and advise the applicant in writing —
    - (i) if the local development plan complies with clause 69(1); or
    - (ii) if further information from the applicant is required before the local development plan can be accepted for assessment and advertising;

and

- (b) must give the applicant an estimate of the fee for dealing with the application in accordance with the *Planning and Development Regulations 2009* regulation 48.
- (2) The local development plan is to be taken to have been accepted for assessment and advertising if the Commission has given written notice to the applicant of its decision, including giving the applicant an estimate of the fee and the applicant has paid the fee.

## **71. Advertising of local development plan**

- (1) The Commission must, within 28 days of preparing a local development plan or accepting an application for a local development plan to be assessed and advertised —
  - (a) advertise the proposed local development plan in accordance with subclause (2); and
  - (b) seek comments in relation to the proposed local development plan from any public authority or utility service that the Commission considers appropriate.
- (2) The Commission must advertise the local development plan in one or more of the following ways —
  - (a) by giving notice of the proposed plan to owners and occupiers who, in the opinion of the Commission, are likely to be affected by the approval of the plan, including a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is given to the person;
  - (b) by publishing a notice of the proposed plan in a newspaper circulating in the Scheme area including a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is published;
  - (c) by publishing a notice of the proposed plan by electronic means in a form approved by the Commission including a statement that submissions may

be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is published;

- (d) by erection of a sign or signs in a conspicuous place on the land the subject of the proposed plan giving notice of the proposed plan for a period of not less than 14 days from the day on which the sign is erected including on each sign a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the sign is erected.
- (3) Despite subclause (1) the Commission may decide not to advertise a local development plan if the Commission is satisfied that the plan is not likely to adversely affect any owners or occupiers within the area covered by the plan or an adjoining area.
- (4) The Commission —
- (a) must make a local development plan advertised under subclause (1) and the material accompanying it available for public inspection during business hours at the offices of the Commission; and
  - (b) may publish the local development plan and the material accompanying it on the website of the Commission.

## **72. Consideration of submissions**

The Commission —

- (a) must consider all submissions in relation to a local development plan made to the Commission within the period specified in a notice advertising a proposed local development plan; and
- (b) may consider submissions in relation to a local development plan made to the Commission after that time; and
- (c) is to have due regard to the matters set out in clause 88 to the extent that, in the opinion of the Commission those matters are relevant to the development to which the plan relates.

## **73. Decision of Commission**

- (1) Following consideration of a proposed local development plan, including any amendments made to the plan to address matters raised in submissions, the Commission must —
- (a) approve the local development plan; or
  - (b) require the person who prepared the local development plan to —
    - (i) modify the plan in the manner specified by the Commission; and
    - (ii) resubmit the modified plan to the Commission for approval;
- or
- (c) refuse to approve the plan.

- (3) The Commission must give the local government and any person who prepared the local development plan written notice of its decision to approve or to refuse to approve a local development plan.

**74. Local development plan may provide for later approval of details of development**

- (1) The Commission may approve a local development plan that provides for further details of any development included in the plan to be submitted to, and approved by, the Commission before the development commences.
- (2) The Commission may only approve a local development plan referred to in subclause (1) if the Commission is satisfied that the further matters that are to be approved would not result in a substantial departure from the plan.

**75. Review**

A person who prepared a local development plan may apply to the State Administrative Tribunal for a review, in accordance with the *Planning and Development Act 2005* Part 14, of a decision by the Commission not to approve the local development plan.

**76. Publication of local development plan approved by Commission**

If the Commission approves a local development plan the Commission must publish the local development plan on the website of the Commission.

**77. Effect of local development plan**

- (1) When considering applications for development approval in an area that is covered by an approved local development plan, the Commission must have due regard to, but is not bound by, the local development plan when deciding the application.
- (2) The Commission may approve an application for development approval in an area referred to in clause 68 as being an area for which a local development plan may be prepared, but for which no local development plan has been approved by the Commission, if the Commission is satisfied that —
  - (a) the proposed development does not conflict with the principles of orderly and proper planning; and
  - (b) the proposed development would not prejudice the overall development potential of the area.

**78. Duration of approval**

- (1) The approval of a local development plan has effect for a period of 10 years commencing on the day on which the Commission approves the plan, or another period determined by the Commission, unless the Commission earlier revokes its approval.
- (2) The Commission may extend the period of approval of a local development plan if there are no changes to the terms of the plan or the conditions attached to the approval.

**79. Revocation of local development plan**

The Commission must not revoke approval of a local development plan unless this Scheme is amended so that the development to which the plan relates is a non-conforming use.

**80. Amendment of local development plan**

- (1) A local development plan may be amended by the Commission.
- (2) A person who owns land in the area covered by a local development plan may request the Commission to amend the plan.
- (3) The procedures for making a local development plan set out in this Part, with any necessary changes, are to be followed in relation to an amendment to a local development plan.
- (4) Despite subclause (3), the Commission may decide not to advertise an amendment to a local development plan if, in the opinion of the Commission, the amendment is of a minor nature.
- (5) An amendment to a local development plan does not extend the period of approval of the plan unless, at the time the amendment is approved, the Commission agrees to extend the period.

## Part 11 — Requirement for development approval

### 81. Requirement for development approval

A person must not commence or carry out any works on, or use, land in the Scheme area unless —

- (a) the person has obtained the development approval of the Commission under Part 13; or
- (b) the development is of a type referred to in clause 82.

