

GO TO CONTENTS PAGE

TOWN OF CLAREMONT

Local Planning Scheme No. 3

Updated to include AMD 141 GG 14/02/2020



Department of Planning,
Lands and Heritage

Prepared by the
Department of Planning, Lands and Heritage
Original Town Planning Scheme Gazettal
1 June 1999

Disclaimer

This is a copy of the Local Planning Scheme produced from an electronic version of the Scheme held and maintained by the Department of Planning, Lands and Heritage. Whilst all care has been taken to accurately portray the current Scheme provisions, no responsibility shall be taken for any omissions or errors in this documentation.

Consultation with the respective Local Government Authority should be made to view a legal version of the Scheme.

Please advise the Department of Planning, Lands and Heritage of any errors or omissions in this document.

Department of Planning,
Lands and Heritage
Gordon Stephenson House
140 William Street
Perth WA 6000

Locked Bag 2506
Perth WA 6001

website: www.dplh.wa.gov.au
email: info@dplh.wa.gov.au

tel: 08 6551 9000
fax: 08 6551 9001

National Relay Service: 13 36 77
infoline: 1800 626 477

TOWN OF CLAREMONT LPS 3 - SCHEME TEXT AMENDMENTS

| AMD NO | GAZETAL DATE | UPDATED | | DETAILS |
|--|--------------|----------|----|--|
| | | WHEN | BY | |
| 45 | 3/3/95 | 27/11/96 | DH | Part 3 - Subclause 33 (2) - substituting the words "Cash in Lieu Reserve Fund" for the words "separate trust account" |
| 44 | 31/3/95 | 27/11/96 | DH | Part 3 - Subclause 36(1) - deleting the words Ain a location permitted under the provisions of the Uniform Building By-laws 1974 (as amended). Subclause 36(1a) - deleting subclause and substituting. Subclause 36(1b) - deleting subclause and substituting. Clause 49 - deleting subclause 49(3). Subclause 27(1) - deleting and renumbering. |
| 46 | 11/7/96 | 27/11/96 | DH | Part 3 - renumbering Clause 48 to Subclause 48(1). Part 3 - adding Subclause 48(2). Adding Appendix XIII - Streets Deemed to Carry High Volumes of Traffic. |
| 47 | 25/8/95 | 27/11/96 | DH | Table 1 - Land Use Table - Day Care Centre, Local Centre Zone, - deleting & substituting use class. Funeral Parlour, Local Centre Zone, Light Industrial & Town Centre Zone - deleting & substituting use class. Hospital, Highway Zone - deleting & substituting use class. Hotel/Tavern, Town Centre Zone & Highway Zone - deleting & substituting use class. Motel, Highway Zone - deleting & substituting use class. Motor Repair Station, Highway zone - deleting & substituting use class. Recreation Indoor, Residential Zone, Local Centre Zone, Town Centre Zone & Highway Zone - deleting & substituting use class. Recreation Outdoor, Local Centre & Town Centre Zone - deleting & substituting use class. |
| 48 | 12/12/95 | 27/11/96 | DH | Appendix 8 - adding No. 141 Claremont Crescent, 145 Claremont Crescent, 10, 12 and 14 Rob Roy Street, Swanbourne. |
| 49 | 4/6/96 | 27/11/96 | DH | Part 1 - deleting & adding new definition "Recreation - Indoor (Active)" and adding new definition "Recreation - Indoor (Passive)". Table 1 - deleting definition "Recreation – Indoor" Table 1 - adding new definition "Recreation - Indoor Active – Passive" & inserting appropriate use classes. Table 2 - adding use "Recreation-Indoor – Active". Table 2 - adding use "Recreation-Indoor – Passive" Table 2 - deleting use "Theatre, Hall, Cinema, Church" |
| 51 | | 28/11/96 | DH | Table 1 - adding use zone "Fast Food Outlet" Part 3 - adding "Fast Food Outlet – X" to Clause 61(2). |
| 58 | 18/7/97 | 4/8/97 | DH | Appendix VII - adding No. 59 Bay View Terrace to Scheme Text. |
| 61 | 9/4/98 | 14/4/98 | DH | Table 1 - Substituting symbol "X" in column heading Highway opposite use Hotel/Tavern, Motel, and Motor Repair Station. |
| 57 | 1/12/98 | 2/12/98 | DH | Appendix 7 - (Incorrectly advertised as App 8) - substituting words 'permitted uses' for the words " <i>parking of motor vehicles</i> " in the first line of Standard Condition 3 in column headed 'Standards/Conditions'. Appendix 7 - (Incorrectly advertised as App 8) - substituting words 'permitted uses' for the words " <i>parking of motor vehicles</i> " in the first line of Standard Condition 4 in the column headed 'Standard Conditions'. Appendix 7 - (Incorrectly advertised as App 8) - adding to Standard Condition 1 in column headed 'Standards/Conditions'. Appendix 7 - (Incorrectly advertised as App 8) - adding four new conditions (e),(f),(g) & (h) to subsection 4. |
| 64 | 3/11/99 | 23/2/99 | DH | Part 3 - substituting subclause 25(3). |
| Amendments since scheme consolidation 1/6/99 | | | | |
| 66 | 4/6/99 | 9/6/99 | DH | Part 3 - adding new clause after clause 64A – "(65) Walt Drabble Lane". |
| 72 | 24/12/99 | 23/12/99 | DH | Adding new clause "31A Relaxation of Car Parking Numbers" after clause 31. |

| AMD NO | GAZETAL DATE | UPDATED | | DETAILS |
|--------|--------------|---------|----|--|
| | | WHEN | BY | |
| 67 | 24/12/99 | 12/1/00 | DH | Appendix 8 (<i>Should refer App 7</i>) - adding "Not 75 Graylands Road Swan Location 429 being Lot 87 Certificate of Title Volume 188 Folio 103". Clause 18 - inserting the words "unless expressly permitted in a Special Zone (restricted use)" immediately after the word 'zone' in line 1 of subclause 18(1) and immediately after the second use of the word 'zone' in line 2 of subclause 18(2). |
| 77 | 28/1/00 | 31/1/00 | DH | Appendix 7 - opposite "Location No. 141 Claremont Crescent, 145 Claremont Crescent, 10, 12 and 14 Rob Roy Street, Swanbourne delete the words "elsewhere than" in the Standards/Conditions column and delete all after the word "land" in line 3. Appendix 7 - insert new condition (3) in standards conditions column opposite the Location No. 141 Claremont Crescent, 145 Claremont Crescent, 10, 12 and 14 Rob Roy Street, Swanbourne reading "a minimum of 10 car parking bays to be for the exclusive use of visitors to the site". |
| 74 | 30/6/00 | 3/7/00 | DH | Modifying Subclause 98(2). Adding new subclause (3) to Clause 53. Amending Clause 79 by deleting subclauses (3), (4) and (5). Table 2 - modifying table by deleting the words "In the Town Centre zone, one for each 20 21m of gross leasable area" from the column headed 'Car Parking Space Requirements' opposite the use 'Office'. |
| 81 | 9/2/01 | 13/2/01 | DH | Clause 36 - deleting Clause 36 'Outbuildings, Garages and Pergolas' and inserting new Clause 36 'Outbuildings, Garages, Carports and Pergolas'. |
| 91 | 9/12/03 | 8/12/03 | DH | Appendix 7 – substituting the words "Aged Persons Dwellings and Ancillary Uses only: for the words "A total of 54 aged persons' housing and ancillary uses only generally in accordance with drawings prepared by John L. Silbert & Associates and dated on February 1995 with the exception that all floor levels are lowered by a minimum of 600mm" in the Permitted use column. Appendix 7 – substituting "141 Claremont Crescent, Swanbourne" for the words "141 Claremont Crescent, 145 Claremont Crescent, 10, 12 and 14 Rob Roy Street, Swanbourne: in the Location column. Appendix 7 – substituting "Lot 77 of Swan Location P1069 of Certificate of Title Volume 2189 Folio 78" for the words "(1) Lot 200 of Swan Location P1069 on Certificate of Title Volume 1815 Folio 500. (2) Lot 62 of Swan Location P1069 on Certificate of Title Volume 360 Folio 131. (3) Lot 61 of Swan Location P1069 on Certificate of Title Volume 333 Folio 158A. (4) Lot 64 of Swan Location P1069 on Certificate of Title volume 333 Folio 159A. (5) Lots 65 and 68 of Swan Location P1069 on Certificate of Title Volume 1738 Folio 685/6" in the Particulars of Land Column. |
| 93 | 13/5/05 | 17/3/05 | DH | Table 2 – amending by substituting the figure "16.67 for figure "12.5" in the "Car Parking space Requirement" column opposite the Use Classes "Retail Store", "shop (Intermediate)", "shop (Small)" and "Town Centre, (Shopping Policy Area): of Table 2 – Development Table. Clause 31A – inserting the words "exercise a discretion to: after "may" in the third line of Clause 31A (1). Clause 31A(2) – removing and replace with new clause to read "Where the number of car parking spaces to be provided accords with the third column of Table 3 provided the dimensions of each car parking space meets the relevant minimum dimensions specified in the first and second columns of Table 3 for the number of car parking spaces" and inserting Table "Table 3 – Car Parking Space under Clause 31A (2) after Clause 31A. Table of Contents – amending list of tables contained within by adding a new table "Table 3 – Car Parking Space Under Clause 31A *2):. Clause 31A – substituting the figure "5" for the figure "4" in line six of Clause 31A (4). |

| | | | | |
|-----|----------|----------|----|---|
| 94 | 13/5/05 | 24/5/05 | DH | <p>Part 2 – amending Clause 10 by inserting immediately following definition "Depot" a new definition of "Drive Through".</p> <p>Part 3 – amending Clause 61(1) by inserting immediately following the use description Fast Food Outlet – SA the use description "Fast Food Outlet (drive through) – X".</p> <p>Appendix 6 – amending the plan to include Lots 74, Pt 24, 101 and 26 St Quentin Avenue, Lots 10, 11, 12, 13 and 14 O'Beirne Street, Lot 100 Guger Street, a portion of the O'Beirne Street Road Reserve and all of Road No. 18062 within the Shopping Policy Area of the Town Centre Zone as depicted on the Scheme Amendment Map.</p> |
| 65 | 19/8/05 | 20/10/05 | DH | <p>Table 2 – inserting words "Note: Table 2 is subject to the provisions of Clause 37A – Non-Residential Development abutting a Residential Zone", outside Table 2 and after the last row of Table 2 on Page 31.</p> <p>Clause 31(5) – inserting words "and may also be required to be planted in accordance with Clause 37A – Non-Residential Development abutting a Residential Zone" in the third line of Clause 31(5) – Car Parking Spaces after "10m".</p> <p>Clause 31(7) – Car Parking Spaces – inserting words "and planted in accordance with Clause 37A – Non-residential development abutting a Residential Zone", in the third line after "Zone".</p> <p>Clause 37A – inserting "Clause 37A Non-residential Development abutting a Residential Zone"</p> |
| 97 | 6/3/07 | 14/3/07 | DH | <p>Clause 10 - inserting after definition "Public Utility" new definition "Rear building line".</p> <p>Clause 36(2) - inserting the words ",subject to subsection (4) of this Clause," in the first line.</p> <p>Clause 36(3) - inserting the words ",subject to subsection (4) of this Clause," in the first line.</p> <p>Deleting clause 36(3)(d).</p> <p>Deleting existing wording of Clause 36(4) and inserting new words.</p> |
| 100 | 6/3/07 | 14/3/07 | DH | <p>Clause 31A(4) - delete existing subclause and substitute with new text.</p> <p>Clause 33(1(a) - insert after the words "constructing those spaces" the words "calculated in accordance with Clause 31 (but not Clause 31A)".</p> |
| 105 | 4/12/07 | 11/12/07 | DH | Appendix 7 - including new location "10 Albert Street and 5 Dean Street" together with particulars of land, permitted uses and relevant conditions. |
| 106 | 18/12/07 | 7/1/07 | DH | Appendix 7 - adding location particulars being "No. 10 (Lot 108) Melville Street, Claremont" together with relevant particulars of land, permitted uses and standards/conditions. |
| 105 | 18/12/07 | | DH | <p><i>Correction notice:</i></p> <p><i>Appendix 7 - adding missing text - Clause (g)</i></p> |
| 105 | 28/3/08 | | DH | <p><i>Correction notice:</i></p> <p><i>Appendix 7 - adding the word "Correction" which should have been applied to Correction Notice gazetted on 18/12/07.</i></p> |
| 107 | 25/6/08 | 15/7/08 | DH | <p>Clause 8 - amending by deleting all that part of the clause after the words "The remaining documents of the Scheme are:" and substituting new text.</p> <p>Clause 10 - amending by inserting the definitions "Commission", "Council", "Development Contribution Plan", "Owner", "Proposed Structure Plan", "Shared Infrastructure Works", "Structure Plan", "Structure Plan Area" and "Town".</p> <p>Clause 13 - amending by inserting the word "Development" after the word "Educational" in the list of zones in subclause (1).</p> <p>Table 1 (Land Use Table) - amend by inserting a new Column under the heading "Zones" with the zone name "Development" at the head of the column and use class permissibility directions set out in the column to read "Use class permissibility to be determined with reference to the designations in the approved Structure Plan."</p> <p>Part 3 Division - after Part 3 Division 6 ad Division 7 - Development Zone" 75A to 75S.</p> |
| 110 | 9/1/09 | 20/1/09 | DH | <p>Part 3 - amending subclause 31A(4)(b).</p> <p>Part 3 - amending subclause 31A(4)(b)(i).</p> |
| 110 | 20/1/09 | 27/1/09 | DH | <p><i>Correction Notice for the below:</i></p> <p>Part 3 - amending subclause 31A(4)(b).</p> <p>Part 3 - amending subclause 31A(4)(b)(i).</p> |
| 103 | 17/3/09 | 28/4/09 | DH | Appendix 7 - adding "Lot 26 of Swan Location 702 on Diagram 54992 of Certificate of Title volume 1513 folio 978 No. 355 Stirling Highway together with permitted uses and conditions. |

| | | | | |
|-----|------------|----------|-----|--|
| 111 | 9/10/09 | 14/10/09 | DH | <p>Part 1 - amending Clause 9 by amending interpretations of "Hotel" and "Tavern" and inserting new definition "Small Bar".</p> <p>Table 1 - inserting new classification of "Small Bar" and amending classification of "Hotel/Tavern".</p> <p>Part 2 - amending Clause 21 by deleting word 'Hotels' in the heading and modifying subclause (2).</p> <p>Part 2 - deleting Clause 22 and replacing with new clause "22. Licensed Premises".</p> <p>Table 2 - inserting in Development Table requirements in relation to Small Bars.</p> <p>Part 3 - amending Clause 61 Disposition of Uses in sub clauses 1 and 2 by inserting "Small Bar - AA".</p> |
| 117 | 12/10/10 | 28/10/10 | NM | Inserted subclause "7" after subclause "6" within clause 31A. |
| 118 | 12/11/10 | 25/11/10 | NM | Inserted No. 328 Stirling Highway, Claremont into Appendix VII – Location Particulars. |
| 113 | 1/10/13 | 7/10/13 | NM | Deleted No. 120 Guger Street from Appendix VII. Inserted No.s 118, 118A, 120 and 122 Guger St into Appendix VII. |
| 124 | 10/12/2013 | 15/01/14 | ML | Deleted entry No 1 in Appendix VII – 23 Victoria Avenue |
| 126 | 12/09/14 | 18/02/15 | MLD | <p>Rezone Lot 412 (1) Airlie Street, Claremont from "Special Development Zone A" to "Development Zone".</p> <p>Insert the subject site above into 'Schedule 1'</p> <p>Delete Clause 58 – Specific Development Zone A (Sundowner Site).</p> |
| 129 | 24/10/14 | 11/03/15 | MLD | <p>Rezone a portion of Lot 505 (301) Stirling Highway, Claremont from 'Highway' to 'Special Zone - Restricted Use'.</p> <p>Include the zoned portion of Lot 505 Stirling Highway within Appendix 7 and insert the permitted use and standards/conditions.</p> <p>Amending the Scheme Maps accordingly.</p> |
| 125 | 17/03/15 | 24/04/15 | MLD | <p>Replaced sub-clauses 25(1)-(2).</p> <p>Replaced sub-clauses 98(1)-(6) replacement sub-clauses 98(1)-(4).</p> |
| 131 | 15/05/15 | 21/05/15 | MLD | <p>Amend the definition of Shop in Clause 10.</p> <p>Amend the definition of Restricted Premises in Clause 10.</p> <p>Insert new definitions into Clause 10 for Aged or Dependent Persons Dwelling, Home Occupation, Liquor Store-Large, Warehouse</p> |
| 130 | 17/01/17 | 30/01/17 | RMc | Insert the Claremont North East Precinct location into Schedule 1 - Development Zone with Purpose and Requirements |
| 123 | 20/01/17 | 02/02/17 | GM | <p>Modified the use class classification under Table 1 - Land Use Table for Car Park in the Town Centre zone, from X & P* to AA, together with removing Car Park from the use class allocations under Sub-clauses (1) and (2) of Clause 61 Disposition of Uses.</p> <p>Added an additional Note to Table 2 - Development Table.</p> <p>Amended Clause 30.</p> <p>Amended Clause 31(2).</p> <p>Deleted "Appendix III - Dimensions of Car Parking" from the Scheme.</p> <p>Amended Clause 31A(1) and (2) by combining them under Clause 31A(1) for clarity.</p> <p>Renamed Table 3 - Car Parking Space under existing Clause 31A(2) to be changed to Clause 31A (1) to "Table 3 - Car Parking Space under Clause 31A(1) and modify reference "Appendix III" to "relevant Australian Standards".</p> <p>Replaced existing Clause 31A(2) with a new Clause 31A(2) which allows for parking concessions to apply to the minimum parking requirements achievable under the provisions of Town Planning Scheme No. 3.</p> <p>Added new Clause 31A(98).</p> <p>Deleted existing Clause 31A(3) and added new Clause 31A(3).</p> <p>Deleted existing Clause 31A(4) and added new Clause 31A(4).</p> <p>Modified Clause 33(1)a.</p> <p>Deleted existing Clause 33(2) and added new Clause 33(2).</p> <p>Added new Clause 33(3).</p> |
| 132 | 16/05/17 | 18/08/17 | GM | <p>Modified definition of 'Dwelling (Self Contained)' in Clause 10</p> <p>Deleted clauses – 27(1) (2), 35, 36(1) (4) (5), 36(7) (8) (9), 38, 43(1) (2), 47, 55.</p> <p>Modified clauses – 36(6), 46, 48(2), 53.</p> |