### 82. Development for which development approval not required

- (1) Development approval of the Commission is not required for the following works —
  - (a) the carrying out of internal building work which does not materially affect the external appearance of the building unless the development is located in a place that is —
    - (i) entered in the Register of Heritage Places under the *Heritage Act 2018*; or
    - (ii) the subject of an order under the *Heritage Act 2018* Part 4; or
    - (iii) included on a heritage list prepared in accordance with this Scheme and identified on that list as having an interior with cultural heritage significance; or
    - (iv) the subject of a heritage agreement entered into under the *Heritage Act 2018* Part 7;
  - (b) the demolition of a single house, ancillary dwelling, outbuilding, external fixture, boundary wall or fence, patio, pergola, veranda, garage, carport or swimming pool except where the single house or other structure is —
    - (i) located in a place that is entered in the Register of Heritage Places under the *Heritage Act 2018*; or
    - (ii) the subject of an order under the *Heritage Act 2018* Part 4; or
    - (iii) included on a heritage list prepared in accordance with this Scheme; or
    - (iv) located within an area designated under the Scheme as a heritage area; or
    - (v) the subject of a heritage agreement entered into under the *Heritage Act 2018* Part 7;
  - (c) temporary works which are in existence for less than 48 hours, or a longer period agreed by the Commission, in any 12 month period;
  - (d) the temporary erection or installation of an advertisement if —
    - (i) the advertisement is erected or installed in connection with an election, referendum or other poll conducted under the

*Commonwealth Electoral Act 1918* (Commonwealth), the *Electoral Act 1907* or the *Local Government Act 1995*; and

- (ii) the primary purpose of the advertisement is for political communication in relation to the election, referendum or poll; and
  - (iii) the advertisement is not erected or installed until the election, referendum or other poll is called and is removed no later than 48 hours after the election, referendum or other poll is conducted;
- (e) the erection or installation of a sign of a class specified in an improvement scheme policy or local development plan that applies in respect of the sign unless the sign is to be erected or installed —
- (i) on a place included on a heritage list prepared in accordance with this Scheme; or
  - (ii) on land located within an area designated under this Scheme as a heritage area;
- (f) the carrying out of any other works specified in an improvement scheme policy or local development plan that applies to the development as works that do not require development approval;
- (g) the carrying out of works of a type identified elsewhere in this Scheme as works that do not require development approval;
- (h) Public works undertaken by the Crown, or the Governor, or the Government of the State, or the Local government, except where the public works is for a category of land use not permitted by this Scheme; and
- (i) any other development specified in writing by the Commission;
- (2) Development approval of the Commission is not required for the following uses —
- (a) development that is a use identified in this Scheme as a use that is permitted in the zone in which the development is located and —
    - (i) the development has no works component; or
    - (ii) development approval is not required for the works component of the development;
  - (b) temporary use which is in existence for less than 48 hours, or a longer period agreed by the Commission, in any 12 month period;
  - (c) any other use specified in an improvement scheme policy or local development plan that applies to the development as a use that does not require development approval;
  - (d) use of a type identified elsewhere in this Scheme as use that does not require development approval;
  - (e) any other development specified in writing by the Commission.

- (3) Despite subclause (1) development approval may be required for certain works carried out —
  - (a) in a special control area; or
  - (b) on land designated by an order made under the *Fire and Emergency Services Act 1998* section 18P as a bush fire prone area.



## Part 12 — Applications for development approval

### 83. Form of application

- (1) An application for development approval must be —
  - (a) made in the form of the “Application for development approval” set out in Part 16 of this Scheme; and
  - (b) signed by the owner of the land on which the proposed development is to be located; and
  - (c) accompanied by any fee for an application of that type set out in the *Planning and Development Regulations 2009*; and
  - (d) accompanied by the plans and information specified in clause 84.
- (2) For the purposes of subclause (1)(b), a person or body may sign an application for development approval as the owner of freehold land if the person or body is one of the following —
  - (a) a person who is referred to in the definition of owner in respect of freehold land in subclause 1;
  - (b) a strata company that
    - (i) is authorised to make an application for development approval in respect of the land under scheme by-laws registered under the Strata Titles Act 1985; and
    - (ii) if the land is held under a leasehold scheme, has the written consent of the owner of the leasehold scheme to make the application;
  - (c) a person who is authorised under another written law to make an application for development approval in respect of the land;
  - (d) an agent of a person referred to in paragraph (a).

Note: The *Planning and Development Act 2005* section 267A makes provision for the signing of documents by the owner of Crown land.

- (3) An application for development approval for the erection, placement or display of an advertisement must be accompanied by sufficient information to determine the application in the form of the “Additional information for development approval for advertisements” set out in Part 16 of this Scheme.

Note: The *Interpretation Act 1984* section 74 provides for circumstances in which deviations from a prescribed form do not invalidate the form used.

### 84. Accompanying material

- (1) An application for development approval must be accompanied by —
  - (a) a plan or plans in a form approved by the Commission showing the following —
    - (i) the location of the site including street names, lot numbers, north point and the dimensions of the site;