| | | | | |
|-----|----------|----------|-----|--|
| 134 | 02/02/18 | 06/06/18 | MLD | <p>Zone the unzoned portions of the following lots to 'Educational' - all of which form part of the Scotch College campus at 31 Shenton Road, Swanbourne:</p> <ul style="list-style-type: none"> • Lot 1 on D6269 • Lot 400 on P33694 • Lot 151 on D30924 <p>Modify the portions of the following lots that are currently zoned 'Educational' to 'Local Reserves – Recreation' - which are located immediately north of The Cedus, Swanbourne:</p> <ul style="list-style-type: none"> • Lot 900 on P48900 • Lot 11098 on P016084 (R40523) <p>Modify the following lots from 'Residential' to 'Local Reserves – Recreation'; - which are adjacent to Swanway Crescent, Swanbourne:</p> <ul style="list-style-type: none"> • Lot 440 on P59604 (R49882) • Lot 441 on P59604 (R49882) <p>Remove the present 'Residential' zone from the following road reserves within the Lakeway Estate, Swanbourne:</p> <ul style="list-style-type: none"> • Swanway Crescent • Glenway Crescent • Eastway Crescent • Aceway Lane • Melway Lane <p>Remove the present "Local Reserves - Recreation" from the portion of Lot 1063 on P222328 that is intended to be formalised as a road reserve and that forms the intersecting area of Devon Road, Mitford Street and Fern Street.</p> <p>Zone the unzoned portion of Lot 63 on PS002835 (88 Davies Road, Claremont) 'Residential' and apply a density code of 'R30'.</p> <p>Remove the 'residential' zoning from the Cedus road reserve.</p> |
| 135 | 5/10/18 | 8/10/18 | HB | <p>Amend the 'Residential' zoning of Lot 90 Fern Street, Claremont to 'Local Reserves- Recreation'.</p> <p>Amend the Scheme map accordingly.</p> |
| 136 | 06/12/19 | 10/12/19 | GM | <p>Zoning all unzoned parcels of Urban land north west and south east of Stirling Highway to the west of the Stirling Road/Queenslea Drive intersection excluding 355 Stirling Highway (cnr Stirling Road) and 414 (cnr Airlie Street) Stirling Highway to "Residential", "Educational" or "Special Development" zone to match the adjoining zoning of the remainder of the property.</p> <p>Apply the associated R-Codes of "R30" and "R40" to the "Residential" zones.</p> <p>Zoning 414 (cnr Airlie Street) Stirling Highway from "Residential" and unzoned land to "Special Zone Restricted Use".</p> <p>Updating Appendix VII to include 414 Stirling Highway, Claremont.</p> <p>Amend the Scheme Map accordingly.</p> |
| 137 | 06/12/19 | 10/12/19 | GM | <p>Zoning all unzoned parcels of Urban land north and south of Stirling Highway to the east of the Stirling Road/Queenslea Drive intersection (including 355 Stirling Highway (cnr Stirling Road) and to the west of Mary Street to "Town Centre".</p> <p>Rezoning the remainder of 355 Stirling Highway (cnr Stirling Road) and a portion of 301 Stirling Highway (Lot 505) from "Special Zone Restricted Use" to "Town Centre", 2 Queenslea Drive (Lot 2) from "Highway" to "Town Centre", 1 Freshwater Parade (Lot 203) from "Special Zone Restricted Use" to "Town Centre", 2 Freshwater Parade (Lot 17), 322 to 324 Stirling Highway (Lots 11, 10, 9, 8 and 7) and 57 Bay View Terrace (Lot 12) from "Highway" to "Town Centre".</p> <p>Rezoning the laneway behind the properties fronting Stirling Highway between Freshwater Parade and Bay View Terrace from "Highway" to "Residential" with an "R25" density coding.</p> <p>Removing the "R40" coding from all lots to be zoned "Town Centre" to the south side of Stirling Highway between Freshwater Parade and Bay View Terrace, and for 355 (cnr Stirling Road) and 301 (Lot 505) Stirling Highway.</p> <p>Removing No. 355 and No. 301 Stirling Highway, Claremont from LPS3 Appendix VII Location Particulars for the "Special Zone Restricted Use".</p> |

| | | | | |
|-----|------------|------------|-----|--|
| 141 | 14/02/2020 | 24/02/2020 | MLD | <p>Modify the purpose and requirements relative to 1 Airlie street in Schedule 1 as follows:</p> <p>a) Include 'Dwellings (Self Contained)' as an addition to the use of 'aged persons' accommodation.</p> <p>b) Modify reference to 'Clause 75 D-O of the Scheme' to 'Schedule 2, Part 4, clauses 14-29 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>.</p> |
|-----|------------|------------|-----|--|

CONTENTS

| | |
|---|-----------|
| PART I - PRELIMINARY..... | 12 |
| 6. Relationship of Scheme By-Laws:..... | 12 |
| 8. Arrangement of Scheme: | 12 |
| 9. Interpretation: | 13 |
| PART II - LAND USE CONTROL | 19 |
| RESERVED LAND..... | 19 |
| DIVISION I..... | 19 |
| DIVISION II..... | 20 |
| 13. Zones: | 20 |
| Table 1 - Land Use Table | 21 |
| 14. Land Use Table: | 23 |
| 15. Home Occupation:..... | 24 |
| 16. Shops (Small) Various Zones:..... | 25 |
| 17. Recreation-Indoor - Residential Zone: | 25 |
| 18. Education Establishments: | 25 |
| 19. Hospitals:..... | 25 |
| 20. Local Centre Zone - Objectives:..... | 25 |
| 21. Service Stations - Local Centre Zones:..... | 26 |
| 22. Other Licensed Premises | 26 |
| 23. Office and Dwelling (Self-Contained) - Local And Town Centre Zones: | 27 |
| DIVISION III..... | 27 |
| <i>NON-CONFORMING USES</i> | <i>27</i> |
| PART III - DEVELOPMENT REQUIREMENTS..... | 29 |
| DIVISION I..... | 29 |
| <i>GENERAL REQUIREMENTS</i> | <i>29</i> |
| 25. Development Generally:..... | 29 |
| Table 2 – Development Table | 32 |
| 26. Residential Development: Residential Planning Codes: | 34 |
| 27. Special Application of Residential Planning Codes:..... | 34 |
| 28. Table 2 - Listed Use Classes: | 34 |
| 29. Table 2 - Unlisted Use Classes: | 34 |
| 30. Substantial Alterations - Car Parking: | 35 |
| 31. Car Parking Spaces: | 35 |
| 31A. Relaxation of Car Parking Numbers:..... | 36 |
| Table 3 – Car Parking space Under Clause 31A (1) | 36 |
| Table 4 - Additional Car Parking Concessions | 36 |
| 32. Car Parking Spaces - Location:..... | 38 |
| 33. Cash Payment in Lieu of Providing Car Parking Spaces: | 38 |
| 34. Landscaped Open Space:..... | 38 |
| 35. Grouped Dwelling - Store-Room: | 39 |
| 36. Outbuildings, Garages Carports & Pergolas: | 39 |
| 37A. Non-Residential Development Abutting a Residential Zone: | 40 |
| 37. Combined Uses:..... | 41 |
| 38. Amalgamation of Lots:..... | 41 |
| 39. Access - Disabled Persons: | 41 |
| 40. Height of Buildings: | 41 |

| | | |
|------------------------------------|---|----|
| 41. | Plot Ratio - Consulting Rooms: | 42 |
| 42. | Plot Ratio - Residential Buildings: | 42 |
| 43. | Relaxation of Set-Backs: | 42 |
| 44. | Stirling Highway Vehicular Access: | 42 |
| DIVISION II | | 43 |
| <i>RESIDENTIAL ZONE</i> | | 43 |
| 45. | Application: | 43 |
| 46. | Objectives: | 43 |
| 47. | Single House: | 43 |
| 48. | Car Parking: | 43 |
| 49. | Additions to Dwellings (Self-contained): | 43 |
| 50. | Lots Affected by By-law No. 123: | 44 |
| 51. | Lots affected by By-law 132: | 44 |
| 52. | Buildings and Objects - Replacement: | 44 |
| 53. | Bonus Densities: | 45 |
| 54. | R Code Density R30 - R40: | 45 |
| 55. | Access to Grouped Dwellings: | 45 |
| 56. | Small Shop: | 45 |
| 57. | Restaurant: | 46 |
| 58. | Specific Development Zone A (Sundowner Site): | 46 |
| DIVISION III | | 46 |
| <i>TOWN CENTRE ZONE</i> | | 46 |
| 59. | Application: | 46 |
| 60. | Objectives: | 46 |
| 61. | Disposition of Uses: | 47 |
| 62. | Residential Development Requirements: | 47 |
| 63. | Plot Ratio: | 48 |
| 64. | Bonus Plot Ratio: | 48 |
| (65) | Walt Drabble Lane: | 48 |
| DIVISION IV | | 49 |
| <i>LIGHT INDUSTRIAL ZONE</i> | | 49 |
| 65. | Application: | 49 |
| 66. | Objectives: | 49 |
| 67. | Front Setback - Graylands Road: | 49 |
| 68. | Other Front Boundary Setbacks: | 49 |
| DIVISION V | | 50 |
| <i>HIGHWAY ZONE</i> | | 50 |
| 69. | Application: | 50 |
| 70. | Objectives: | 50 |
| 71. | Building Setback Distances: | 50 |
| 72. | Control of Access: | 50 |
| DIVISION VI | | 51 |
| <i>EDUCATIONAL ZONE</i> | | 51 |
| 73. | Application: | 51 |
| 74. | Objectives: | 51 |
| DIVISION VII | | 51 |
| <i>DEVELOPMENT ZONE</i> | | 51 |
| 75A | Application | 51 |
| 75B | Purposes of Development Zone | 51 |
| 75C | Subdivision and Development in Development Zone | 51 |
| 75D | Structure Plan required | 51 |
| 75E | Preparation of Proposed Structure Plans | 52 |

| | | |
|--|---|-----------|
| 75F | Details of Proposed Structure Plan | 52 |
| 75H | Submission to Town and Commission | 54 |
| 75I | Advertising of Proposed Structure Plan | 55 |
| 75J | Adoption of Proposed Structure Plan | 55 |
| 75K | Endorsement by Commission | 56 |
| 75L | Notification of Structure Plan | 56 |
| 75M | Operation of Structure Plan | 56 |
| 75N | Inspection of Structure Plan | 56 |
| 75O | Variation to Structure Plan | 56 |
| 75P | Detailed Area Plan | 57 |
| 75Q | Applications for Review (Appeals) | 59 |
| 75R | Expiry of Structure Plans | 59 |
| 75S | Development Contribution Areas | 59 |
| PART IV - SPECIAL AMENITY, DESIGN AND DEVELOPMENT CONTROL | | 74 |
| 75. | Design Advisory Committee: | 74 |
| 76. | Design and Construction: | 74 |
| 78. | Schedule of Historic and Other Buildings and Places: | 75 |
| 79. | Preservation of Historic and Other Buildings, Objects and Places: | 75 |
| 80. | Protection of Landform: | 76 |
| 81. | Protection of Vegetation: | 76 |
| 82. | Planning Policies: | 76 |
| PART V - PLANNING APPROVAL | | 78 |
| 83. | Application: | 78 |
| 84. | Landscaping Requirements: | 80 |
| 85. | Form of Approval/Refusal of Application: | 80 |
| 86. | Determination of Application: | 80 |
| 87. | Conditional Approvals: | 81 |
| 88. | Deemed Refusal: | 81 |
| PART VI - FINANCE, ADMINISTRATION, APPEALS AND OFFENCES | | 82 |
| 89. | Purchase and Disposal of Land: | 82 |
| 90. | Agreement: | 82 |
| 91. | Entry to Premises: | 82 |
| 92. | Compensation: | 82 |
| 93. | Notices: | 82 |
| 94. | Appeals: | 82 |
| 95. | Offences: | 82 |
| 98. | Delegation: | 83 |
| APPENDICES | | 84 |
| Appendix I - | (Form 1a) Application For Planning Approval | 84 |
| Appendix II - | (Form 2a) Planning Approval/Refusal Of Planning Approval | 85 |
| Appendix III - | Dimensions Of Car Parking | 86 |
| Appendix IV - | Residential Planning Codes | 87 |
| Appendix V - | Town Of Claremont Map | 88 |
| Appendix VI - | Town Centre Policy | 89 |
| Appendix VII - | Location Particulars | 90 |
| Appendix VIII - | Requirements Applicable To Lots 78 & 79 Stirling Highway | 93 |
| Appendix IX - | Notice Of Application To Use Or Develop Land | 94 |
| Appendix X - | Form Of Newspaper Notice/Notice Of Application To Use Or Develop Land | 95 |
| Appendix XI - | Streets Deemed To Carry High Volumes Of Traffic | 96 |
| Schedule 1 | | 97 |
| Adoption | | 98 |

TOWN OF CLAREMONT
TOWN PLANNING SCHEME NO. 3

The Town of Claremont under and by virtue of the powers conferred upon it in that behalf by the *Town Planning and Development Act 1928* (as amended) and the *Metropolitan Region Town Planning Scheme Act 1959* (as amended) hereby makes the following Town Planning Scheme for the purpose of:

- (a) Setting aside land for future public use as reserves;
- (b) Directing and controlling land development by zoning in such a way as to promote and safeguard the health safety convenience and general welfare of the inhabitants of the district of the Town of Claremont and the amenities of that district;
- (c) Other matters authorised by the enabling Act.

PART I - PRELIMINARY

1. This Town Planning Scheme may be cited as the Town of Claremont Town Planning Scheme No.3 (hereinafter called "the Scheme" or "this Scheme") and shall come into operation on the publication of notice of the Minister's final approval thereof in the Government Gazette.
2. The Scheme shall apply to the whole of the Municipal District of the Town of Claremont (herein called "the District").
3. The Scheme is complementary to, and is not a substitute for, the Metropolitan Region Scheme, and the provisions of the Metropolitan Region Scheme, as amended from time to time shall continue to have effect.
4. The Town of Claremont Town Planning Scheme No. 1 which was published in the Government Gazette on the 7th April 1967, and subsequently from time to time amended, is hereby revoked.
5. The responsible authority for carrying out the Scheme is the Council of the Town of Claremont (herein referred to as "the Council") except that where land is shown on the Scheme Map as "Regional Reservation" the responsible authority shall be deemed to be the Western Australian Planning Commission and the provisions of the Metropolitan Region Scheme shall apply to such reservations.

6. RELATIONSHIP OF SCHEME BY-LAWS:

The provisions of this Scheme shall have effect, notwithstanding any By-law for the time being in force in the District, and where the provisions of the Scheme are inconsistent with the provisions of any By-law the provisions of the Scheme shall prevail.

7. All buildings hereafter erected and all other development hereafter carried out in the Scheme Area shall conform to the provisions and standards contained in the Scheme and, where appropriate, with the requirements of the Uniform Building By-laws to the extent to which those By-laws make provision for matters not dealt with by this Scheme.

8. ARRANGEMENT OF SCHEME:

AMD 107 GG 25/6/08

The Scheme Text is divided into the following parts

- Part 1. Preliminary
- Part 2. Land Use Control
- Part 3. Development Requirements
- Part 4. Special Amenity, Design and Development Control
- Part 5. Planning Approval
- Part 6. Finance, Administration, Appeals and Offences

The remaining documents of the Scheme are:

- (1) The Land Use Map,
- (2) The Scheme Map;
- (3) The Appendices; and
- (4) The Schedules

all of which form part of the Scheme.

9. INTERPRETATION:

- (1) Words and expressions used in the Scheme shall have the respective meanings given to them in the Scheme and the Residential Planning Codes.
- (2) Where a word or term is defined in the Residential Planning Codes then notwithstanding anything else in this Scheme that word or term when used in respect of residential development has the meaning given to it in the Residential Planning Codes.
- (3) Words and expressions used in the Scheme but not defined in Part 1 of the Scheme, elsewhere in the Scheme or in the Residential Planning Codes shall have their normal and common meanings.

10. In the Scheme, unless the context requires otherwise:

“Aged or Dependant Persons Dwelling” Has the same meaning as in the Residential Design Codes. *AMD 131 GG 15/5/15*

“Alfresco Dining Area” means an area of footpath or street or other public place in which tables, chairs or other structures are provided, with prior approval in writing of the Council, for the purpose of the consumption of food or drink by the public.

“Bulk Retail Sales” means premises set aside and limited to use for the sale of the following:

floor and wall coverings;
large recreational equipment;
camping equipment;
furniture, furnishings and window treatments;
each of sanitary, general hardware and plumbing supplies;
motor vehicle sales, spares and accessories;
machinery and large electrical, mechanical and heating appliances;
swimming pool supplies and fittings;
sunblinds and awnings;
kitchen and bathroom cupboards/fittings;
picture framing/gallery;
motor cycles;
boat sales and marine supplies;
roofing insulation;
air conditioning and vacuum cleaning systems;
equipment, tools or supplies necessary for the efficient merchandising of the abovementioned goods;
any other use relating to the sale and display of items of goods which are not readily portable and which in the opinion of Council is not likely to attract considerable vehicular traffic to those premises.

“Car Park” means a site or building used primarily for parking private cars or taxis whether as a public or private car park, but does not include any part of a public road used for parking or for a taxi stand, or any land or buildings on or in which cars are displayed for sale;

“Civic Building” means a building used by any:

- (a) government department; or
- (b) statutory body representing the Crown for office or for administrative or other like purpose;

“Commission” means the Western Australian Planning Commission. *AMD 107 GG 25/6/08*

"Consulting Room" means a building or part of a building (other than a hospital) used in the practice of his or her profession by:

- (a) A registered medical practitioner
- (b) A registered dentist or dental therapist
- (c) A registered occupational therapist or physiotherapist
- (d) A registered psychologist
- (e) A registered chiropractor
- (f) A registered psychiatrist
- (g) A registered chiropodist
- (h) A qualified welfare counsellor including a marriage guidance counsellor
- (i) A qualified masseur; or
- (j) A person ordinarily associated with a registered medical practitioner in the investigation or treatment for physical or mental injuries or ailments.

"Council" means the Council of the Town;

AMD 107 GG 25/6/08

"Craft Industry" means any part of any land or building used for the production of works of art or handcrafted works and included the workshop or studio of a sculptor, artist, potter or hand carver but the term does not include any use which is a light industry as defined in Appendix D of the Town Planning Regulations 1967 as amended or re-enacted from time to time;

"Day Care Centre" has the same meaning as is given to that term in the Child Welfare (Care Centres) Regulations 1968 as amended or re-enacted from time to time and includes a facility providing similar services for adults;

"Depot" means any part of any land or building used for the maintenance or storage (in the course of transfer from place to place or otherwise) of vehicles, goods or materials of any kind including, without limiting the generality of the foregoing, a builder's yard. The word does not include a warehouse;

"Development Contribution Plan" means a plan and any necessary accompanying text which:

AMD 107 GG 25/6/08

- (a) identifies all Shared Infrastructure Works required within a Structure Plan Area;
- (b) the cost or estimated cost of Shared Infrastructure Works where the Town considers it reasonable to provide those details; and
- (c) a schedule showing the portion or proportion of the cost payable by each Owner of land in the Structure Plan Area where the Town considers it reasonable to provide those details;

"Drive Through" means an area and facilities attached to or closely associated with a "Fast Food Outlet", at which patrons of the outlet may purchase and retrieve food from their vehicles and without leaving their vehicle.

AMD 3 GG 13/5/05

"Dry Cleaning Premises" means any part of any land or building used for the cleaning of garments and other fabrics by chemical processes;

"Dwelling (Self-contained)" means a Single House, a Grouped Dwelling, a Multiple Dwelling and a Special Purpose Dwelling;

AMD 132 GG 16/05/17

“Educational Establishment” means a school, college, university, technical institute, kindergarten, academy or other educational centre;

“Fast Food Outlet” means a building used for the purpose of preparing and serving meals for gain or reward to the public for consumption otherwise than on the premises;

“Fish Shop” means a shop where the goods sold include wet fish or fish cooked on the premises for consumption off the premises;

“Funeral Parlour” means any part of any land or building occupied by an undertaker in connection with the business of the disposal of the dead and includes any chapel erected on that land;

“Gross Leaseable Area”

(a) means the area of all floors capable of being occupied by a tenant for his exclusive use, which area is measured from the centre lines of joint partitions or walls and from outside faces of external walls or the building alignment, including shop fronts, and

(b) includes basements, mezzanines and storage areas.

“Home Occupation” means an occupation carried out in a dwelling or on land around a dwelling by an occupier of the dwelling. AMD 131 GG 15/5/15

“Hospital” means any building or part thereof, whether permanent or otherwise, in which persons are received and lodged for medical or surgical treatment or care, and includes a maternity hospital or nursing home as defined in the Hospitals Act 1927 as amended or re-enacted from time to time;

“Hotel” means any premises providing guest accommodation for the public that is the subject of a hotel licence under the *Liquor Control Act 1988* and may include a betting agency on the premises. AMD 111 GG 9/10/09

“Landscaped Open Space” means any area developed with or by the planting of lawns, garden beds, shrubs or trees and includes any rockery, ornamental pond or paving, but does not include any area used or designed for use for parking of vehicles or vehicular access;

“Light Industry” means any industry in which the processes carried on, the machinery used and the goods and commodities carried to and from the premises will not cause any injury to or prejudicially affect the amenity of the locality by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, soot, ash, dust, waste water, waste products, grit, oil or otherwise;

“Liquor Store – Large” Means a premises the subject of a liquor store licence granted under the *Liquor Control Act 1988* with a gross leasable area of more than 400m². AMD 131 GG 15/5/15

“Metropolitan Region Scheme” means the Metropolitan Region Scheme made pursuant to the *Metropolitan Region Town Planning Scheme Act 1959* as amended or re-enacted from time to time and published in the Government Gazette on the 9th August 1963 as amended or re-enacted from time to time;

“Motel” means a building, group of buildings, or place used to accommodate patrons in a manner similar to a hotel, but in which special provision is made for the accommodation of patrons with motor vehicles;

“Motor Repair Station” means any land or building or part thereof used for or in connection with the mechanical repair and overhaul of motor vehicles, including tyre recapping, retreading, panel beating, spray painting, chassis reshaping and motor vehicle trimming;

“Non-conforming use” means a use of land which, though lawful immediately prior to the coming into operation of the Scheme, is not in conformity with the Scheme;

"Office" means a building or part thereof used for the conduct of the administration requirements or the secretarial or accounting services of a business or industry, the practice of a profession or the provision of services which do not require continuing public attendance at the premises;

"Open Air Display" means the use of land for the display or the sale of goods or equipment other than vehicles in the open air;

"Open space" in relation to a building other than a Dwelling (Self-contained) means that area of a lot on which the building stands which is not built upon in any way, but the term includes:

- (a) the area of access driveways where those driveways are adjacent to open space and to the extent that those driveways do not exceed 3m in width; and
- (b) the structural decks or roofs of car parking areas where so designed and located as to be suitable for use as open space;

"Owner" in and in relation to Division VII means an owner or any co-owner of land in the Development Area or a person or persons authorised to represent an owner;

AMD 107 GG 25/6/08

"Proposed Structure Plan" means a structure plan, that has been prepared in accordance with clauses 75F and 75G but has not been approved and adopted; *AMD 107 GG 25/6/08*

"Public Utility" means any works or undertakings constructed or maintained by a public authority or municipality to provide water, sewerage, electricity, gas, drainage, communications or other similar services;

"Rear building line" means a notational line that:

AMD 97 GG 6/3/07

- a) Intersects the part of the dwelling or proposed dwelling located furthest from the boundary of the lot abutting the primary street measured at right angles to that boundary; and
- b) Is drawn parallel to the boundary of the lot abutting the primary street.

"Recreation-Indoor" (Active) means a building or part thereof used for the purposes of a dance hall, skating rink, swimming pool, gymnasium, sports hall or squash court.

"Recreation-Indoor" (Passive) means a building or part thereof used for the purposes of a theatre or cinema or bridge club.

"Recreation-Outdoor" means land used for passive or active recreation and the term includes children's play-grounds, public gardens and public sports grounds where no special provision is made for spectators;

"Religious purposes" means places of public worship and buildings used primarily for the religious and social activities of a church, but does not include an institution for primary, secondary or higher education, or a residential training institution;

"Residential Building" means a building, other than a Dwelling (Self-contained) used for human habitation and includes such outbuildings as are ordinarily used therewith. The term includes a hostel and a hotel used primarily for residential purposes, a residential club and a residential institution for the intellectually handicapped;

"Restaurant" means any part of any land or buildings used for the purpose of serving meals for gain or reward to the public for consumption on the premises, but does not include a Fast Food Outlet;

“Restricted Premises” 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: *AMD 131 GG 15/5/15*

- (a) publications that are classified as restricted under the *Classification (Publications, Films and Computer Games) Act 1995 (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.

“Retail Store” means a shop the gross leaseable area of which exceeds 400m²;

“Service Industry” means a light industry in which goods are manufactured, assembled or serviced principally:

- (a) for, or for sale to, inhabitants of the District; or
- (b) for installation within the District.

The term does not include premises in which goods (other than goods manufactured or assembled on those premises) are kept exposed for sale;

“Service Station” means land and buildings used for the supply of petroleum products and automotive accessories and includes greasing, tyre repairs and minor mechanical repairs;

“Service Trade” means any part of any land or building used for the repair, servicing or maintenance of goods, generally of a readily portable nature, and without limiting the generality of the foregoing, includes the premises of a bootmaker and a bicycle repair shop;

“Shared Infrastructure Works” means any works, lands, services, or other things whatsoever required to be provided for the subdivision or development of land within a Structure Plan Area such as but not limited to the services of administration and supervision, land for any school site, open space, drainage, road works, or any public facility or work whatsoever and the works necessary to adapt or prepare that land in the subdivision or development process; *AMD 107 GG 25/6/08*

“Shop” means a building or part of a building in which goods are kept exposed for sale by retail, and includes a lunch bar, newsagency, a branch of a building society or bank in which the services provided involve continuing contact with the public, or a building or part of a building involving continuing contact with the public are provided. *AMD 131 GG 15/5/15*

The word does not include:

- (a) premises used for the sale of petrol, boats, motor or other vehicles (not including a bicycle); or
- (b) a Showroom.

“Shop (Intermediate)” means a shop the gross leaseable area of which exceeds 80m² but not more than 400m²;

“Shop (Small)” means a Shop the gross leaseable area of which does not exceed 80m²;

“Showroom” means a building or any part thereof in which only goods which are not readily portable are kept exposed for sale by retail or wholesale;

“Small Bar” means any premises licensed as a small bar under the *Liquor Control Act 1988* and used to sell liquor for consumption on the premises, subject to conditions prohibiting the sale of packaged liquor and limiting the number of persons who may be on the licensed premises to a maximum of 120. *AMD 111 GG 9/10/09*

“Storey” means that portion of a building which is situation between the top of any floor and the top of the floor next above it; and if there is not floor above it, that portion between the top of the floor and the ceiling above it;

"Structure Plan" means a structure plan that has been adopted by the Town under clause 75J and approved by the Commission under clause 75K; AMD 107 GG 25/6/08

"Structure Plan Area" means an area of land in the Development Zone which is the subject of a Structure Plan or a Proposed Structure Plan; AMD 107 GG 25/6/08

"Tavern" means any premises licensed as a tavern under the *Liquor Control Act 1988* and used to sell liquor for consumption on the premises. AMD 111 GG 9/10/09

"The Act" means the Town Planning and Development Act 1928 as amended or re-enacted from time to time;

"Town" means the Town of Claremont; AMD 107 GG 25/6/08

"Transport Depot" means any land or building used:

- (a) for the garaging of vehicles used or intended for use for the carriage of goods for hire or reward; or
- (b) for the transfer of goods from one such vehicle to another such vehicle; whether or not the land or building is also for the maintenance and repairs of the vehicles;

"Uniform Building By-laws" means the Uniform Building By-laws published in the Government Gazette on the 19th December 1974, as amended or re-enacted from time to time;

"Vehicle Sales" means any part of any land where motor vehicles are displayed for sale in a brick building with a metal or tiled roof;

"Veterinary Clinic" and "Veterinary Hospital" have the respective meanings given to those terms in the Veterinary Surgeons Act 1960 as amended or re-enacted from time to time.

"Warehouse" means premises used for the purposes of storage, display or the sale by wholesale of goods. AMD 131 GG 15/5/15

PART II - LAND USE CONTROL

RESERVED LAND

DIVISION I

RESERVATION OF LAND AND DEVELOPMENT THEREOF

11. (1) Certain land within the Scheme area is set aside as reserves under this Scheme and those reserves respectively comprise the areas which are delineated, distinctively coloured and identified as such on the Scheme Map.
- (2) The land shown as “Metropolitan Region Scheme Reserves” or “Regional Reserves” on the Scheme Map are lands reserved under the Metropolitan Region Scheme and are shown on the Scheme Map in order to comply with the Metropolitan Region Town Planning Scheme Act, 1959, as amended. Those lands are not reserved by this Scheme. The provisions of the Metropolitan Region Scheme continue to apply to such reserves.
- (3) Except as otherwise provided in this Part a person shall not carry out any development on land reserved under this Scheme, other than the erection of a boundary fence, without first applying for and obtaining the written approval of the Council.
- (4) In giving its approval the Council shall have regard to the ultimate purpose intended for the reserve and shall in the case of land reserved for the purposes of a public authority confer with that authority before giving its approval.
- (5) No provision of this Part shall prevent the continued use of land for the use for which it was being lawfully used immediately prior to the Scheme having the force of law, or the repair and maintenance, for which the prior consent in writing of the Council has been obtained of buildings or works lawfully existing on the land.
12. (1) Where the Council refuses approval for the development of land reserved under the Scheme on the ground that the land is reserved for public purposes, or grants approval subject to conditions that are unacceptable to the applicant the owner of the land may, if the land is injuriously affected thereby, claim compensation for such injurious affection in accordance with the Town Planning and Development Act 1928 (as amended).
- (2) Claims for such compensation shall be lodged at the office of the Council not later than six months after the date of the decision of the Council refusing approval or granting it subject to the conditions that are unacceptable to the applicant.
- (3) In lieu of paying compensation the Council may purchase the land affected by such decision of the Council at a price not exceeding the value of the land at the time of refusal or of the grant of approval subject to conditions that are unacceptable to the applicant.

DIVISION II

13. ZONES:

- (1) There are hereby created the zones set out hereunder:

Residential

Local Centre

Town Centre

Light Industrial

Highway

Educational Development

AMD 107 GG 25/6/08

Special Development Zone A

Special Development (Restricted Use)

- (2) Those zones respectively comprise the areas which are delineated, distinctively coloured hatched or lettered and identified as such by the legend on the Scheme Map.

TABLE 1 - LAND USE TABLE

| CLASSIFICATION | ZONES | | | | | | |
|---|--------------------------------|-------------|--------------|-------------|-----------------|---------|-------------|
| | SPECIAL ZONE RESTRICTED USE | RESIDENTIAL | LOCAL CENTRE | TOWN CENTRE | LIGHT INDUSTRIA | HIGHWAY | EDUCATIONAL |
| Aged or Dependent Persons Dwelling | AS PER APPENDIX VIII | SA | X | X | X | P | X |
| Bulk Retail Sales | | X | X | X&AA* | X | AA | X |
| Car Park <i>AMD GG 20/01/17</i> | | IP | P | AA | IP | P | IP |
| Civic Building | | X | X | AA | X | AA | AA |
| Consulting Room | | X | AA | AA | X | AA | IP |
| Craft Industry | | SA | AA | AA | AA | AA | IP |
| Day Care Centre | | SA | SA | AA | X | AA | AA |
| Depot | | X | X | X | P | X | X |
| Dry Cleaning Premises | | X | AA | P | AA | X | |
| Dwelling (Self-contained) | | P | AA*† | AA*† | IP | P | IP |
| Educational Establishment | | SA | X | AA | X | AA | P |
| Fast Food Outlet | | X | X | SA&X* | X | X | X |
| Fish Shop | | X | SA | SA | X | X | X |
| Funeral Parlour | | X | X | SA | X | X | X |
| Home Occupation | | AA | AA | AA | AA | AA | AA |
| Hospital | | SA | X | X | X | SA | X |
| Hotel/Tavern <i>AMD 111 GG 9/10/09</i> | | X | X | SA | X | X | X |
| Light Industry | | X | X | X | P | X | X |
| Motel | | X | X | SA | X | X | X |
| Motor Repair Station | | X | X | X&AA* | P | X | X |
| Office | | X | AA*† | P*† | IP | P | IP |
| Open Air Display | | X | X | AA | P | AA | X |
| Public Utility | | AA | AA | AA | AA | AA | AA |
| Recreation-Indoor - Active-Passive | | X | X | SA | X | X | IP |
| Recreation-Outdoor | | SA | SA | SA | AA | SA | P |
| Religious Purposes | | SA | P | P | X | P | IP |
| Residential Building | | SA | SA | SA | X | SA | IP |
| Restaurant | | SA | AA | AA | X | SA | IP |
| Restricted Premises | | X | X | X | SA | X | X |
| Retail Store | | X | X | AA&X* | X | X | X |
| Service Industry | | X | X | X&P* | P | AA | X |
| Service Station | | X | SA | AA | IP | AA | X |
| Service Trade | | X | P | X&AA* | AA | P | IP |
| Shop (Intermediate) | | X | P | P&X* | X | X | X |
| Shop (Small) | | SA | P | P&X* | SA | AA | IP |
| Showroom | | X | X | P&X* | IP | P | X |
| Small Bar <i>AMD 111 GG 9/10/09</i> | | X | SA | AA | X | SA | IP |
| Transport Depot | | X | X | X | P | X | X |
| Vehicle Sales | | X | X | SA | X | AA | X |
| Veterinary Clinic/Hospital | | X | AA | X&AA* | X | AA | X |
| Warehouse | | X | AA | X&P* | P | AA | X |