- (ii) the existing and proposed ground levels over the whole of the land the subject of the application;
- (iii) the location, height and type of all existing structures and environmental features, including watercourses, wetlands and native vegetation on the site;
- (iv) the structures and environmental features that are proposed to be removed;
- (v) the existing and proposed use of the site, including proposed hours of operation, and buildings and structures to be erected on the site;
- (vi) the existing and proposed means of access for pedestrians and vehicles to and from the site;
- (vii) the location, number, dimensions and layout of all car parking spaces intended to be provided;
- (viii) the location and dimensions of any area proposed to be provided for the loading and unloading of vehicles carrying goods or commodities to and from the site and the means of access to and from those areas;
- (ix) the location, dimensions and design of any open storage or trade display area and particulars of the manner in which it is proposed to develop the open storage or trade display area;
- (x) the nature and extent of any open space and landscaping proposed for the site;

and

- (b) plans, elevations and sections of any building proposed to be erected or altered and of any building that is intended to be retained; and
  - (c) a report on any specialist studies in respect of the development that the Commission requires the applicant to undertake such as site surveys or traffic, heritage, environmental, engineering or urban design studies; and
  - (d) any other plan or information that the Commission reasonably requires.
- (2) The Commission may waive or vary a requirement set out in subclause (1).
- (3) Where an application relates to a place entered on a heritage list prepared in accordance with this Scheme or within an area designated under this Scheme as a heritage area, the Commission may require the application to be accompanied by one or more of the following —
- (a) street elevations drawn as one continuous elevation 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;

- (b) a detailed schedule of all finishes, including materials and colours of the proposed development;
- (c) a description of the finishes of the existing developments on the subject lot and on each lot immediately adjoining the subject lot.

**85. Advertising applications**

- (1) An application for development approval must be advertised under this clause if the proposed development —
  - (a) relates to the extension of a non-conforming use; or
  - (b) relates to a use if —
    - (i) the use is not specifically referred to in the zoning table for this Scheme in respect of the zone in which the development is located; and
    - (ii) the Commission determines that the use may be consistent with the objective of that zone and that notice of the application should be given;or
  - (c) does not comply with a requirement of this Scheme; or
  - (d) is a development for which the Commission requires a heritage assessment to be carried out under clause 38(1); or
  - (e) is of a type that this Scheme requires to be advertised.
- (2) The Commission may waive a requirement for an application to be advertised in the circumstances set out in subclause (1)(c) if the Commission is satisfied that the departure from the requirements of this Scheme is of a minor nature.
- (3) The Commission may advertise, or require the applicant to advertise, an application for development approval in one or more of the following ways —
  - (a) by giving notice of the proposed use or development to owners and occupiers of properties in the vicinity of the development who, in the opinion of the Commission, are likely to be affected by the granting of development approval, including a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is given to the person;
  - (b) by publishing a notice of the proposed use or development in a newspaper circulating in the Scheme area including a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is published;
  - (c) by publishing a notice of the proposed use or development by electronic means in a form approved by the Commission including a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the notice is published;

- (d) by erecting a sign or signs in a conspicuous place on the land the subject of the application giving notice of the proposed use or development for a period of not less than 14 days from the day on which the sign is erected including on each sign a statement that submissions may be made to the Commission by a specified day being a day not less than 14 days from the day on which the sign is erected.
- (4) Notice referred to in subclause (3) may be in the form of the “Notice of public advertisement of planning proposal” set out in Part 16 of this Scheme.
- (5) If an application for development approval is advertised under this clause, the Commission —
  - (a) must make the application and the material accompanying it available for public inspection during business hours at the offices of the Commission; and
  - (b) may publish the application and the material accompanying it on the website of the Commission.

#### **86. Subsequent approval of development**

The procedures relating to applications for development approval set out in Part 11, Part 13 and this Part apply, with any modifications necessary, to an application for development approval for development already commenced or carried out.

Note: The Planning and Development Act 2005 section 164 sets out the effect of approval for development already commenced or carried out.

## **Part 13 — Procedure for dealing with applications for development approval**

### **87. Consultation with other authorities**

- (1) When, in the opinion of the Commission, an application for development approval may affect any other statutory, public or planning authority, the Commission is to provide a copy of the application to the authority for objections and recommendations.
- (2) If an application for development approval relates to proposed development on land that is reserved under this Scheme for a public purpose and vested in a public authority, the Commission must provide a copy of the application to that authority for objections and recommendations before making a decision on the application.
- (3) A statutory, public or planning authority receiving a copy of an application may, within 30 days of receiving the application or within such longer period as the Commission allows, provide to the Commission a memorandum in writing containing any objections to, or recommendations in respect of the whole or part of the proposed development.
- (4) If a statutory, public or planning authority does not provide a memorandum within the time allowed under subclause (3), the Commission may determine that the authority is to be taken to have no objections or recommendations to make.

### **88. Matters to be considered by the Commission**

In considering an application for development approval the Commission is to have due regard to the following matters to the extent that, in the opinion of the Commission, those matters are relevant to the development the subject of the application —

- (a) the aims and provisions of this Scheme;
- (b) the requirements of orderly and proper planning including any proposed amendment to this Scheme that has been advertised under the *Planning and Development (Local Planning Schemes) Regulations 2015* or any other proposed planning instrument that the Commission is seriously considering adopting or approving;
- (c) any approved State planning policy;
- (d) any environmental protection policy approved under the *Environmental Protection Act 1986* section 31(d);
- (e) any policy of the Commission;
- (f) any policy of the State;
- (g) any improvement scheme policy for the Scheme area;
- (h) any structure plan, activity centre plan or local development plan that relates to the development;

- (i) any report of the review of this Scheme that has been published under the *Planning and Development (Local Planning Schemes) Regulations 2015*;
- (j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve;
- (k) the conservation of any place that is of cultural significance;
- (l) the effect of the proposal on the cultural heritage significance of the area in which the development is located;
- (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;
- (n) the amenity of the locality including the following —
  - (i) environmental impacts of the development;
  - (ii) the character of the locality;
  - (iii) social impacts of the development;
- (o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource;
- (p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;
- (q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;
- (r) the suitability of the land for the development taking into account the possible risk to human health or safety;
- (s) the adequacy of —
  - (i) the proposed means of access to and egress from the site; and
  - (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;
- (t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;
- (u) the availability and adequacy for the development of the following —
  - (i) public transport services;
  - (ii) public utility services;

- (iii) storage, management and collection of waste;
- (iv) access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);
- (v) access by older people and people with disability;
- (v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses;
- (w) the history of the site where the development is to be located;
- (x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;
- (y) any submissions received on the application;
- (za) the comments or submissions received from any authority consulted under clause 87;
- (zb) any other planning consideration the Commission considers appropriate.