USE CLASS PERMISSIBILITY TO BE DETERMINED WITH REFERENCE TO THE DESIGNATIONS IN THE APPROVED STRUCTURE PLAN

* See Clause 61 * See Clause 23

14. LAND USE TABLE:

- (1) Subject to this Division, Division III of this Part and Clauses 94 and 95 of the Scheme, the various purposes for which land may be used are set out in the first column of Table No. 1. Those purposes are herein referred to as "Use Classes".
- (2) Whether the land in a particular Zone may be used for a particular purpose shall be determined by reference to the symbol indicated alongside that Use Class under the appropriate Zone heading.
- (3) The symbol:
 - (a) "P" means that the use of the land for the purpose indicated is permitted;
 - (b) "IP" means that the land shall not be used for the purpose indicated unless Council decides that such use is incidental to the predominant use made of the land;
 - (c) "AA" means that the land shall not be used for the purpose indicated but the Council may approve of the use of land for that purpose if that use:
 - (i) will provide a local service to other land in the locality; or
 - (ii) is consistent with the general use of land in that locality and the Council is satisfied that the use, and the activities to be carried on which are connected with, or incidental to that use; and any building to be erected on the land will not have any adverse or detrimental effect on the residents or amenity of or the properties in the locality;
 - (d) "SA" means that the land shall not be used for the purpose indicated but that in exceptional cases the Council may specially approve of such use where:
 - (i) the applicant has given notice of the development proposed to be carried out by:
 - (1) Advertising particulars thereof in a newspaper circulating in the area in which the land is located at least once after the land use application has been lodged with the Council;
 - (2) Placing a notice or notices specifying particulars of the proposed development and the purpose for which the land is to be used in a prominent position or positions on the land so that the same are visible and readable from every street to which the land has frontage;
 - (ii) the advertisement is in the form prescribed in Appendix IX to the Scheme;
 - (iii) the notice is in the form of Appendix X to the Scheme and its content, type and size of print have been first submitted to and approved by the Chief Executive Officer;
 - (iv) the notice or notices referred to in paragraphs (i)(2) of this Clause have been exhibited on the land in accordance with the provisions of that paragraph for a period of not less than seven days during the period during which particulars of the application are being advertised in a newspaper as required by paragraph (i)(1) of this Clause;

- (v) copies of the advertisement referred to in paragraph (i)(1) of this Clause have been served by registered post on such owners and occupiers of land in the vicinity of the land the subject of the land use application as the Chief Executive Officer shall nominate;
 - (vi) the applicant satisfies the Council that the requirements of this Clause have been complied with.
 - (vii) the Council has considered all submissions made with respect to the proposed use and is satisfied that use, the activities to be carried on which are connected with or incidental to that use and any building to be erected on the land will not have any adverse or detrimental effect on the residents or of the amenity of or the properties in the locality.
- (e) "X" means that the land shall not be used for the purpose indicated.
- (4) Where in Table No. 1 a particular Use Class is mentioned, that class is deemed to be excluded from any other use Class which by its more general terms would otherwise include that particular use.
- (5) If a particular use is not mentioned in the list of Use Classes in Table No. 1 or is not included in the general terms of any of the Use Classes that use shall be deemed to be prohibited.
- 14A. No person shall use, or suffer to be used, any land or any building or structure thereon, in a Special Zone (Restricted Use) except for the purpose specified against such land in Appendix VII to this Scheme and subject to compliance with any condition specified in the appendix with respect to that land.

15. HOME OCCUPATION:

- (1) If a Home Occupation is being carried on and the Council is of the opinion that use is causing a nuisance or annoyance to neighbours or owners or occupiers on the land in the neighbourhood or is otherwise having an adverse effect on the residents or amenities of or property in the neighbourhood, the Council may rescind the permission granted by it for that use and thereafter a person shall not use the land for a Home Occupation unless further permission to do so is subsequently granted by the Council.
- (2) Where the Council grants permission for the use of land for a Home Occupation, the Council may limit the time for which that permission remains valid. When that time has expired a person shall not use that land for a Home Occupation unless further permission to do so is subsequently granted by the Council.
- (3) A person to whom permission to use land for a Home Occupation has been granted shall not carry on that Home Occupation at any premises other than those specified in that approval.
- (4) Council shall only grant approval for a Home Occupation where:
 - (i) the Home Occupation does not occupy a greater area than 20m²;
 - (ii) the Home Occupation does not entail the employment of any person not a member of the occupier family except where the Home Occupation is carried on by a professional person;
 - (iii) Council is satisfied that adequate on site parking is available; and
 - (iv) it is agreed with the occupier that no advertisement exceeding 0.185m² in superficial area will be erected.

16. SHOPS (SMALL) VARIOUS ZONES:

In the Residential, Light Industrial and Highway Zones and Local Centre the Council may not approve of the use of land for the purpose of a Small Shop if the area in which the land is situated is already adequately served for that purpose.

17. RECREATION-INDOOR - RESIDENTIAL ZONE:

In the Residential Zone, the Council shall not approve of the use of land for the purpose of Recreation-Indoor unless that use is ancillary to the use of that land for religious purposes or for an Educational Establishment.

18. EDUCATION ESTABLISHMENTS:

(1) In any Zone unless expressly permitted in a Special Zone (restricted use) other than the Educational Zone the Council shall not approve the use of land for the purpose of an Education Establishment unless:

- (a) the number of students attending at any one time is not to exceed thirty (30);
- (b) the Council is satisfied that adequate open space for active and passive recreation for students and all other facilities necessary for the conduct of an Educational Establishment will be provided within the area of the proposed site for that establishment or are available in close proximity to that site.

(2) Subject to Division III of the Part, a person shall not use land for the purpose of an Educational Establishment in a Zone unless expressly permitted in a Special Zone (restricted use) other than the Educational Zone if the number of students attending at any one time exceeds thirty (30). *AMD 67 GG 24/12/99*

19. HOSPITALS:

(1) Subject to sub-clause (3) of this Clause the Council shall not approve of the use of land for the purpose of a hospital unless:

- (a) the number of beds to be provided does not exceed twenty (20); and
- (b) the hospital is to cater for patients who require medium or long term treatment care or convalescence

(2) Subject to sub-clause (3) of this Clause and to Division III of this Part a person shall not use land for the purpose of a hospital if at any time the number of beds provided exceeds twenty (20).

(3) Where a non-conforming use as a hospital exists Council may after complying with the procedures detailed in sub-clause 14(d) approve of an increase in the number of beds or for the development of land adjoining for the purpose connected with the use of land as a hospital for patients who require short term treatment care or convalescence or as a hospital for the dying.

20. LOCAL CENTRE ZONE - OBJECTIVES:

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

- (1) that the Zone is primarily to be used for local shopping and other uses of a local service nature;

- (2) the desirability of providing a wide variety of shops and other services of a local nature;
- (3) that the scale and operation of uses shall be compatible with residential uses in adjoining areas.

21. SERVICE STATIONS - LOCAL CENTRE ZONES:

AMD 111 GG 9/10/09

- (1) The Local Centre Zone is comprised of the separate areas shown on the Scheme Map as the Local Centre Zone.
- (2) In the Local Centre Zone the Council shall not approve of the use of land in any of those separate areas for the purpose of a Service Station if there is already a Service Station in that area of that Zone

22. OTHER LICENSED PREMISES

AMD 111 GG 9/10/09

- (1) Prior to its determination of any application for planning approval in respect of a premises licensed or proposed to be licensed under the *Liquor Control Act 1988*, the Council may require such additional information as it considers relevant to the determination of the application, including:
 - (a) the proposed hours of operation of the licensed premises;
 - (b) the proposed use and/or occupancy of each area of the licensed, including any alfresco areas proposed; and
 - (c) the measures by which the behaviour of patrons is proposed to be managed, and in particular measures to address any unruly behaviour which may take place in association with the operation of the licensed premises.
- (2) In addition to those matters to which the Council must have regard under clause 86, the following additional matters may be considered in the determination of any planning application in respect of a premises licensed or proposed to be licensed under the *Liquor Control Act 1988*:
 - (a) the location of the premises, and its potential impact on the amenity and character of the locality;
 - (b) the effect of the proposed development on the mix of activities in the locality, and the desirability of a mix of land uses that is characteristic of the locality;
 - (c) the duration of trading hours with reference to the amenity of the locality, the availability of public transport services and the generation of vehicular traffic;
 - (d) the number of existing licensed premises in the locality; and
 - (e) any planning policy relevant to the matters specified in paragraphs (a), (b), (c), and (d).
- (3) Without detracting from the generality of Council's discretion under clause 86 to determine an application for planning approval, Council may, when approving an application for planning approval in respect of a premises licensed or proposed to be licensed under the *Liquor Control Act 1988*, impose such conditions as it may deem fit including but not limited to:
 - (a) hours of operation of the premises, including time restrictions on any activity proposed to be carried on within the premises, or part of the premises;
 - (b) maximum number of people permitted to occupy the premises, or particular parts of the premises;

- (c) location and extent of areas to be used for particular activities, including areas in which liquor may be consumed; and
 - (d) management agreements to address any unruly behaviour which may take place in association with the operation of the premises.
- (4) The following car parking space requirements may be applied to the use of land for a Small Bar:
- (a) in the Town Centre Zone, in the alternative to the standard otherwise applicable under the Development Table, Council may reduce the car parking requirements to a number which is not less than one car parking space for every 16 patrons, calculated by reference to the maximum number of patrons for which the Small Bar is licensed; and
 - (b) in the Highway Zone and the Local Centre Zone the Council may, in its discretion, accept the whole or part of the number of spaces required under the Development Table by way of an arrangement utilizing car parking spaces located on land adjacent to, or in close proximity to, the Small Bar premises where the use on the adjacent or proximate land does not open during the opening hours of the Small Bar and where the parking arrangements can be guaranteed to continue while the Small Bar use continues.
- (5) An application for planning approval in respect of a premises licensed or proposed to be licensed under the *Liquor Control Act 1988* shall comply with the provisions of Council's "Policy 103—Licensed Premises with the Town of Claremont", as amended from time to time.

23. OFFICE AND DWELLING (SELF-CONTAINED) - LOCAL AND TOWN CENTRE ZONES:

In the Local and Town Centre Zones (Shopping Policy area) the Council shall not approve of the use of land for an Office or Dwelling (Self-contained) unless:

- (1) that use is confined to a floor or floors of a building above ground floor level; or
- (2) it is not practical to use the land or building in respect of which the application for planning approval is made for retail shopping purposes at ground level.

DIVISION III

NON-CONFORMING USES

24. (1) (a) Notwithstanding any other provision of the Scheme, if on the date when the Scheme comes into operation, any land or building or part of a building is being lawfully used for a purpose other than is permitted under this Scheme, it shall be lawful, subject to this Clause, and to any statute or By-law, to continue to use that land or building or that part of a building and any land directly ancillary thereto for that identical purpose, but no other.
- (b) If any premises entitled to a non-conforming use under this Clause are not used for a period of six (6) months continuously for the purpose authorised by this Clause those premises shall not thereafter be used otherwise than in conformity with this Scheme.
- (c) If a building which is, or of which any part is, being used for a non-conforming use under this Clause is demolished to an extent of more than three quarters of its value or is damaged to more than three-quarters of its value neither that building nor any building erected in place thereof shall thereafter be used otherwise than in conformity with the Scheme, unless by permission of the Council.

- (d) If land, in respect of which a non-conforming use exists or is authorised pursuant to this Clause, is subdivided into two or more lots no part of that land shall be used otherwise than in conformity with the Scheme after that sub-division takes place. The provisions of this paragraph shall not apply if the Council is satisfied that:
 - (i) the subdivision was effected to enable part of the land to be used for public work within the meaning of the *Public Works Act 1902* (as amended); or
 - (ii) that the effect of the subdivision will be to reduce the extent of the non-conforming use being made of the land.
 - (e) If the extent or intensity of a non-conforming use of land authorised by this Clause is reduced for a period of six months continuously the extent or intensity of that non-conforming use of that land shall not thereafter be increased.
- (2) Nothing in the Scheme shall prevent the carrying out or continuance of any development for which, immediately prior to the coming into force of the Scheme, all necessary permits or licences required under the Act, the Metropolitan Region Town Planning Scheme Act or any other Act or law including the Metropolitan Region Scheme and the Town of Claremont Town Planning Scheme No. 1 have been obtained and are current.
 - (3) Where, in respect of land reserved or zoned under this Part of the Scheme, a non-conforming use exists or is authorised as mentioned in sub-clause (1) of this Clause on that land, nothing in the Scheme shall be deemed to prohibit or to have the effect of prohibiting the erection, alteration or extension on the land of any building in connection with or in furtherance of such non-conforming use of the land which would not be an unlawful erection, alteration or extension under the laws of the State or the By-laws of the Council.
 - (4) The Council may permit the use of any land to be changed from one non-conforming use to another non-conforming use, if the proposed use is, in the opinion of the Council, less detrimental to the amenity of the neighbourhood than the existing use, or is in the opinion of the Council closer to the uses permitted in the Zone in which the land is located under the provisions of this Scheme.
 - (5) The Council may effect the discontinuance of a non-conforming use by the purchase of the affected property, or by the payment of compensation to the owner or the occupier or to both the owner and the occupier of that property, and may enter into an agreement with the owner and the occupier for that purpose.

PART III - DEVELOPMENT REQUIREMENTS

DIVISION I

GENERAL REQUIREMENTS

25. DEVELOPMENT GENERALLY:

- (1) Subject to clause 25(2), all development on land zoned and reserved under the Scheme requires the prior approval of the local government. A Person must not commence or carry out any development without first having applied for and obtained the planning approval of the local government under Part V of this Scheme.

- Note:
1. The planning approval of the local government is required for both the development of land and the use of land.
 2. Development includes the erection, placement and display of any advertisements.
 3. Approval to commence development may also be required from the Western Australian Planning Commission under the Metropolitan Region Scheme. AMD 125 GG 17/3/15

- (2) Permitted development

Except as otherwise provided in the Scheme, for the purposes of the Scheme the following development does not require the planning approval of local government -

- (a) the carrying out of any building or work which affects only the interior of a building and which does not materially affect the external appearance of the building except where the building is -
- (i) located in a place that has been entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*;
 - (ii) the subject of an order under Part 6 of the *Heritage of Western Australia Act 1990* or a Heritage Agreement with the Town under clause 53 of the Scheme; or
 - (iii) included on the Heritage Schedule under clause 78 of the Scheme with the exception of buildings used for residential purposes only that are not subject to (i) and (ii) above and the works are confined to any of the following reversible and minor works -
 - Fit out of an existing kitchen, bathroom or laundry with no structural alterations;
 - Replacement of light fittings;
 - Painting/wall papering/plastering of internal walls;
 - Internal retiling;
 - Construction of new internal non-masonry, non-load bearing walls;
 - New floor covering placed over but not replacing existing floor surface materials; or
 - Electrical and plumbing works.

- (b) the erection or extension of a single dwelling, ancillary dwelling, outbuilding, external fixture, patio, pergola, veranda or swimming pool on a lot if the development satisfies the deemed-to-comply requirements of the R-Code, except where -
 - (i) the proposal involves a variation to a provision of the Scheme;
 - (ii) the proposal involves a variation to any local planning policy adopted under Section 82 of the Scheme;
 - (iii) the proposal involves a variation to any Structure Plan or Detailed Area Plan adopted under this Scheme that applies to the development.
 - (iv) the proposal is for a place that has been entered in the Register of Places under the *Heritage of Western Australia Act 1990*;
 - (vi) the proposal is for a place the subject of an Order under Part 6 of the *Heritage of Western Australia Act 1990* or a Heritage Agreement with the Town under clause 53 of the Scheme;
 - (vii) the proposal is for a place listed on the Heritage Schedule under Clause 78 of the Scheme;
- (c) the demolition of any building or structure except where the building or structure is -
 - (i) located in a place that has been entered in the Register of Heritage Places under the *Heritage of Western Australia Act 1990*;
 - (ii) the subject of an order under Part 6 of the *Heritage of Western Australia Act 1990* or a Heritage Agreement with the Town under clause 53 of the Scheme; or
 - (iii) included on the Heritage Schedule under clause 78 of the Scheme.
- (d) the following minor residential development where the development satisfies the deemed-to-comply requirements of the R-Codes, complies with this Scheme, with any local planning policy adopted under clause 82 of this Scheme and any Structure Plan or Detailed Area Plan adopted under this Scheme that applies to development, and with any local law, and where the building or structure is not included on the Heritage Schedule under clause 78 of this Scheme:
 - (i) a rainwater tank with a capacity of 5kL or less;
 - (ii) children's play equipment;
 - (iii) fill and associated retaining less than 0.5m or excavation; or
 - (iv) front fences

where these are located to the side or rear of an existing dwelling (excepting front fences);
- (e) a home office which is also compliant with the home occupation requirements of this Scheme;
- (f) dividing fences with -
 - (i) A height of up to 1.8m; or
 - (ii) A height between 1.8m and 2.3m, where both neighbours are in agreement as to the height;

- (g) landscaping which does not involve fill over 0.5m;
- (h) non-illuminated signage or advertising that complies with the Town's Local Law Relating to Signs or any Local Planning Policy; or
- (i) any works which are temporary and in existence for less than 48 hours or such longer time as the local government agrees.

Note: Development carried out in accordance with a subdivision approval granted by the Commission is exempt under section 157 of the *Planning and Development Act 2005*. AMD 125 GG 17/3/15

- (3) No person shall, unless the consent of the Council is obtained, demolish any building, structure or part thereof that is listed in the Schedule referred to under Clause 78 of Council's Town Planning Scheme or is listed on Council's Heritage Survey undertaken in November 1991 and as amended from time to time. Council may refuse to grant planning approval to any application to demolish any building listed in the Schedule referred to under Clause 78 of Council's Town Planning Scheme or Council's Heritage Survey as amended from time to time which has been identified in that survey as a place which has high intrinsic architectural merit, to be an outstanding example of its kind, to be of historical significance or to substantially contribute to the streetscape.