**89. Determination of applications**

- (1) The Commission must not determine an application for development approval until the later of —
  - (a) if the application is advertised under clause 85 — the end of each period for making submissions to the Commission specified in a notice referred to in clause 85(3); and
  - (b) if a copy of the application has been provided to a statutory, public or planning authority under clause 87 — the end of each period for providing a memorandum to the Commission referred to in clause 87(3).
- (2) The Commission may determine an application for development approval by —
  - (a) granting development approval without conditions; or
  - (b) granting development approval with conditions; or
  - (c) refusing to grant development approval.

**90. Form and date of determination**

- (1) As soon as practicable after determining an application for development approval, the Commission must give the applicant written notice of the determination in the form of the “Notice of determination on application for development approval” set out in Part 16 of this Scheme.
- (2) The determination has effect on the day on which the notice of determination is given to the applicant.

**91. Commencement of development under development approval**

If development approval is granted under clause 89 —

- (a) the development must be substantially commenced —

- (i) if no period is specified in the approval — within the period of 2 years commencing on the date on which the determination is made; or
- (ii) if a period is specified in the approval — within that period; or
- (iii) in either case — within a longer period approved by the Commission on an application made under clause 97(1)(a);

and

- (b) the approval lapses if the development has not substantially commenced within the period determined under paragraph (a).

## **92. Temporary development approval**

The Commission may impose conditions limiting the period of time for which development approval is granted.

Note:

A temporary development approval is where the Commission grants approval for a limited period. It does not have any effect on the period within which the development must commence.

## **93. Scope of development approval**

Development approval may be granted —

- (a) for the development for which the approval is sought; or
- (b) for the development for which the approval is sought, except for a part or aspect of that development specified in the approval; or
- (c) for a part or aspect of the development for which approval is sought that is specified in the approval.

## **94. Approval subject to later approval of details**

- (1) The Commission may grant development approval subject to a condition that further details of any works or use specified in the condition must be submitted to, and approved by, the Commission before the developer commences the development.
- (2) The Commission may only impose a condition referred to in subclause (1) if the Commission is satisfied that the further matters that are to be approved would not substantially change the development approved.

## **95. Time for deciding application for development approval**

- (1) The Commission must determine an application for development approval —
  - (a) if the application is advertised under clause 85 or a copy of the application is provided to a statutory, public or planning authority under clause 87 — within 90 days of receipt of the application; or
  - (b) otherwise — within 60 days of the receipt of the application and the material that is required to accompany the application referred to in clause 84; or



- (c) in either case — within a longer time agreed in writing between the applicant and the Commission.
- (2) If the Commission has not made a determination in the time referred to in subclause (1) the Commission is to be taken to have refused to grant the development approval.
- (3) Despite subclause (2), the Commission may determine whether or not to grant the development approval after the period applicable under subclause (1) has expired and the validity of the determination is not affected by the expiry.
- (4) The Commission must give the applicant written notice of its decision to grant or refuse to grant development approval.

**96. Review of decisions**

- (1) In this clause —

***affected person***, in relation to a reviewable determination, means —

- (a) the applicant for development approval; or
- (b) the owner of land in respect of which an application for development approval is made;

***reviewable determination*** means a determination by the Commission to —

- (a) refuse an application for development approval; or
- (b) to grant development approval subject to conditions; or
- (c) to refuse to amend or cancel a development approval on an application made under clause 97.
- (2) An affected person may apply to the State Administrative Tribunal for a review of a reviewable determination in accordance with the *Planning and Development Act 2005* Part 14.

**97. Amending or cancelling development approval**

- (1) An owner of land in respect of which development approval has been granted by the Commission may make an application to the Commission requesting the Commission to do any or all of the following —
  - (a) to amend the approval so as to extend the period within which any development approved must be substantially commenced;
  - (b) to amend or delete any condition to which the approval is subject;
  - (c) to amend an aspect of the development approved which, if amended, would not substantially change the development approved;
  - (d) to cancel the approval.
- (2) An application under subclause (1) —

- (a) is to be made in accordance with the requirements in Part 12 and dealt with under this Part as if it were an application for development approval; and
  - (b) may be made during or after the period within which the development approved must be substantially commenced.
- (3) Despite subclause (2), the Commission may waive or vary a requirement in Part 12 or this Part in respect of an application if the Commission is satisfied that the application relates to a minor amendment to the development approval.
- (4) The Commission may determine an application made under subclause (1) by —
  - (a) approving the application without conditions; or
  - (b) approving the application with conditions; or
  - (c) refusing the application.