TABLE 2 – DEVELOPMENT TABLE

| USE | BUILDING SETBACKS | LANDSCAPED OPEN SPACE | CARPARKING SPACE REQUIREMENT |
|--------------------------------------|--|---|--|
| Aged or Dependent Persons Dwellings | Refer to Requirements Part 3 | | |
| Bulk retail Sales | * | 5% of Site | One for each 30m ² of gross leasable area. |
| Consulting room | * | In Residential Zone 40% for one storey; 50% if two storey. Elsewhere as determined. | One for each 30m ² of gross leasable area plus one for each person employed. In the town Centre Zone one for each 20m ² of gross leaseable area. |
| Craft Industry | * | 5% of site | As for Light Industry. |
| Dwelling (Self-contained) | Refer to Requirements Part 3 | | |
| Educational Establishment | As for the R15 Code | 50% of site | One for each full-time employee plus spaces for students, as determined by Council. |
| Fast Food Outlet | * | 5% of site | One for each 7m ² of gross leaseable area. |
| Funeral Parlour | * | 5% of site | Not less than six spaces |
| Hospital | As for the R15 Code | 30% of site | One per patient bed plus one for each employee. |
| Hotel/Tavern | * | 10% of site | One for each bedroom, plus one for each 2m ² of bar and lounge floor area. |
| Light Industry | Street 7.5 Side 3 Rear 7.5 | 10% of site | One for each 30m ² of gross leaseable area. |
| Motel | * | 30% of site | One for each bedroom, plus one for each 25m ² of gross leasable area of service building. |
| Office AMD 74 GG 30/6/00 | * | 5% Town Centre | One for each 30m ² of gross leasable area. |
| Recreation-Indoor-Active | * | 5% of the site | One for 12.5m ² of gross leasable area. |
| Recreation-Indoor-Passive | * | 5% of the site | One for each six seats provided. |
| Residential Building | In Residential Zone – as for applicable R – Code. Elsewhere as determined by Council | As for Predominant Use. | One for every two persons the building is designed to accommodate. |
| Restaurant | In Residential Zone – As for applicable R – Code. Elsewhere as determined by Council | As for Predominant Use. | One for: (a) each 12.5m ² of gross leasable area; or (b) Every four seats provided (other than in an alfresco dining area), whichever is greater. |
| Retail Store AMD 93 GG 13/5/05 | * | 5% of site | One for each 16.67m ² of gross leasable area. |
| Service Industry | Street 1.5 Side Nil Rear Nil | 10% of site | One for each 20m ² of gross leasable area. |

TABLE 2 – DEVELOPMENT TABLE (Cont'd)

| USE | BUILDING SETBACKS | | | LANDSCAPED OPEN SPACE | CARPARKING SPACE REQUIREMENT |
|---|-------------------|-------------|-------------|------------------------|--|
| Service Station | * | | | 5% of site | One for each working bay, plus one for each person employed on site. |
| Shop (Intermediate) <i>AMD 93 GG 13/5/05</i> | * | | | 5% of site | One for each 16.67m ² of gross leasable area. |
| Shop (Small) Residential zone & Light Industrial Town Centre (Shopping Policy area) Local Centre Zone <i>AMD 93 GG 13/5/05</i> | Street Nil | Side 2.5 | Rear 7.5 | 5% of site | Requirements to be determined by Council. One for each 16.67m ² of gross leasable area. |
| Showroom more than 400m ² Showroom less than 400m ² | * | | | 5% of site | One for each 50m ² of gross leasable area or one for every two persons employed on site, whichever is greater. One for each 40m ² of gross leasable area. In the Town Centre where the floor area is less than 200m ² - one for each 20m ² of gross leaseable area. |
| Small Bar <i>AMD 111 GG 9/10/09</i> | * | | | * | One for every 4 patrons calculated by reference to the maximum number of patrons for which the Small Bar is licensed, but subject to variation in accordance with Clause 22. |
| Vehicle Sales | * | | | As for Predominant Use | One for each 100m ² of sales area plus one for each person employed on site. |
| Warehouse | * | | | As for Predominant Use | As for Showroom. |

Note: Table 2 is subject to the provisions of Clause 37A - Non Residential Development abutting a Residential Zone.

AMD 65 GG

19/8/05

Note: Car parking requirements are to be measured to the second decimal point for all elements of the calculation and then rounded up or down to the nearest whole number for the final figure.

AMD 123 GG 20/01/17

26. RESIDENTIAL DEVELOPMENT: RESIDENTIAL PLANNING CODES:

- (1) For the purpose of this Scheme “Residential Planning Codes” means the Residential Planning Codes set out in Appendix 2 to the Statement of Planning Policy No.1, together with any amendments thereto.
- (2) A copy of the Residential Planning Codes, as amended, shall be kept and made available for public inspection at the offices of the Council.
- (3) Unless otherwise provided for in the Scheme, the development of land for any of the residential purposes dealt with by the Residential Planning Codes shall conform to the provisions of those codes.
- (4) The Residential Planning Code density applicable to land within the Scheme Area shall be determined by reference to the Residential Planning Codes density number superimposed on the particular areas shown on the Scheme maps as being contained within the solid black line borders or where such an area abuts another area having a Residential Planning Codes density, as being contained in the centre-line of those borders.

27. SPECIAL APPLICATION OF RESIDENTIAL PLANNING CODES:

DELETED BY AMD 132 GG 16/05/17

28. TABLE 2 - LISTED USE CLASSES:

- (1) Unless otherwise provided in the Scheme, where land may be used for the purpose set out in the first column of Table No. 2 the land shall not be used for that purpose unless the requirements specified in that Table or (where so provided in that Table) determined by the Council are complied with in accordance with the provisions of this Part.
- (2) Where in Table No. 2 provision is made for the Council to determine a particular requirement, the Council shall make that determination on each application for planning approval for the development with respect to which that provision is made having regard to:
 - (a) the nature of the use proposed to be made of the land;
 - (b) the purposes for which land in the locality may be used in accordance with the Scheme;
 - (c) the use being made of land in the locality;
 - (d) the preservation of the amenity of the locality and the prevention of any adverse or detrimental affect which the use might have on the residents of, or the properties in the locality.

29. TABLE 2 - UNLISTED USE CLASSES:

- (1) Where a particular Use Class is not mentioned in the first column of Table No. 2, land shall not be used for that purpose unless the requirements laid down with respect to the Use Class which predominates in the Zone in which the development is proposed to be carried out are complied with but, if the Council considers that those requirements are inappropriate to the proposed development, the Council shall determine the requirements to be complied with having regard to the matters mentioned in Clause 28(2).

- (2) For the purposes of sub-clause (1) of this Clause, the Use Class which predominates in a particular Zone shall be deemed to be:
 - (a) in the Residential Zone - Dwelling (Self-contained);
 - (b) in the Local Centre Zone - Shop (Indeterminate);
 - (c) in the Town Centre Zone - Office or Shop (Indeterminate) as the Council determines in each particular case;
 - (d) in the Light Industrial Zone - Light Industry;
 - (e) in the Highway Zone - Showroom with a floor area of less than 400m²;
 - (f) in the Education Zone - Educational Establishment;

30. SUBSTANTIAL ALTERATIONS - CAR PARKING:

AMD 123 GG 20/01/17

Where:

- (1) land is developed by any substantial reconstruction, alteration or any addition to a building on that land, or
- (2) the nature of the use made of the land is changed,

and the alteration results in additional useable area and/or creates an additional demand for car parking, only the additional bays shall be required to be provided, constructed and maintained in accordance with the Scheme.

31. CAR PARKING SPACES:

- (1) Car parking spaces of the number required to be provided by the Scheme and any trees or vegetation required to be provided pursuant thereto shall be constructed and maintained in accordance with the provisions of this Clause.
- (2) Those car parking spaces and the access ways to those spaces shall not be of lesser dimensions than those specified under the relevant Australian Standards and shall be laid out together with required access aisles in accordance with those standards.
AMD 123 GG 20/01/17
- (3) Those car parking spaces and access ways shall be constructed of hard standing, dust free surfaces graded and drained to specifications approved of by the Council.
- (4) Every car parking space provided pursuant to the Scheme (other than car parking spaces for a Single House or Attached House) shall be clearly identified by painted outline, kerbed divisions or other method approved by the Council.
- (5) Where the total number of car parking spaces in any row exceeds six (6), the Council may require that a suitable species of shade tree be planted at intervals of not more than 10m and may also be required to be planted in accordance with Clause 37A – Non-Residential Development abutting a Residential Zone.
AMD 65 GG 19/8/05
- (6) The Council may require that a suitable species of and number of shade trees or other suitable vegetation be planted at the end of a row of car parking spaces or at the street alignment.
- (7) Where car parking spaces are located on land adjacent to the Residential Zone, the Council may require that those spaces shall be suitably screened from view from that Zone and planted in accordance with Clause 37A – Non-residential development abutting a Residential Zone.
AMD 65 GG 19/8/05

31A. RELAXATION OF CAR PARKING NUMBERS:

AMD 72 GG 24/12/99; AMD 93 GG 13/5/05; AMD 123 GG 20/01/17

- (1) Notwithstanding clause 31(1) and the requirements of Table No. 2 relating to the number of car parking spaces to be provided, the Council may in its discretion approve the development of land for the purpose of:

- a) a Retail Store:
- b) a Shop (Intermediate); or
- c) a Shop (Small),

with a reduced number of parking bays in accordance with the third column of Table No. 3, provided the parking layout is in accordance with the first and second columns of Table No. 3.

TABLE 3 – CAR PARKING SPACE UNDER CLAUSE 31A (1)

| Minimum width (metres) | Minimum aisle width (metres) | One car parking space for each m ² of gross leasable area |
|---------------------------|---|--|
| 2.69 or less | As per relevant Australian Standards | 16.67 |
| 2.70 to 2.79 | 6.4 | 20 |
| 2.80 plus | 6.2 | 20 |

Note: Aisle widths are to be defined by reference to the diagram contained within Appendix III. The car parking space is denoted within this diagram as "C" and the aisle width as "D";

- (2) Notwithstanding other parking concessions available for non-residential development under this Scheme, Council at its absolute discretion may apply further parking concessions for non-residential development (excluding educational establishments) of up to 35% where it is considered that the proposed land use or development satisfies the performance criteria contained in Table 4 - Additional Car Parking Concessions.

AMD 123 GG 20/01/17

TABLE 4 - ADDITIONAL CAR PARKING CONCESSIONS

| Car Parking Concession | Performance Criteria |
|---------------------------|--|
| 5% | The proposed development is within 400m of a rail station and customers/staff are likely to use the train to access the development. |
| 5% | The proposed development is within 100m of a stop on a high frequency bus route and customers/staff are likely to use the bus to access the development. |
| 5% | The proposed development is within 400m of a public car park. |
| 5% | The proposed development provides 10 bicycles bays or more and where 'end-of-trip facilities' are provided as recommended under a Local Planning Policy adopted under the provisions of the Scheme and customers/staff are likely to use bicycles to access the development. |
| 5% | The proposed development is located within Town Centre or Local Centre zone and provides a public benefit, compliments the character of the zone and does not adversely impact the amenity of the locality. |
| 5% | Where the building/place is listed on the Town's Heritage List, Municipal Inventory or the State Register of Heritage Places (subject to the building or place being conserved to the satisfaction of Council). |
| 5% | The proposed development contains parking controls which monitor and control use through boom-gates (or similar) and ticket issuing machines. |

- Notes:
1. Distances referred to in this table are measured along constructed footpaths or verges of road reserves, not 'as the crow flies'.
 2. The applicant shall be required to submit a Peak Parking Demand Survey to satisfy Council that the granting of parking concessions under this clause will not result in parking shortfalls for the proposed development.
- (3) Council, in considering the merits and application of parking concessions relative to non-residential land use and development proposals under Clause 31A(2) and the value of cash-in-lieu for parking bay construction under Clause 33(1)(a), is to take into consideration any Local Planning Policy which is adopted under the scheme and is applicable to public parking. *AMD 123 GG 20/01/17*
- (4) Council may consider joint use of car parking facilities in satisfaction of parking requirements for non-residential development under the scheme as follows:
- (a) Parking facilities may be provided jointly by two or more owners or users of land or by one owner or user in respect of separate buildings or uses, subject to the satisfaction of the standards and requirements hereinafter set out in this sub-clause.
 - (b) If there is a deficiency in the number of parking spaces provided to serve and building or use, the Council may permit the parking spaces for that building or use to be provided jointly with any one or more other buildings or uses whether or not those others separately have the prescribed number of parking spaces provided that the peak hours of operation of the buildings or uses so sharing are different and do not substantially overlap.
 - (c) The Council may require that reciprocal access and circulation arrangements are provided for any buildings or uses affected by this sub-clause when, in the opinion of the Council, such arrangements are deemed necessary to improve design or amenity.
 - (d) The combined supply of car parking is considered by Council to be sufficient to meet the estimated peak combined demand and the location of parking is considered to be within close proximity and accessible from the development site, to the satisfaction of Council.
 - (e) The Council may require an agreement to be prepared by a solicitor at the expense of the person seeking to take advantage of the provisions of this sub-clause, detailing the relevant issues of the joint usage, and executed by all parties concerned. Any such agreement shall be capable of operating as an easement, an easement in gross and/or a restrictive covenant against any land providing parking spaces, reciprocal access or circulation arrangements and shall ensure that where the easement or restriction is made expressly in favour of an adjacent landowner other than the Town, that the restraint cannot be removed without consent of the Council upon the Council being satisfied that the joint use of parking facilities is no longer required. *AMD 123 GG 20/01/17*
- (5) Without limiting its powers under clause 85, the Council may impose a condition of planning approval to ensure the continuing provision of the arrangements referred to in subclause (4).
- (6) Notwithstanding that all car parking spaces to be provided within the development are 2.8 metres or more in width, for the purpose of determining the amount of the cash payment referred to in clause 33(1), the number of car parking spaces required to be provided pursuant to this scheme is to be calculated on the basis that the required spaces must be 2.5 metres in width.
- (7) Notwithstanding that the definition of Gross Leasable Area in clause 10 includes storage areas, where the Council is satisfied that the storage areas are separate from but used in conjunction with retail premises, then the Council may exclude storage areas from the calculation of Gross Leasable Area for the purpose of determining car parking requirements, if it considers that use of the storage areas is not likely to result in any additional demand for car parking spaces. *AMD 117 GG 12/10/10*

- (8) If the Council has granted an interim parking concession in accordance with Clause 31A(2) in respect of a development of land, and application is made to Council for reconsideration of the parking requirements under the Scheme, the Council may consider any revised parking requirement as satisfying the parking requirements of the Scheme as if the application for the development was then before the Council for determination. The reduced parking requirements shall be taken into account as satisfying the final parking requirements of the Scheme. *AMD 123 GG 20/01/17*

32. CAR PARKING SPACES - LOCATION:

DELETED BY AMD 123 GG 20/01/17

33. CASH PAYMENT IN LIEU OF PROVIDING CAR PARKING SPACES:

- (1) Where car parking spaces are required to be provided pursuant to this Scheme, the Council may accept a cash payment in lieu of the provision of some or all of those car parking spaces, if:
- (a) the payment is not less than the amount the Council estimates to be the cost to the owner of providing and constructing those spaces calculated in accordance with the scheme inclusive of any amount the Council estimates to be the cost of providing land to accommodate those spaces within or adjacent to the Town Centre and Local Centre zones taking into consideration any Local Planning Policy which is adopted under the scheme and is applicable to public parking; *AMD 100 GG 6/3/07; AMD 123 GG 20/01/17*
 - (b) payment is made prior to commencement of the development in respect of which those spaces are required to be provided or in accordance with the terms of an agreement made between the Council and the applicant for planning approval for that development.
- (2) The monies received by the Town under this clause shall be paid into a Parking Reserve Fund and shall only be used: *AMD 123 GG 20/01/17*
- (a) for the provision of public parking or facilities, infrastructure and services for cyclists, pedestrians and public transport users;
 - (b) for reimbursing the Town for any expenses incurred for the purpose of this clause including any loan repayments.
- (3) If the Council has granted or waived a parking licence fee or granted a licence of car parking bays in a parking area or parking station under the control of the Council in respect of a development of land for any of the purposes referred to in Clause 31A(3), if during the term of the licence, or within three months after the termination of the licence by reason of the expiration of the term, or otherwise on the election of the licensee in accordance with the provisions of the lease or licence, the licensee may apply to the Council to reassess the parking requirements for the development in accordance with the provisions of this clause and the Council may do so as if the application for the development was then before the Council for determination. The waived licence fee or licence payment paid to Council for the licence of Council parking bays shall be taken into account as satisfying the final cash-in-lieu payment to Council for parking.

AMD 123 GG 20/01/17

34. LANDSCAPED OPEN SPACE:

The Council shall determine the location of the open space in connection with every development. The area provided shall not be less than the area (if any) required to be provided for that purpose by the Scheme.

35. GROUPED DWELLING - STORE-ROOM:
DELETED BY AMD 132 GG 16/05/17

36. OUTBUILDINGS, GARAGES CARPORTS & PERGOLAS:
AMD 81 GG 9/2/01; AMD 132 GG 16/05/17

(1) *DELETED BY AMD 132 GG 16/05/17*

(2) In considering an application for a carport, Council will, subject to subsection (4) of this Clause, have regard to the following: *AMD 97 GG 6/3/07*

- (a) Carports with a front setback of less than 4.5 metres will only be supported where the position of the existing dwelling does not allow a 4.5 metre setback to be employed and subject to consideration of the impact upon the streetscape and character of the locality.
- (b) Carports with a side physically attached to an existing dwelling will be supported to enable the greatest front setback possible to be employed.
- (c) Where possible, a carport shall be located at or behind the building line of the dwelling.
- (d) Council will consider other appropriate options for carports for places referred to in Clause 79.

(3) In considering an application for a garage, Council will, subject to subsection (4) of this clause, have regard to the following: *AMD 97 GG 6/3/07*

- (a) Subject to subclause 3 (b) of this Clause the minimum front setback shall be 6 metres,
- (b) A garage with a setback of less than 6 metres, but not less than 4.5 metres from the front boundary will only be supported where it is demonstrated that the garage does not detract from the dominance of the dwelling upon the streetscape and does not adversely affect the character of the locality and casual surveillance of the street from the dwelling is maintained.
- (c) Where possible, a garage shall be located at or behind the building line of the dwelling.

(4) *DELETED BY AMD 132 GG 16/05/17*

(5) *DELETED BY AMD 132 GG 16/05/17*

(6) The provision or use of: *AMD 132 GG 16/05/17*

- (a) A car parking area (whether a garage, carport or dedicated uncovered area) at the front of a property; and
- (b) Any crossover from the primary street,

will not be permitted where a practical alternative vehicle access point exists (such as from a secondary street, rear laneway or similar). This prohibition will apply notwithstanding a proposed development involves the use of a pre-existing crossover from the primary street, except where the proposed development:

- (a) Is considered by the Council to be a renovation of an existing dwelling which retains the pre-existing car parking area without facilitating additional car parking, and provided the requirement to remove the crossover and provide an alternative car parking area is considered by the Council to be unreasonable; or

- (b) Involves only the upgrading of an existing car parking area, provided that the proposed upgrading does not facilitate any additional car parking.

To facilitate the use of rear laneways or similar practical alternative access points, the Council may consider approving a reduced front setback for the dwelling where private open space to the rear would be significantly compromised by the requirements of this clause, having regard to the applicable design principles of the Residential Design Codes.

- (7) *DELETED BY AMD 132 GG 16/05/17*
- (8) *DELETED BY AMD 132 GG 16/05/17*
- (9) *DELETED BY AMD 132 GG 16/05/17*

37A. NON-RESIDENTIAL DEVELOPMENT ABUTTING A RESIDENTIAL ZONE:

AMD 65 GG 19/8/05

- (1) Notwithstanding the provision of Table 2 – Development Table, where an application is received for a development that is for a use other than a “Dwelling Self-Contained” and the land the subject of that application abuts land that has a zoning or use of “Residential”, Council shall not approve of that development unless:
 - (a) The following building set backs from the Residential zoned land are provided:
 - (i) six (6) metres for the ground floor and first floor with all other floors being set back six (6) metres for each additional storey;
 - (ii) notwithstanding (i) above Council may accept the ground floor being constructed up to the boundary of the Residential zoned land providing the wall on the boundary does not at any point exceed a height of two (2) metres above natural ground level (measured at the common boundary) of the adjacent residential land.
 - (b) No part of a balcony faces the Residential zoned land and any windows on that elevation are fixed sash obscure glazed to a height of 1.8 metres above the floor level of the storey that the window services.
 - (c) No vehicular access (other than a vehicle access where the vehicle enters the building in a forward gear) be provided within five (5) metres of the Residential zoned land and where any vehicle is required to either enter or exit the site in a reverse gear, that set back shall be increased to ten (10) metres minimum.
 - (d) Where the maximum dimension of any open car parking area exceeds ten (10) metres in length or width, one (1) tree for every three (3) car parking bays shall be provided within the car parking areas for the purpose of shade and visual relief and those trees shall be included as additional to that required in Clause 31(5) – Car Parking Spaces and planted in accordance with Clause 31(7) – Car Parking Spaces.
- (2) Council may require that a masonry wall with a minimum height of two (2) metres above natural ground level be constructed along any boundary with Residential zoned land.
- (3) Where the building is setback from the rear boundary, a buffer zone is to be created by the planting of a belt of trees to prevent visual contact between the development and residential areas. The species of trees and landscaping are to be such as to enhance the visual perspective, amenity and value of the development and are to be approved by Chief Executive Officer of the Town or their delegate.

37. COMBINED USES:

Where land or a building is used for multiple purposes:

- (1) the number of car parking spaces to be provided pursuant to this Part shall be calculated separately for each part of the building used for a purpose which differs from the purpose for which another part is used and the number of car parking spaces with which the building shall be provided shall be the total of the numbers calculated for each of those parts;
- (2) the Council shall determine which of the other requirements prescribed for those uses in Table No.2 shall be complied with having regard to the matters mentioned in Clause 28(2).

38. AMALGAMATION OF LOTS:

DELETED BY AMD 132 GG 16/05/17

39. ACCESS - DISABLED PERSONS:

Where any part of a proposed building will be open to the public generally, provision shall be made for disabled persons to have access to that building in accordance with the relevant requirements of Australian Standard 1428-1977 relating to access to buildings.

40. HEIGHT OF BUILDINGS:

- (1) Subject to sub-clauses (6) and (12) of this Clause, a building shall not be erected or added to so as to exceed the height prescribed or determined in accordance with this Clause.
- (2) For the purpose of this Clause the height of a building shall be the vertical distance between the top of the eaves, parapet or flat roof, whichever is the highest and the natural ground level. Natural ground level shall be determined by connecting a point on the front boundary to a corresponding point on the rear boundary. Points are deemed to correspond when a line connecting such points is parallel to the nearest side boundary. Where a lot is affected by By-law No.123 Council may accept the line dividing the unhatched area from the hatched area as the rear boundary of the site.

On Lots 13 and 20 Cliff Way and Lot 2 Brae Road only, the height of a building shall be the vertical distance between the top of the eaves, parapet or flat roof whichever is the higher, and natural ground level immediately below that part.

- (3) Subject to sub-clauses (4) and (5) and (6) of this Clause, in the Residential Zone a building shall not exceed 6.6m in height.
- (4) On the south side of Victoria Avenue west of Chester Road, a building shall not at any point exceed 9m in height above natural ground level.

For the purpose of this sub-clause the natural ground level shall be determined by a line connecting a point on the ground at the street alignment to a corresponding point of the Foreshore Building Line prescribed by By-law No. 132 published in the Government Gazette on the 25th January 1962. Points are deemed to be corresponding when the line connecting such points is parallel to the nearest side boundary of the lot.

- (5) Notwithstanding any provisions of this part to the contrary, the Council may in special circumstances only approve of a building of a greater height than prescribed under sub-clause (3) of this Clause on any lot within the Municipality -
 - (a) that is located within the area contained within the black border on the map in Appendix V, or

- (b) Where an application is received to construct additions to a dwelling constructed during or before the year 1920, which Council considers to have high intrinsic architectural merit, or be an outstanding example of its kind, or of historical significance and Council considers it desirable to exceed the height limit to a maximum of 1.5 metres above that prescribed in sub-clause (3) of this Clause, to maintain the intrinsic architectural merit of the building.
- (6) In the Local Centre Zone a building shall not exceed 6m in height.
- (7) In the Town Centre Zone a building of more than two storeys shall not exceed a height which, in the opinion of the Council, would be contrary to the orderly and proper planning of the locality or would have an adverse effect on the amenity of the locality.
- (8) In the Light Industrial Zone a building shall not exceed 6m in height provided that the Council may permit a building to be erected or added to a height of not more than 9m if the Council is satisfied that the use proposed to be made of that building could not be effectively carried out in a building of a maximum height of 6m and if the Council is satisfied that there will be no adverse effect on the amenity of the locality.
- (9) In the Highway Zone a building shall not exceed 12m in height provided that, if the Council is of the opinion that it is necessary to do so in a particular case to avoid any adverse effect on the amenity of any part of the Residential Zone, the Council may require a building to be constructed to a lower height than 12m.
- (10) In the Educational Zone a building shall not exceed 9m in height provided that, if the Council is of the opinion that it is necessary to do so in a particular case to avoid any adverse effect on the amenity of any part of the Educational Zone, the Council may permit a building to be constructed to a height not exceeding 12m.
- (11) Notwithstanding the provisions of this Clause, a church may have a tower, spire or arch feature which exceeds the maximum prescribed building height.

41. PLOT RATIO - CONSULTING ROOMS:

The Plot Ratio of Consulting Rooms:

- (1) in the Residential Zone shall not exceed 0.4;
- (2) in any other Zone shall not exceed 0.5

42. PLOT RATIO - RESIDENTIAL BUILDINGS:

The Plot Ratio of a Residential Building:

- (1) in the Residential Zone shall not exceed 0.4;
- (2) in the Town Centre Zone shall not exceed 0.8;
- (3) in the Highway Zone shall not exceed 0.4 unless the land on which the building is erected has no direct vehicular access to or from Stirling Highway in which case the Plot Ratio of that building shall not exceed 0.8;
- (4) in any other Zone shall not exceed 0.5.

43. RELAXATION OF SET-BACKS:

DELETED BY AMD 132 GG 16/05/17

44. STIRLING HIGHWAY VEHICULAR ACCESS:

Where land having a frontage to Stirling Highway has an alternative means of vehicular access to another street or road, a person shall not create and direct vehicular access to or from that land to Stirling Highway.

DIVISION II

RESIDENTIAL ZONE

45. APPLICATION:

This division applies to development in the Residential Zone.

46. OBJECTIVES:

AMD 132 GG 16/05/17

Development in the Residential Zone the Council, in addition to any other matter it is required or permitted to consider, shall have regard to the following objectives:

- (1) the retention of the Zone as an area of largely residential character with only limited non-residential exceptions;
- (2) the confinement of non-residential uses to those providing:
 - (a) amenities to the residential area in which the use is to be established; or
 - (b) services to that area which uses are compatible in scale, appearance and operation with residential uses;
- (3) the continuation of the domestic scale and architectural character of the area of the proposed development;
- (4) the preservation of the traditional housing character of the Zone;
- (5) the preservation of all buildings referred to in Clause 78.

47. SINGLE HOUSE:

DELETED BY AMD 132 GG 16/05/17

48. CAR PARKING:

- (1) Notwithstanding the provisions of Table No. 2 the Council may increase the total number of car parking spaces required for a development for the purpose of a Dwelling (Self-contained) if the Council is satisfied that number is insufficient to adequately cater for the proposed development and that the amenity of the locality may be adversely affected if that number is not increased.
- (2) Where it is proposed that a Dwelling (Self Contained) is to be constructed on a lot which has a frontage to a street which is deemed to carry a high volume of traffic by its inclusion in Appendix XI to the Scheme, where the Council considers there to be poor visibility or safety concerns and that street provides the principal vehicular access to the lot or the design of the development is such that a vehicle is required to reverse for a distance exceeding 15 metres to exit the site, provision shall be made to permit vehicles to enter and exit the site in forward gear.

AMD 132 GG 16/05/17

49. ADDITIONS TO DWELLINGS (SELF-CONTAINED):

- (1) Where an application is submitted to construct additions to a dwelling and that addition when completed will be visible from a street, Council may only approve of the application if the materials used in and the nature of the construction will be consistent with those of the dwelling.

- (2) In exceptional cases, where the applicant can show that:
 - (a) it is not possible to obtain the materials, or
 - (b) it is impractical to follow the existing style of the dwelling, the addition may be constructed in materials and a style as approved by Council.

50. LOTS AFFECTED BY BY-LAW NO. 123:

Where part of a lot is in the hatched area shown on the Plan in the Schedule to By-law No.123 of the Town of Claremont (published in the Government Gazette on the 18th April 1975):

- (1) for the purpose of calculating the number of dwelling units which may be erected on that lot, the area of that lot shall be deemed to be the area of the lot which is not so hatched but for the purposes of calculating plot ratio the hatched and unhatched areas may be taken into account; and
- (2) the distance from the underside of any part of the footings of a building in the hatched area to the top of the building immediately above that point shall not exceed 2.4m and no part of such a building shall be more than 1m above the natural surface of the land immediately beneath that part.

51. LOTS AFFECTED BY BY-LAW 132:

- (1) Subject to sub-clause (2) of this Clause, where the building line prescribed by By-law 132 of the Town of Claremont (published in the Government Gazette of the 25th day of January 1962) applies to a lot, the relevant set-back distance prescribed by the Scheme for buildings on that lot shall be calculated from that building line.
- (2) The Council may permit the relevant set-back distance for a building on a lot referred to in sub-clause (1) of this Clause, to be calculated from the boundary of that lot with the foreshore reserve if the Council is satisfied that the development is so designed and sited that:
- (3) Notwithstanding the provisions of subclauses (1) and (2) above, Council shall not approve of a building to be located within 3m of the Metropolitan Region Scheme Parks and Recreation Reservation boundary, other than a swimming pool or a fence.
 - (a) public access to the foreshore reserve will not be inhibited; and
 - (b) that part of the foreshore reserve abutting on the land to be developed will not have the appearance of being part of that land.

52. BUILDINGS AND OBJECTS - REPLACEMENT:

- (1) If any part of a Grouped or Multiple Dwelling development existing at the time the Scheme comes into operation, is damaged or destroyed, otherwise than by or on behalf of the owner thereof, the Council may permit that development to be restored (in the event of damage) or replaced (in the event of destruction), notwithstanding that the density of the Development exceeds that permitted on land having the R Code Density accorded to it by the Scheme.
- (2) If any part of a building (other than a single dwelling) that is entered in the Schedule referred to in Clause 78 is damaged or destroyed, otherwise than by or on behalf of the owner thereof, the Council may permit that development to be restored (in the event of damage) or replaced (in the event of destruction) without the provision of additional carparking as required by sub-clause 30(a) of this Scheme if:
 - (a) the building is a true copy with no significant or substantial variation from the original building,

- (b) the gross floor area is no greater than the original building,
- (c) the use of the building remains unchanged.

53. BONUS DENSITIES:

AMD 132 GG 16/05/17

- (1) Where land has an R-Code Density of R15 / R20 accorded to that land by the Scheme and there is a building, object or place on that land which is referred to in the Schedule maintained by the Council pursuant to Clause 78 of the Scheme Council may:
 - (i) consider the development of that land to the density of R20 if:
 - (a) where necessary, that building, object or place is repaired or restored to the satisfaction of the Council; and
 - (b) in any event, the owner of that land enters into an agreement with the Council undertaking to maintain and preserve that building, object or place to the Council's satisfaction and authorising the Council to enter on that land to carry out the work necessary for that purpose should the owner fail to do so;
 - (ii) reduce the building set-back distances prescribed by the Scheme with respect to development to those applicable to the R20 requirement and reduce the number of car parking spaces required to be provided, if the Council is satisfied in either case that to do so is necessary to protect the character of appearance of that building, object or place and to enable the development to be carried out.
- (2) If, for any reason, the provisions of sub-clause (1) of this Clause do not apply to land to which an R-Code Density of R15 / R20 is accorded by the Scheme, development of that land shall conform to the requirements of the lower R-Code Density accorded to that land.
- (3) Where:

Development or subdivision has occurred under Clause 53 (a); and the building, object or place referred to in that clause is demolished or damaged so as to be unfit for occupation or its original architectural form is materially altered, then no other person shall use or develop the land otherwise than in conformity with the requirements of the lower R-Code Density accorded to that land.

54. R-CODE DENSITY R30 - R40:

Where land has an R-Code Density of R30 - R40 accorded to that land by the Scheme, development of that land shall conform to the requirements applicable to land having an R-Code Density of R30, unless the development is for Aged or Dependent Persons Dwellings when the development of that land shall conform to the requirements of R-Code Density R40.

55. ACCESS TO GROUPED DWELLINGS:

DELETED BY AMD 132 GG 16/05/17

56. SMALL SHOP:

- (1) Where part of a building is used for the purpose of a Small Shop that part may abut upon the street alignment.
- (2) All areas used for servicing a Small Shop shall be completely screened from public view.
- (3) A street awning or verandah attached to a Small Shop may project over the footpath adjoining that Shop but shall not project closer than 150mm to any part of the vehicle carriageway.

- (4) An advertising sign shall not be placed, painted or displayed on a building containing a Small Shop other than on a street awning or verandah attached to that Shop or on the facade of the building below the level of such an awning or verandah.

57. RESTAURANT:

- (1) Where part of a building is used for the purpose of a Restaurant that part may abut upon the street alignment.
- (2) All areas used for servicing the Restaurant shall be completely screened from public view.
- (3) In granting approval of an application for planning approval for the use of land for the purpose of a Restaurant the Council may (in addition to any other conditions the Council is required or permitted to impose):
 - (a) specify the days and hours on and during which the Restaurant may be open to the public;
 - (b) specify the location of the car parking spaces to be provided on the land.
- (4) A person shall not use land for the purpose of a Restaurant in such a way as to cause any nuisance or offence to the occupiers of property in the vicinity of the Restaurant.

58. SPECIFIC DEVELOPMENT ZONE A (SUNDOWNER SITE):

DELETED BY AMD 126 GG 12/9/14

DIVISION III

TOWN CENTRE ZONE

59. APPLICATION:

This division applies to the Town Centre Zone.

60. OBJECTIVES:

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

- (1) that Bay View Terrace be maintained as the centre of the specialised shopping area of the District;
- (2) the need for the Zone to provide a varied and integrated centre incorporating a wide range of retail outlets, Offices, Entertainment, Social and Community Facilities;
- (3) that buildings and the access and circulation for pedestrians and vehicles and parking facilities be so laid out as to ensure safety and convenience for shoppers and other users of the Zone;
- (4) the need for architectural and civic design of a high standard in order to compliment the design of older buildings and provide diversity consistent with overall harmony;
- (5) the provision of landscaping to provide shade and visual relief;
- (6) to enable appropriate residential development within the Zone;
- (7) the preservation of all buildings referred to in Clause 78.