## Part 14 — Bushfire risk management

### 98. Terms used

In this Part, unless the contrary intention appears —

**AS 3959** means Australian Standard AS 3959 — Construction of buildings in bushfire-prone areas, as adopted from time to time as a referenced document for the purposes of the Building Code;

**BAL contour map**, in relation to a development site, means a scale map of an area that includes the development site —

- (a) prepared in accordance with State planning policy 3.7: Planning in Bushfire Prone Areas as part of a plan of subdivision that has been approved under Part 10 of the Act for the area; and
- (b) that shows the indicative bushfire attack levels (BAL) for the area;

**bushfire attack level assessment** means an assessment prepared in a manner and form set out in AS 3959 to determine a bushfire attack level (BAL) as set out in AS 3959;

**construction** of a building includes the erection, assembly or placement of a building but does not include the renovation, alteration, extension, improvement or repair of a building;

**development approval** means development approval of the Commission obtained under Part 12;

**development site** means that part of a lot on which a building that is the subject of development stands or is to be constructed;

**habitable building** means a permanent or temporary structure on land that —

- (a) is fully or partially enclosed; and
- (b) has at least one wall of solid material and a roof of solid material; and
- (c) is used for a purpose that involves the use of the interior of the structure by people for living, working, studying or being entertained;

**specified building** means a structure of a kind specified in this Scheme as a kind of structure to which this Part applies in addition to its application to habitable buildings.

### 99. Application of Part to development

(1) This Part does not apply to development unless the development is —

- (a) the construction or use, or construction and use, of a single house or ancillary dwelling on a lot or lots with a total area of 1 100 m<sup>2</sup> or more; or
- (b) the construction or use, or construction and use, of —
  - (i) a habitable building other than a single house or ancillary dwelling; or
  - (ii) a specified building.

- (2) The requirements in this Part are in addition to any provisions relating to development in a bushfire prone area that apply in a special control area.

**100. Determining whether development site is in a bushfire prone area**

For the purposes of this Part, a development site is subject, or likely to be subject, to bushfires and is referred to as being in a bushfire prone area if the development site is on land designated by an order made under the Fire and Emergency Services Act 1998 section 18P as a bush fire prone area.

**101. Proposed development in a bushfire prone area**

- (1) Unless subclause (2) applies, before commencing any development on a development site a person (the developer) must cause to be prepared a bushfire attack level assessment for the development site if the development site —
  - (a) is in a bushfire prone area; and
  - (b) has been in a bushfire prone area for a period of at least 4 months.
- (2) A developer is not required under subclause (1) to cause to be prepared a bushfire attack level assessment for a development site if —
  - (a) a BAL contour map has been prepared in relation to the development site; or
  - (b) because of the terrain of the development site it is not possible to calculate the bushfire attack level of the development site.
- (3) The developer must have development approval to commence any development on the development site if —
  - (a) the bushfire attack level assessment prepared under subclause (1) calculates the bushfire attack level of the development site as BAL - 40 or BAL - Flame Zone; or
  - (b) a bushfire attack level assessment has not been prepared under subclause (1) but a BAL contour map prepared in relation to the development site indicates that the bushfire attack level of the development site is BAL - 40 or BAL - Flame Zone; or
  - (c) because of the terrain of the development site it is not possible to calculate the bushfire attack level of the development site.
- (4) Subclause (3) applies —
  - (a) in addition to any requirement in this Scheme for development approval to be obtained; and
  - (b) despite any exemption in this Scheme from the requirement to obtain development approval.

**102. Matters to be considered for development approval**

- (1) In considering an application for development approval for development to which this Part applies, the Commission is to have regard to the bushfire resistant construction requirements of the Building Code.
- (2) The matters referred to in subclause (1) are in addition to any other matters that the Commission is to have regard to in considering the application in accordance with this Scheme.

**103. Transitional provisions for sites in new bushfire prone areas**

- (1) In this clause, each of these terms has the meaning given in the Building Act 2011 section 3 —

***building permit***

***building work***

- (2) In this clause —

***application*** means an application under the Building Act 2011 for a building permit;

***transitional permit*** means a building permit granted in respect of an application to do building work on a development site if —

- (a) the site was not in a bushfire prone area when the application was made; or
  - (b) the site had been in a bushfire prone area for a period of less than 4 months when the application was made.
- (3) Clause 101 does not apply to the commencement of development to which a transitional permit applies.

## Part 15 — Enforcement and administration

### Division 1 — Powers of Commission

#### 104. Powers of Commission

- (1) For the purposes of implementing this Scheme the Commission may —
  - (a) enter into an agreement in respect of a matter relating to this Scheme with any owner, occupier or other person having an interest in land affected by this Scheme; and
  - (b) deal with or dispose of any land in the Scheme area which it has acquired in accordance with the *Planning and Development Act 2005* Part 11 Division 4.
- (2) The Commission may only deal with or dispose of land acquired by the Commission for the purpose of a local reserve for a use of the land that is compatible with the purpose for which it is reserved.

#### 105. Entry and inspection powers

- (1) The Commission may, by instrument in writing, designate an officer of the Commission as an authorised officer for the purposes of this clause.
- (2) An authorised officer may, for the purpose of monitoring whether this Scheme is being complied with, at any reasonable time and with any assistance reasonably required —
  - (a) enter any building or land in the Scheme area; and
  - (b) inspect the building or land and any thing in or on the building or land.

#### 106. Repair of existing advertisements

- (1) The Commission may require the owner of an advertisement located in the Scheme area to repair the advertisement if, in the opinion of the Commission, the advertisement has deteriorated to a point where it is in conflict with the aims of this Scheme.
- (2) A requirement referred to in subclause (1) must —
  - (a) be in the form of a written notice given to the person; and
  - (b) specify the advertisement the subject of the requirement; and
  - (c) set out clear reasons for the requirement; and
  - (d) set out full details of the action or alternative courses of action to be taken by the person; and
  - (e) specify the period, not being a period of less than 60 days from the day on which the notice is given to the person, within which the requirement must be complied with.
- (3) If the Commission does not know who the owner of an advertisement is, the Commission may give a notice referred to in subclause (1) to the owner of the land on which the advertisement is located and direct the owner of the land to

give the notice to the owner of the advertisement within a period specified by the Commission.