61. DISPOSITION OF USES:

- (1) Where land is in the Shopping Policy Area depicted on the plan in Appendix VI to the Scheme the following symbols in Table No. 1 apply to the following uses:

Bulk Retail Sales - X
Fast Food Outlet – SA
Fast Food Outlet (drive through) – X *AMD 94 GG 13/5/05*
Motor Repair Station - X
Retail Store - A-A
Service Industry - X
Service Trade - X
Shop (Intermediate) - P
Shop (Small) - P
Showroom - X
Small Bar - AA *AMD 111 GG 9/10/09*
Warehouse - X
Veterinary Clinic/Hospital – X

- (2) Where land is not in the Shopping Policy Area depicted on the plan in Appendix VI to the Scheme the following symbols in Table No. 1 apply to the following uses:

Bulk Retail Sales - A-A
Fast Food Outlet - X
Motor Repair Station - A-A
Retail Store - X
Service Industry - P
Service Trade - A-A
Shop (Intermediate) - X
Shop (Small) - X
Showroom - P
Small Bar - AA *AMD 111 GG 9/10/09*
Warehouse - P
Veterinary Clinic/Hospital - A-A

- (3) Notwithstanding sub-clause (2) of this Clause, any lot having a frontage to Stirling Road the following shall apply:

Car Park - X
Service Industry - X
Service Trade - X
Veterinary Clinic/Hospital - A-A

62. RESIDENTIAL DEVELOPMENT REQUIREMENTS:

- (1) Where approval is given for the use of land for residential purposes, development for those purposes shall, subject to sub-clause (2) of this Clause, conform with the requirements prescribed for land having an R Code Density of R80 accorded to it by the Scheme.
- (2) In the case of Multiple Dwellings the Council may:
- (a) reduce the number of car parking spaces required to be provided to 0.5 spaces per dwelling unit if the Council is satisfied that the reduced number of spaces will be adequate to cater for the development;
 - (b) if the Council considers that the prescribed set-back distances are inappropriate having regard to the nature of the proposed development and its relationship to adjoining streets, land or buildings, increase or reduce those distances;
 - (c) reduce the prescribed open space requirements to the provision of an open balcony for each Multiple Dwelling.

63. PLOT RATIO:

Subject to Clause 64 and any provision of the Scheme imposing a lower plot ratio with respect to a particular building, a building shall not have a plot ratio of more than 2.0.

64. BONUS PLOT RATIO:

The Council may approve of:

- (1) a building having a plot ratio of not more than one fifth in excess of the plot ratio prescribed for that building; or
- (2) an increase of not more than one fifth of the permitted number of dwelling units otherwise permitted on land, as the case may be, if the proposed development:
 - (a) incorporates an area that is freely accessible to the public at street level and is arcaded or open to the sky;
 - (b) incorporates an area of the kind described in paragraph (1) of this Clause at a level other than street level, which area is, in the opinion of the Council, a substantial amenity to the public;
 - (c) preserves a building, object or place of historic, architectural or townscape value and any other building on the site is located so as to enhance or maintain the setting of that building, object or place;
 - (d) incorporates a courtyard between two streets freely accessible to the public with pedestrian access to the courtyard from one or both streets through arcades; or
 - (e) incorporates a community or other facility or amenity that the Council considers justifies an increase in the permissible plot ratio.

- 64A. (a) This Clause shall apply to the land known as Lots 78 and 79 Stirling Highway and being portion of Swan Location 701.
- (b) Notwithstanding any other provision of this Division to the contrary, the land shall not be used for the purpose of a "Retail Store".
- (c) Development of the land for the purpose of Shops (Small) or Shops (Intermediate) or both shall be in accordance with:
- (i) the requirements set out in Appendix VIII; and
 - (ii) the plans (8 sheets) numbered 1-8, dated 28.2.89 and signed by the Chief Executive Officer, which plans form part of this Scheme.

(65) WALT DRABBLE LANE:

AMD 66 GG 4/6/99

This Clause shall apply to any application to develop land within the Shopping Policy Area that abuts Walt Drabble Lane and the continuation north of Walt Drabble Lane up to Guger Street, other than minor alterations that are in keeping with paragraph (c) below-

Council may require any development abutting Walt Drabble Lane to be designed so that-

- (a) The Ground floor of any building is set back 3 metres from Walt Drabble Lane and Council may exercise discretion in requiring any first floor of the building to be setback a minimum of 4 metres;
- (b) All developments to have a shop front to Walt Drabble Lane and at least 60%; of that frontage is to be fully glazed;

- (c) The Walt Drabble Lane facade of the proposed development shall meet the criteria for the development of Walt Drabble Lane as resolved by Council from time to time;
- (d) Special provision shall be made for the concealment of garbage collection receptacles within the shop front;
- (e) Any paving between the building and Walt Drabble Lane to match that of Walt Drabble Lane in terms of colour and style;
- (f) Where the applicant elects to cede or setback a building from Walt Drabble Lane, Council may agree to a reduction in the number of car parking bays, the reduction being no more than two carparking bay for every 3m² of land ceded or setback as required by a) above; and
- (g) Where the applicant elects not to cede or setback that portion of the development site that is within 3 metres of Walt Drabble Lane, carparking shall be provided in accordance with Table 2 - Development Table of Town Planning Scheme No. 3.

DIVISION IV

LIGHT INDUSTRIAL ZONE

65. APPLICATION:

This division applies to the Light Industrial Zone.

66. OBJECTIVES:

In considering an application for planning approval for development in the Light Industrial Zone the Council, in addition to any other matter it is required or permitted to consider, shall have regard to the following objectives:

- (1) that the Zone provide a location for diverse light industry servicing the District;
- (2) the preservation of all buildings referred to in Clause 78.

67. FRONT SETBACK - GRAYLANDS ROAD:

The area of land in Graylands Road between the street alignment and the prescribed setback distance for buildings may only be used for any one or more of the following purposes:

- (1) landscaping;
- (2) visitor car parking;
- (3) access;
- (4) advertising.

68. OTHER FRONT BOUNDARY SETBACKS:

Subject to Clause 67, a minimum of one third of the area of land between the street alignment and the prescribed setback distance for buildings shall be comprised of landscaped open space. That space shall include strips of not less than 1m in width immediately adjacent to each side boundary, unless there is an access way on that boundary which is shared by adjacent lots. The remainder of the area of land between the street alignment and the prescribed setback distance for buildings shall be developed with landscaped open space or shall be completely screened from view.

DIVISION V

HIGHWAY ZONE

69. APPLICATION:

This division applies to the Highway Zone.

70. OBJECTIVES:

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

- (1) a mixture of residential and commercial developments;
- (2) the restriction, to a minimum, of direct vehicular access to and from Stirling Highway;
- (3) the volume of traffic likely to be generated;
- (4) a landscape and townscape within the Zone compatible with the scale of Stirling Highway;
- (5) the preservation of all buildings referred to in Clause 78.

71. BUILDING SETBACK DISTANCES:

Where the Council grants an application for planning approval the minimum setback from Stirling Highway shall be 7 metres except that Council may vary that distance having regard to the following matters:

- (1) the need for shops and other commercial uses to be exposed to the Highway;
- (2) the desirability of variety in setback distances;
- (3) the desirability of reducing noise impact from the Highway;
- (4) the desirability of providing space for landscaped area; and
- (5) the desirability of providing flexibility in residential development.

72. CONTROL OF ACCESS:

- (1) The Council may in respect of any planning approval require that an easement be granted over the land in favour of any other parcel of land for the purpose of providing access for vehicles from a street or right of way other than Stirling Highway.
- (2) The Council may in respect of any planning approval, require that the development be so designed as to allow future access to be taken from a street or right of way other than Stirling Highway and in such cases may limit the time for which access from Stirling Highway may be permitted to such time as an adequate alternative access to a street or right of way is not available.
- (3) Where access is available solely from Stirling Highway the Council may reduce the extent of the development to be permitted on the site to the extent it determines in the interest of safety and convenience for users of the Highway.

DIVISION VI

EDUCATIONAL ZONE

73. APPLICATION:

This division applies to the Educational Zone.

74. OBJECTIVES:

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

- (a) the maintenance of the park-like appearance of the school grounds visible to the public;
- (b) the preservation of all buildings referred to in Clause 78.

DIVISION VII

AMD 107 GG 25/6/08

DEVELOPMENT ZONE

75A APPLICATION

This Division applies to the Development Zone.

75B PURPOSES OF DEVELOPMENT ZONE

- (1) The purposes of the Development Zone are to:
 - (a) identify areas requiring comprehensive planning; and
 - (b) coordinate subdivision and development in areas requiring comprehensive planning.
- (2) Schedule 1 describes each Development Zone in detail and sets out any specific purposes and requirements that apply to any Development Zone.

75C SUBDIVISION AND DEVELOPMENT IN DEVELOPMENT ZONE

- (1) The development of land within a Development Zone is to comply with any provisions relating to the land set out in Schedule 1.
- (2) Where a Structure Plan exists the subdivision and development of land within a Development Zone is to generally be in accordance with any Structure Plan that applies to that land.

75D STRUCTURE PLAN REQUIRED

- (1) The Town is not to:
 - (a) consider recommending subdivision; or
 - (b) approve developmentof land within a Development Zone unless there is a Structure Plan for the Development Zone or for the relevant part of the Development Zone.
- (2) Notwithstanding clause 75D(1), the Town may recommend subdivision or approve the development of land within a Development Zone prior to a Structure Plan coming into effect in relation to that land, if the Town is satisfied that this will not prejudice the specific purposes and requirements of the Development Zone.

75E PREPARATION OF PROPOSED STRUCTURE PLANS

- (1) A Proposed Structure Plan may be prepared by:
 - (a) the Town; or
 - (b) The Council may require the preparation and presentation to it of a Structure Plan as a prerequisite to:
 - (i) the Council's support for a proposal to rezone or reclassify land in the district; or
 - (ii) The Council's support for an application to subdivide or amalgamate lots; or
 - (iii) the Council's consideration of an application for planning approval.
- (2) A Proposed Structure Plan may be prepared for all of a Development Zone, or for such part of a Development Zone as is designated by the Town.
- (3) The Town or the Commission may, as a condition of adopting or approving a Proposed Structure Plan, require that a more detailed Structure Plan or a Detailed Area Plan be provided in future if the Town or the Commission considers that it will be necessary to provide additional detail to the proposals contained in the Proposed Structure Plan.
- (4) The Town preparing a Structure Plan, or an Owner preparing a Structure Plan with the authorization of the Town, at the same time is to prepare a Development Contribution Plan relating to the Structure Plan Area.

75F DETAILS OF PROPOSED STRUCTURE PLAN

- (1) A Proposed Structure Plan is to contain the following details:
 - (a) a map showing the area to which the Proposed Structure Plan is to apply;
 - (b) a site analysis map showing the characteristics of the site including:
 - (i) landform, topography and land capability;
 - (ii) conservation and environmental values including bushland, wetlands, damp lands, streams and water courses, foreshore reserves and any environmental policy areas;
 - (iii) hydrogeological conditions, including approximate depth to water table;
 - (iv) sites and features of Aboriginal and European heritage value;
 - (c) a context analysis map of the immediate surrounds to the site including such of the following as the Town requires in any specific case:
 - (i) the pattern of neighbourhoods, and existing and planned neighbourhood, town and regional centres;
 - (ii) transport routes, including freeways, arterial routes and neighbourhood connector alignments, public transport routes, strategic cycle routes, bus stops and rail stations;
 - (iii) existing and future land use;

- (d) a map showing proposals for such of the following as the Town requires in any specific case:
 - (i) the pattern of neighbourhoods around any existing or proposed town and neighbourhood centre;
 - (ii) existing and proposed commercial centres;
 - (iii) arterial routes and neighbourhood connector streets;
 - (iv) the protection of natural features such as water courses and vegetation;
 - (v) major open spaces and parklands;
 - (vi) major public transport routes and facilities;
 - (vii) transportation corridors, public transport network, and cycle and pedestrian networks;
 - (viii) the pattern and disposition of land uses including residential densities and estimates of population;
 - (ix) schools and community facilities;
 - (x) street block layouts;
 - (xi) the street network including street types;
 - (xii) public parklands; and
 - (xiii) urban water management areas;
- (e) a written report to explain the mapping and to address such of the following as the Town requires in any specific case:
 - (i) the planning framework for the Structure Plan including any applicable regional or district structure plans, and any policies, strategies and scheme provisions which apply to the land, and any environmental conditions which apply under the Scheme;
 - (ii) the site analysis including reference to the matters listed in clause 75F(1)(b) above, and in particular the significance to the conservation, environmental and heritage values of the site;
 - (iii) the context analysis including reference to the matters listed in clause 75F(1)(c) above;
 - (iv) how planning for the Structure Plan Area is to be integrated with the surrounding land;
 - (v) the design rationale for the proposed pattern of subdivision, land use and development;
 - (vi) traffic management and safety;
 - (vii) parkland provision and management;
 - (viii) urban water management;
 - (ix) proposals for public utilities including sewerage, water supply, drainage, gas, electricity and communication services;

- (x) the proposed method of implementation including any cost sharing arrangements and details of any staging of subdivision and development.

75G (1) The maps referred to in clause 75F are to:

- (a) be drawn to a scale that clearly illustrates the details referred to in clause 75F; and
 - (b) include a north point, visual bar scale, key street names and a drawing title and number.
- (2) A Proposed Structure Plan may, to the extent that it does not conflict with the Scheme, impose a classification on the land included in it by reference to reserves, zones or the Residential Design Codes, and where the Proposed Structure Plan becomes a Structure Plan, the Town is to have due regard to such reserves, zones or Residential Design Codes when recommending subdivision or approving development of land within the relevant Structure Plan Area.
- (3) Subject to subclause (6), where a Proposed Structure Plan imposes a classification on the land included in it by reference to reserves, zones, or the Residential Design Codes, the Proposed Structure Plan may only be adopted if the Structure Plan Area is listed in Schedule 1 as a Development Contribution Area.
- (4) Where a Proposed Structure Plan proposes the provision of infrastructure in the Structure Plan Area, the Proposed Structure Plan may only be adopted by the Town if a Development Contribution Plan has been adopted by the Town in relation to the Structure Plan Area.
- (5) A Proposed Structure Plan must be, in the opinion of the Town, consistent with orderly and proper planning.
- (6) The Commission may at the request of the Town approve the adoption of a Proposed Structure Plan without the listing of a Development Contribution Area in Schedule 1 as otherwise would be required under subclause (3).

75H SUBMISSION TO TOWN AND COMMISSION

- (1) A Proposed Structure Plan prepared by an Owner is to be submitted to the Town and is to be accepted by the Town for processing under this Part if and only if it complies with clauses 75F and 75G and other provisions of the Scheme. In the event that a Proposed Structure Plan submitted to the Town does not comply with clauses 75F and 75G or other provisions of the Scheme, the Town shall return the submitted Proposed Structure Plan to the Owner and advise the Owner accordingly.
- (2) Within 14 days of preparing or accepting a Proposed Structure Plan which proposes the subdivision of land, the Town is to forward a copy of the Proposed Structure Plan to the Commission.
- (3) The Commission is to provide comments to the Town as to whether it is prepared to endorse the Proposed Structure Plan with or without modifications.
- (4) The Commission must provide its comments to the Town within 30 days of receiving the Proposed Structure Plan.

75I ADVERTISING OF PROPOSED STRUCTURE PLAN

- (1) Within 60 days of preparing or accepting a Proposed Structure Plan that conforms with clauses 75F and 75G and otherwise complies with the Scheme (or such longer time as may be agreed in writing between the Owner who submitted the Proposed Structure Plan and the Town, the Town is to:
 - (a) advertise, or require the Owner who submitted the Proposed Structure Plan to advertise the Proposed Structure Plan for public inspection by one or more of the following ways:
 - (i) notice of the Proposed Structure Plan published in a newspaper circulating in the Scheme Area;
 - (ii) a sign or signs displaying notice of the Proposed Structure Plan to be erected in a conspicuous place or places in the Development Zone, or part of the Development Zone to which the Proposed Structure Plan applies; and
 - (b) give notice or require the Owner who submitted the Proposed Structure Plan to give notice, in writing to:
 - (i) all owners whose land is included in the Proposed Structure Plan;
 - (ii) all owners and occupiers who, in the opinion of the Town, are likely to be affected by the adoption of the Proposed Structure Plan;
 - (iii) such public authorities and other persons as the Town nominates.
- (2) The advertisement and notice are to:
 - (a) explain the scope and purpose of the Proposed Structure Plan;
 - (b) specify when and where the Proposed Structure Plan may be inspected; and
 - (c) invite submissions to the Town by a specified date being not less than 21 days after the giving or erection of the notice or publication of the advertisement, as the case requires.

75J ADOPTION OF PROPOSED STRUCTURE PLAN

- (1) The Town is to consider all submissions received and within 60 days of the latest date specified in the notice or advertisement for the making of submissions is to:
 - (a) adopt the Proposed Structure Plan, with or without modifications; or
 - (b) refuse to adopt the Proposed Structure Plan and, where the Proposed Structure Plan was submitted to an Owner, give reasons for this to the Owner.
- (2) In making a determination under clause 75J(1), the Town is to have due regard to the comments and advice received from the Commission in relation to the Proposed Structure Plan.
- (3) If the Commission requires modifications to the Proposed Structure Plan, the Town is to consult with the Commission prior to making a determination under clause 75J(1).

- (4) If the Town, after consultation with the Commission, is of the opinion that a modification to the Proposed Structure Plan is substantial the Town may:

- (a) readvertise the Proposed Structure Plan; or
- (b) require the owner who submitted the Proposed Structure Plan to readvertise the Proposed Structure Plan;

and thereafter, the procedures set out in clause 75I(1) onwards are to apply.

- (5) If within the period referred to in clause 75J(1), or such further time as may be agreed in writing between the Owner who submitted the Proposed Structure Plan and the Town, the Town has not made a determination under clause 75J(1), the Town is deemed to have refused to adopt the Proposed Structure Plan.