- (4) If an owner of land on which an advertisement is located does not give to the owner of the advertisement a notice as directed under subclause (3), the owner of the land is to be taken to be the owner of the advertisement.
- (5) A person to whom a notice under this clause is given may apply for a review of the requirement to the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14.

## **Division 2 — Miscellaneous**

### **107. Agreement to use of material provided for Scheme purposes**

The Commission may refuse to accept an application made under this Scheme if the Commission is not satisfied that there is in place an agreement for the Commission to use any copyrighted material provided in support of the application –

- (a) for the purposes of advertising the application or implementing a decision on the application; and
- (b) for zero remuneration.

## Part 16 — Forms referred to in this Scheme

### 108. Forms referred to in this Scheme

- (1) The form of an application for development approval referred to in clause 83(1)(a) is as follows –

#### Application for development approval

Owner details		
Name:		
ABN (if applicable):		
Address: .....		
.....		Postcode: .....
Phone:	Fax:	Email:
Work: .....	.....	.....
Home: .....		
Mobile: .....		
Contact person for correspondence:		
Signature:		Date:
Signature:		Date:
<i>The signature of the owner(s) is required on all applications. This application will not proceed without that signature.</i>		

Applicant details (if different from owner)		
Name:		
Address: .....		
.....		Postcode: .....
Phone:	Fax:	Email:
Work: .....	.....	.....
Home: .....		
Mobile: .....		
Contact person for correspondence:		
The information and plans provided with this application may be made available by the Commission for public viewing in connection with the application: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Signature:		Date:



Property details		
Lot No:	House/Street No:	Location No:
Diagram or Plan No:	Certificate of Title Vol. No:	Folio:
Title encumbrances (e.g. easements, restrictive covenants): .....		
Street name:	Suburb:	
Nearest street intersection:		

Proposed development:	
Nature of development:	<input type="checkbox"/> Works <input type="checkbox"/> Use <input type="checkbox"/> Works and Use
Is an exemption from development claimed for part of the development?:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Works <input type="checkbox"/> Use
Description of proposed works and/or land use: .....	
Description of exemption claimed (if relevant):	
Nature of any existing buildings and/or land use:	
Approximate cost of proposed development:	
Estimated time of completion:	

OFFICE USE ONLY:	
Acceptance Officer's initials:	Date received:
Commission reference No:	

- (2) The form for providing additional information for development approval for advertisements is as follows —

**Additional information for development approval for advertisements**

*Note: To be completed in addition to the Application for development approval form.*

<p>1. Description of property upon which advertisement is to be displayed including full details of its proposed position within that property:</p> <p>.....</p>
<p>2. Details of proposed sign:</p> <p>(a) Type of structure on which advertisement is to be erected (ie, freestanding, wall mounted, other):</p> <p>.....</p> <p>.....</p> <p>(b) Height: ..... Width: ..... Depth: .....</p> <p>(c) Colours to be used:</p> <p>.....</p> <p>(d) Height about ground level –</p> <p style="padding-left: 40px;">to top of advertisement: .....</p> <p style="padding-left: 40px;">to underside: .....</p> <p>(e) Materials to be used:</p> <p>.....</p> <p>(f) Illuminated: Yes/No</p> <p style="padding-left: 40px;">If yes, state whether steady, moving, flashing, alternating, digital, animated or scintillating and state intensity of light source:</p> <p>.....</p>
<p>3. Period of time for which advertisement is required:</p> <p>.....</p>
<p>4. Details of signs (if any) to be removed if this application is approved:</p> <p>.....</p>
<p>Signature of advertiser(s): .....</p> <p>(if different from landowners): .....</p> <p>Date:.....</p>



- (4) The form of a notice of determination on an application for development approval is as follows —

**Notice of determination on application for development approval**

*Planning and Development Act 2005*

Location:	
Lot: Plan/Diagram:	
Vol No:	Folio No:
Application Date:	Received on:
Description of proposed development: .....	
.....	
..... The application for development is:	
<input type="checkbox"/>	Approved subject to the following conditions.
<input type="checkbox"/>	Refused for the following reason(s) Conditions/reasons for refusal:
.....	
.....	
..... Date of determination: .....	
Note 1:	If the development the subject of this approval is not substantially commenced within a period of 2 years, or another period specified in the approval after the date of the determination, the approval will lapse and be of no further effect.
Note 2:	Where an approval has so lapsed, no development must be carried out without the further approval of the Commission having first been sought and obtained.
Note 3:	If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the Planning and Development Act 2005 Part 14. An application must be made within 28 days of the determination
Signed:	Dated:
.....	..... for and on behalf of the Western Australian Planning Commission

## Schedule 1 - Carparking requirements

### 1. Carparking requirements

The minimum number and dimensions of car parking spaces to be provided shall be in accordance with the following table:

USE	NUMBER OF CAR PARKING SPACES
Amusement parlour	1 bay for every 5m <sup>2</sup> of open floor area; 1 bay for every 10m <sup>2</sup> of tables and/or chairs; 1 bay for every 4 spectator/audience seats in rows; and All other areas and facilities at the Commission's discretion
Art gallery	1 bay per 20m <sup>2</sup> floor area (minimum 3 bays per tenancy or unit)
Bed and Breakfast	1 additional bay per bedroom
Betting agency	1 bay per 30m <sup>2</sup> floor area
Brewery	1 bay per 40m <sup>2</sup> floor area
Bulky goods showroom	1 bay per 50m <sup>2</sup> floor area (minimum 3 bays per tenancy or unit)
Caravan park – short term	Visitor car parking: 1 bay per 10 long stay bays; and 1 bay per 20 short stay bays
Cinema / theatre	1 bay for every 5m <sup>2</sup> of open floor area; 1 bay for every 10m <sup>2</sup> of tables and/or chairs; 1 bay for every 4 spectator/audience seats in rows; and All other areas and facilities at the Commission's discretion
Civic use	1 bay for every 35m <sup>2</sup> floor area
Club premises	1 bay for every 4 persons to be accommodated
Community purpose	1 bay for every 35m <sup>2</sup> floor area.
Consulting rooms	4 bays for every consulting room
Convenience store	1 bay per 25m <sup>2</sup> floor area
Education establishment - tertiary	1 bay for every person employed; Adequate pickup / set down areas on site; Provision of on-site bus standing and turning areas; and Onsite visitor and student parking at the discretion of the Commission.
Exhibition centre	1 bay per 30m <sup>2</sup> floor area
Fast food outlet	1 bay for every 10m <sup>2</sup> floor area
Funeral parlour	1 bay for every 4 persons for which any assembly area is designed; and 1 bay for every employee
Garden centre	1 bay per 100m <sup>2</sup> floor area of display and sales area
Holiday accommodation	As determined by the Commission.

Holiday house	As determined by the Commission.
Home business	As determined by the Commission.
Home occupation	As determined by the Commission.
Home store	1 bay per 40m <sup>2</sup> of floor area or part thereof
Hotel	1 bay for every bedroom; and 1 bay for every employee
Industry	1 bay for every 100m <sup>2</sup> of unenclosed space used for such purposes; and 1 bay for every 50m <sup>2</sup> enclosed space or 1 space for each employee, whichever is the greater (total minimum 3 bays per tenancy or unit)
Industry - light	1 bay for every 100m <sup>2</sup> of unenclosed space used for such purposes; and 1 bay for every 50m <sup>2</sup> enclosed space or 1 space for each employee, whichever is the greater (total minimum 3 bays per tenancy or unit)
Liquor store - large	1 bay per 50m <sup>2</sup> floor area
Liquor store - small	1 bay per 30m <sup>2</sup> floor area
Lunch Bar	1 bay for every 10m <sup>2</sup> floor area
Market	1 bay per 20m <sup>2</sup> of land and buildings used for such purposes
Medical centre	4 bays for every consulting room
Motel	1 bay for every bedroom; and 1 bay for every employee
Motor vehicle, boat or caravan sales	1 bay for every 100m <sup>2</sup> display area; and 1 bay for every employee (total minimum 3 bays)
Motor vehicle repair	4 bays for each working bay or 1 bay for every 50m <sup>2</sup> NLA, whichever is the greater; and 1 bay for every employee
Motor vehicle wash	1 queuing bay per wash bay, and 1 bay per employee present at any one time
Nightclub	1 bay per 50m <sup>2</sup> floor area
Office	1 bay for every 30m <sup>2</sup> NLA (minimum 3 bays per tenancy or office unit)
Place of worship	1 bay for every 4 seats; or 1 bay for every 4 persons the facility is designed to accommodate.
Reception centre	1 bay for every 4 seats; or 1 bay for every 4 persons the facility is designed to accommodate.
Recreation - private	1 bay for every 20m <sup>2</sup> unmarked indoor floor area; 1 bay for every 40m <sup>2</sup> pool, skating or other free-movement area; 1 bay for every player accommodated on marked courts or lanes; 1 bay per 4 spectator/audience seats; and 1 bay per employee. All other non-specified areas and facilities at the Commission's discretion.
Restaurant / cafe	1 bay for every 4 seats; or 1 bay for every 5m <sup>2</sup> seating area, whichever is the greater

Restricted premises	1 bay per 40m <sup>2</sup> of NLA (minimum 3 bays)
Road house	2 bays per pump; 1 bay per employee; and 1 bay per 15m <sup>2</sup> shop area
Service station	1 bay per motor vehicle repair bay; 1 bay per 20m <sup>2</sup> of floor area area; 1 bay per 6m <sup>2</sup> of dining space; and 1 bay per employee
Serviced apartment	1.5 bays per accommodation unit
Shop	1 bay per 20m <sup>2</sup> of floor area (minimum 3 bays per tenancy or unit)
Small bar	1 bay per 20m <sup>2</sup> bar and lounge areas; and 1 bay per 10m <sup>2</sup> restaurant
Tavern	1 bay per 20m <sup>2</sup> bar and lounge areas; and 1 bay per 10m <sup>2</sup> restaurant
Tourist development	1.5 bays per accommodation unit rounded up plus 1 bay per employee plus 1 bay per 10m <sup>2</sup> restaurant
Trade display	1 per 100m <sup>2</sup> of display area; and 1 bay per employee
Trade supplies	1 bay per 100m <sup>2</sup> of display area; 1 per employee; and at the Commission's discretion the provision of oversized vehicle bays (minimum 1 bay)
Veterinary centre	4 bays per consulting room plus 1 bay per staff member
Warehouse / storage	1 bay per 200m <sup>2</sup> floor area
Workforce accommodation	1 bay for every 2 beds (in the case of communal accommodation); or 1 bay per bedroom unit; and 1 oversized vehicle parking bay per every 10 beds (minimum 2 bays)
All land uses	Where a service/loading bay is required for a land use it is to be provided in addition to the minimum number of car parking bays required under this table.  A variation to this requirement may be appropriate where it can be demonstrated that a service bay is either not required due to the type of land use, can be shared with visitor parking or may be located off-site.

Note: If a use is not listed in the preceding table, then car parking bay dimensions shall be in accordance with Australian Standard AS2890.1 with minimum 90 degree bays measuring 2700mm wide and 5700mm long.

## 2. Minimum carparking specifications

Where car parking is required or provided in conjunction with the use or development of land, the following specifications shall be met:

Parking angle	Width of bay	Depth of bay	Aisle width		Distance along kerb	Kerb overhang	Total depth (1 row, aisle & bay)	
			1 way	2 way			1 way	2 way
90 <sup>0</sup>	2.7m	5.4m	5.4m	5.8m	3.0m	0.7m	10.8m	11.2m
60 <sup>0</sup>	2.7m	5.7m	4.0m	5.8m	3.3m	0.6m	9.7m	11.5m
45 <sup>0</sup>	2.7m	5.3m	2.9m	5.8m	4.1m	0.5m	8.2m	11.1m
30 <sup>0</sup>	2.7m	5.0m	2.9m	5.8m	5.8m	0.3m	7.9m	10.8m
Parallel	2.7m	2.7m (width)	3.0m	5.8m	6.3m	0.0m	6.0m	8.8m
			3.3m	5.8m	6.1m	0.0m	6.3m	8.8m
			3.6m	5.8m	5.9m	0.0m	6.6m	8.8m

- (i) Bays situated adjacent to walls or other obstructions that affect door opening, shall be increased in width by 0.3m on the side of the obstruction.
  - (ii) The length of parallel parking bays may be reduced to 5.5m for end bays where free access is available.
  - (iii) For blind aisles, an aisle extension of 2m shall be provided to facilitate access.
  - (iv) Where access aisles intersect, adequate truncations shall be provided to facilitate the movement of vehicles (Refer AS 2890.1 - 85 percentile vehicle swept path with 300mm clearances each side).
3. A person shall not develop or use any land or erect, use or adapt any building in the West End zone unless car parking spaces specified by the Commission are provided and such spaces are constructed and maintained in accordance with the Scheme.
  4. All areas utilised for vehicle parking, manoeuvring, access, egress and storage in the West End zone are to be sealed, marked and formalised as per 'User class 3A' with the B99 vehicle in accordance with the Australian Standards 2890.1:2004 (as amended) and the Building Codes.
  5. Where the maximum dimension of any open car parking area exceeds twenty metres in length or width, one car parking space in ten shall be used for garden and tree planting to provide visual relief and so long as the garden and tree planting areas shall be maintained in good order, those car parking spaces shall be included in calculations as car parking and not as landscaping.
  6. Where the owner can demonstrate to the satisfaction of the Commission that there is not the demand for the number of parking spaces specified in Schedule 1 clauses 1. and 2., landscaping may be provided in lieu of car parking spaces not constructed and the said landscaping shall be included in the calculations as car parking but not as



landscaping provided that the Commission may from time to time require that the additional parking spaces be provided.

- 7.** All areas utilised for storage in the West End zone may be constructed to a suitable unsealed standard that permits all-weather access by two-wheel drive vehicles and that does not result in gravel, sand or other forms of earth leaving the site.
- 8.** Where public off street parking facilities are located or are proposed to be located in the near vicinity of land or building being the subject of an application for development approval the Commission may approve such application notwithstanding that the required number of car parking spaces are not to be provided on site subject to:
  - (i) the Commission being satisfied that off street parking facilities are sufficient to cater for the requirements of the land or buildings, and
  - (ii) the applicant entering into an agreement with the Commission and/ or the Local government to pay for the cost of providing and maintaining the required number of car parking spaces as required.
- 9.** Where the number of car parking spaces proposed to be provided on land or in a building the subject of an application for development approval is less than the number required to be provided pursuant to the Scheme, the Commission may approve the application if it can be demonstrated that off street parking facilities in the near vicinity are available to cater for the requirements of the proposal and that arrangements to the satisfaction of the Commission and/ or the Local government have been made to enable those facilities to be used for that purpose.
- 10.** The owner or occupier of premises on which car parking spaces are provided shall ensure that the parking area is landscaped with shade trees, the car parking is laid out, drained and maintained in accordance with the approved plans relating thereto.

**APPROVAL PAGE**

**WESTERN AUSTRALIAN PLANNING COMMISSION RESOLUTION TO ADVERTISE THE  
PORT HEDLAND WEST END IMPROVEMENT SCHEME NO. 1**

Prepared by resolution of the Western Australian Planning Commission on 19 February 2020.

David Caddy  
Chairman  
Western Australian Planning Commission

Sam Fagan  
Secretary  
Western Australian Planning Commission

**WESTERN AUSTRALIAN PLANNING COMMISSION RESOLUTION TO SUPPORT  
SCHEME FOR APPROVAL**

The Western Australian Planning Commission resolved to support approval of the Port Hedland West End Improvement Scheme No. 1 at its meeting on 19 August 2020.

The Common Seal of the Western Australian Planning Commission was hereunto affixed by authority of a resolution of the Western Australian Planning Commission in the presence of:

David Caddy  
Chairman  
Western Australian Planning Commission

Sam Fagan  
Secretary  
Western Australian Planning Commission

Approval granted.

Rita Saffioti  
Minister for Planning

Date: 7 Sept 2020