75K ENDORSEMENT BY COMMISSION

- (1) If the Proposed Structure Plan proposes subdivision of land, then within 7 days of making its determination under clause 75J(1), the Town is to forward the Proposed Structure Plan to the Commission for its endorsement.
- (2) As soon as practicable after receiving the Proposed Structure Plan, the Commission is to determine whether to endorse the Proposed Structure Plan.
- (3) The Commission is to notify the Town of its determination under clause 75K(2).

75L NOTIFICATION OF STRUCTURE PLAN

As soon as practicable after adopting a Proposed Structure Plan under clause 75J and if clause 75K applies, as soon as practical after being notified of the Commission's decision under clause 75K(3), the town is to forward a copy of the Structure Plan to:

- (1) any public authority or person that the Town thinks fit; and
- (2) where the Structure Plan was submitted by an Owner, to the Owner.

75M OPERATION OF STRUCTURE PLAN

- (1) A Structure Plan comes into effect:
 - (a) where the Structure Plan proposes the subdivision of land, on the day on which it is endorsed by the Commission pursuant to clause 75K; or
 - (b) on the day on which it is adopted by the Town under clause 75J in all other cases.
- (2) If a provision of a Structure Plan is inconsistent with the provision of the Scheme, then the provision of the Scheme prevails to the extent of the inconsistency.

75N INSPECTION OF STRUCTURE PLAN

The Structure Plan and the Commission's notification under clause 75K(3) is to be kept at the Town's administrative offices, and is to be made available for inspection by any member of the public during office hours.

75O VARIATION TO STRUCTURE PLAN

- (1) The Town may vary a Structure Plan:
 - (a) by resolution if, in the opinion of the Town, the variation does not materially alter the intent of the Structure Plan;
 - (b) otherwise, in accordance with the procedures set out in clause 75F onwards.

- (2) If the Town varies a structure plan by resolution, and the variation does not propose the subdivision of land, the Town is to forward a copy of the variation to the Commission within 10 days of making the resolution.
- (3) If the Town varies a structure plan by resolution, and the variation proposes the subdivision of land, the Town is to forward a copy of the variation to the Commission within 10 days of making the resolution for its endorsement.
- (4) As soon as practicable after receiving the copy of the variation referred to in clause (3), the Commission is to determine whether to endorse the proposed variation.
- (5) The Commission is to notify the Town of its determination under clause (4).
- (6) A variation to a Structure Plan by resolution comes into effect:
 - (a) where the variation proposes the subdivision of land, on the day on which it is endorsed by the Commission pursuant to clause (4); or
 - (b) on the day on which the Town resolves to make the variation under clause (1)(a).

75P DETAILED AREA PLAN

- (1) Where a Structure Plan has already been adopted in relation to a Structure Planning Area by the Town pursuant to clause 75J and, where the Structure Plan proposes the subdivision of land, endorsed by the Commission pursuant to clause 75K:
 - (i) The Town when considering a development proposal, or the Commission when considering a subdivision proposal, may by notice in writing, request an Owner to prepare and submit to the Town or the Commission as the case requires, a Detailed Area Plan in relation to a Structure Planning Area within the time specified in the notice, to assist in the consideration process; or
 - (ii) An Owner may at any time prepare and submit to the Town a Detailed Area Plan in relation to a Structure Planning Area.

Where the Town under item (i) requests a Detailed Area Plan to assist in the consideration of a development application, the time for determining the application before there is a deemed refusal under the provisions of this Scheme shall be extended by the time specified in the notice requesting the Detailed Area Plan.

- (2) The preparation and submission of a Detailed Area Plan may be required by the Town or the Commission as a condition of adoption or approval of a Proposed Structure Plan.
- (3) A Detailed Area Plan is intended to enhance, elaborate or expand the details or provisions contained in a Structure Plan for a particular lot or lots and may include details as to:
 - (a) building envelopes;
 - (b) distribution of land uses within a lot;
 - (c) private open space;
 - (d) services;
 - (e) vehicular access, parking, loading and unloading areas, storage yards and rubbish collection closures;
 - (f) the location, orientation and design of buildings and the space between buildings;

- (g) advertising signs, lighting and fencing;
 - (h) landscaping, finished site levels and drainage;
 - (i) protection of sites of heritage, conservation or environmental significance;
 - (j) special development controls and guidelines; and
 - (k) such other information considered relevant by the Town.
- (4) When a proposed Detailed Area Plan is prepared under clause 75P(1), the Town is to:
- (a) advertise, or require the Owner who submitted the proposed Detailed Area Plan to advertise, the proposed Detailed Area Plan for public inspection by one or more of the following ways:
 - (i) notice of the proposed Detailed Area Plan published in a newspaper circulating in the Scheme area;
 - (ii) a sign or signs displaying notice of the proposed Detailed Area Plan to be erected in a conspicuous place or places in the Structure Planning Area, or the part of the Structure Planning Area to which the proposed Detailed Area Plan applies; and
 - (b) give notice or require the Owner who submitted the proposed Detailed Area Plan to give notice, in writing to:
 - (i) all Owners whose land is included in the proposed Detailed Area Plan;
 - (ii) all Owners and occupiers who, in the opinion of the Town, are likely to be affected by the adoption of the proposed Detailed Area Plan; and
 - (iii) such public authorities and other persons as the Town nominates.
- (5) The advertisement and notice are to:
- (a) explain the scope and purpose of the proposed Detailed Area Plan;
 - (b) specify when and where the proposed Detailed Area Plan may be inspected; and
 - (c) invite submissions to the Town by a specified date being not less than 21 days after the giving or erection of the notice or publication of the advertisement, as the case requires.
- (6) The Town is to consider all submissions received and:
- (a) approve the Detailed Area Plan with or without conditions; or
 - (b) refuse to approve the Detailed Area Plan and, where the proposed Detailed Area Plan was submitted by an Owner, give reasons for this to the Owner.
- (7) If within 60 days of receiving a Detailed Area Plan prepared under clause 75P(1)(b), or such longer period as may be agreed in writing between the Owner and the Town, the Town has not made one of the determinations referred to in clause 75P(5), the Town is deemed to have refused to approve the Detailed Area Plan.
- (8) Once approved by the Town, the Detailed Area Plan constitutes a variation of the Structure Plan applicable to the area the subject of the Detailed Area Plan and has effect as such.

- (9) The Town may vary a Detailed Area Plan in accordance with the procedures set out in clause 75P onwards provided such variations do not prejudice the intention of any related Structure Plan.

75Q APPLICATIONS FOR REVIEW (APPEALS)

- (1) An Owner who has submitted a Proposed Structure Plan under clause 75H(1) may apply to review, under Part 14 of the Act:
- (a) any failure of the Town to advertise, or require the Owner to advertise, a Proposed Structure Plan within the required time period under clause 75I(1); or
 - (b) any determination of the Town:
 - (i) to refuse to adopt a Proposed Structure Plan (including a deemed refusal); or
 - (ii) to require modifications to a Proposed Structure Plan that are unacceptable to that Owner.
- (2) An Owner who has submitted a Detailed Area Plan in accordance with clause 75P may apply to review, in accordance with Part 14 of the Act, any discretionary decision made by the Town under clause 75P.

75R EXPIRY OF STRUCTURE PLANS

- (1) Subject to clause 75R(2), a Structure Plan expires upon the expiration of 5 years from the date of endorsement by the Commission in the case of a Structure Plan that proposes the subdivision of land, but otherwise upon the expiration of 5 years from the date of adoption of the Structure Plan by the Town.
- (2) The term of a Structure Plan may be extended for a further period of up to 5 years if the Town so decides, and in the case of a Structure Plan that proposes the subdivision of land, if the Commission endorses such extension.

75S DEVELOPMENT CONTRIBUTION AREAS

- (1) Development Contribution Areas are shown on the Scheme Map as DCA with a number and included in Schedule 1.
- (2) In respect of a Development Contribution Area shown on the Scheme Map, the provisions applying to the Development Contribution Area apply in addition to the provisions applying to the Development Zone and any general provisions of the Scheme.
- (3) Interpretation

In Part 75S, unless the context otherwise requires:

"Cost Contribution" means the contribution to the cost of Infrastructure Costs payable by an Owner under this Part and pursuant to an applicable Development Contribution Plan;

"Credit" means the amount of excess Cost Contribution which has been made either in money or works including land, over and above the amount of Cost Contribution for which an Owner is liable at any particular time;

"Estimated Lot Yield" means at any particular time, the total potential number of lots including freehold title, survey strata and strata lots, which are capable of being produced from the land within the Development Contribution Area that remains to be subdivided or developed and which is calculated in accordance with the methods specified in 75S.8;

"General Infrastructure Works" means the works stipulated in clause 75S.10(2);

"Infrastructure" means services and facilities in respect of which, in accordance with the Commission's policy, it is reasonable for Owners to make a Cost Contribution;

"Infrastructure Costs" means the costs of Infrastructure Works;

"Infrastructure Works" means the works necessary for the provision of Infrastructure as referred to in clause 75S.10;

"Infrastructure Cost Schedule" means a table appurtenant to a Development Contribution Plan, which contains the itemised estimates of Infrastructure Costs, as periodically reviewed under this Part;

"Modified Code Number" means the R-Code number applying to land within a Development Contribution Area reduced to reflect the fact that certain areas are excluded from the land area calculations pursuant to the clause headed 'Calculation of Deductions from Development Contribution Area'. The Modified Code Number is intended to indicate the number of residential dwellings per hectare that are capable of being produced in the Development Contribution Area if all developable land was developed for residential purposes consistently with the applicable R-coding under the Scheme;

"Nominal Contribution" means a Cost Contribution in respect of an area of land specified by the Town for exclusive use by a private educational establishment, which is set at a lesser rate than the Cost Contribution that would apply for residential subdivision and development, in acknowledgement that private educational establishments contribute betterment to the Development Contribution Area by virtue of the services provided to the community and that a full Cost Contribution may act as a disincentive to the provision of such services.

"Owner" means an owner or co-owner of land that is located within a Development Contribution Area;

"Potential Lots" means the total number of lots, including freehold title, survey strata and strata lots, a particular parcel of land, which has been identified for group housing, aged persons housing, office, shop, showroom, place of worship or other commercial or non-residential uses approved in writing by the Town, is capable of producing, if subdivided or developed to the maximum capacity permitted under the Scheme as calculated in accordance with the methods specified in clause 75S.8.

"Preliminary Contribution Payment" means a payment made by an Owner pursuant to a condition of subdivision or development approval or a notice served upon an Owner by the Town, prior to the adoption of the Infrastructure Cost Schedule under a Development Contribution Plan by the Town.

"Specified Infrastructure Works" are works, in addition to General Infrastructure Works, that are specified by the Town as required to be undertaken within a Cost Contribution Area, the cost of which shall be shared between Owners within that area in accordance with clause 75S.10(1);

(4) Purpose

The purpose of having Development Contribution Areas is to:

- (a) provide for the equitable sharing of Infrastructure Costs between Owners in a Development Contribution Area;
- (b) ensure that Cost Contributions are reasonably required as a result of the subdivision and development of land in the Development Contribution Area; and
- (c) coordinate the timely provision of Infrastructure within the Development Contribution Area.

(5) Development Contribution Plan Prerequisite to Subdivision and Development

- 75S.5(1) A Development Contribution Plan shall be prepared for each Development Contribution Area.
- 75S.5(2) Where a Development Contribution Area is prescribed in Schedule 1 of the Scheme, all Owners within that Development Contribution Area are required to make a Cost Contribution in accordance with the provisions of this Part and the applicable Development Contribution Plan.
- 75S.5(3) A Development Contribution Plan is intended to be incorporated in Schedule 1 as part of the Scheme, but effect may be given prior to such incorporation if that will facilitate the equitable sharing of Infrastructure Costs.
- 75S.5(4) Subject to clause 75S.5(6), the Town is not to support subdivision or approve development of land within a Development Contribution Area until:
- (a) Development Contribution Plan is in effect; and
 - (b) the Owner who has applied for a subdivision or development approval has made arrangements in accordance with clause 75S.19 for the payment of the Owner's Cost Contribution.
- 75S.5(5) Clause 75S.5(4) does not apply to the development of a single house or outbuildings associated with a single house on a lot which has not been subdivided since the coming into operation of this Part.
- 75S.5(6) Notwithstanding clause 75S.5(4), where a Development Contribution Plan is not in effect, the Town may support subdivision or approve development where the Owner has made other arrangements satisfactory to the Town with respect to the Owner's contribution towards the provision of Infrastructure Costs in the Development Contribution Area.

(6) General Principles and Content of Development Contribution Plan

- 75S.6(1) A Development Contribution Plan made in respect of any Development Contribution Area is to be prepared in accordance with the following principles:
- (a) it is to provide for Cost Contributions to only the amount of such Infrastructure Costs as fairly and reasonably relate to, and are reasonably required as a result of, the subdivision and development of land in the Development Contribution Area;
 - (b) it is to provide for Cost Contributions in accordance with the provisions of this Part 75S;
 - (c) matters requiring land contribution, such as public open space, are to be treated as the cost of Infrastructure with any necessary adjustments to establish, where appropriate, a money equivalent;
 - (d) Cost Contributions are to be based upon the proportion that the area of that Owner's land bears to the total area of land within the Development Contribution Area for which Cost Contributions have yet to be made;
 - (e) the Cost Contribution is to take into account the highest and

best uses attainable for the Owner's land; and

- (f) the value of Infrastructure Costs shall be based on amounts expended, but when expenditure has not occurred, it is to be based on the best and latest estimated costs available to the Town.

75S.6(2) A Development Contribution Plan is to specify:

- (a) the Development Contribution Area to which the Development Contribution Plan applies;
- (b) the Infrastructure Costs to be funded through the Development Contribution Plan;
- (c) the method of determining the Cost Contribution of each Owner in a manner consistent with the provisions of this Part 75S;
- (d) the priority and timing for the provision of Infrastructure.
- (e) the period during which it is to operate, with the approval of the Commission at the request of the Town.
- (f) the Specified Infrastructure Works that are to be undertaken within the Development Contribution Area as required by clause 75S.10.(3).

(7) Calculation of Deductions from Development Contribution Area

For the purposes of clause 75S.6(1)(d), the following areas are to be excluded from the land area calculations of both the total land area in the Development Contribution Area and the Owners land:

- (a) roads designated under the Metropolitan Region Scheme as Primary Regional Roads and Other Regional Roads;
- (b) existing public open space;
- (c) government primary and secondary schools, existing and proposed;
- (d) sites nominated by the relevant Structure Plan for exclusive use of private educational establishments and which have also been approved by the Town for a Nominal Contribution;
- (e) drainage reserves;
- (f) public utility sites;
- (g) community purpose sites; and
- (h) land required for Infrastructure Works.

(8) Calculation and Apportionment of Infrastructure Costs and Cost Contributions

75S.8(1) The Town will, for the purposes of apportioning Infrastructure Costs to Owners, make an estimate of the lot yield for the Development Contribution Area called the 'Estimated Lot Yield'. This will be calculated by determining the number of hectares in the Development Contribution Area, excluding those land uses stipulated in clause 75S.7 and multiplying that area by the Modified Code Number.

75S.8(2) The contribution to be made by each owner of land within the Development Contribution Area to the implementation of the Infrastructure Works shall be a Cost Contribution, based on a Cost Contribution per lot which is to be calculated by the Town in the following manner:

- (a) The Cost Contribution per lot is determined by first deriving the Net Infrastructure Costs according to the following formula:

(i) $A - B = C$

Where:

A = gross cost of Infrastructure Works being the total of fixed actual and estimated future costs, which will be based on costs estimated no more than 12 months in advance. Such estimates shall be based on an average for each Infrastructure work cost and recognise all factors affecting the development of the relevant Development Contribution Area and associated constraints the Town will encounter in the provision of the Infrastructure Works. This shall include (but not be limited to) variable market conditions and the nexus between the time frame of development and provision of Infrastructure Works.

B = payments made to date by owners of land who subdivide or develop land within the Development Contribution Area calculated on the basis of whichever is the lesser of:

- (1) the lots produced at the rate of the Modified Code Number of lots per hectare for the Area equivalent of the land holding of an owner; or
- (2) the actual number of lots produced by the landholding of an owner;

C = Infrastructure Costs;

and then dividing the Infrastructure Costs by the subdivision potential of the balance of the Development Contribution Area remaining unsubdivided, excluding those land uses in clause 75S.7 and in accordance with the following formula:

(ii) $C \div D = E$

Where:

D = the number of lots to be produced to achieve the Modified Code Number of lots per hectare for the area equivalent of the unsubdivided balance area of the Development Contribution Area, excluding those land uses in clause 75S.7;

E = the Cost Contribution per lot.

- (b) The Cost Contribution payable by each owner of land in the Development Contribution Area is calculated by multiplying the number of freehold, survey strata and strata lots produced from the owner's land by the Cost Contribution per lot.

- (c) Cost Contributions shall not be payable for land that is used for government school sites, public open space and any other public purpose land uses approved by the Town for exclusion from the Cost Contributions.

75S.8(3) Determination of Potential Lots to which the Cost Contribution per lot Applies.

In addition to the number of lots on which the Cost Contribution payable by each Owner pursuant to the cost sharing arrangement included in clause 75S.8(2) is assessed, a further Cost Contribution per lot shall be payable on the potential lots/dwellings capable of being produced, assessed in accordance with the following provisions:

- (a) where land is identified by the Town as having potential or the capability of being developed for grouped housing or aged persons development, the Cost Contribution per lot will be charged on the basis that the lot has residential subdivision potential at the time that lot is created. This shall be calculated by the Town by multiplying the total land area expressed in hectares by the Modified Code Number, to derive the notional number of dwellings the land has potential for or is capable of producing;
- (b) where the Town is satisfied that an area of land is intended to be developed as a private educational establishment and the Town considers it appropriate in the circumstances, the Cost Contribution may be charged a Nominal Contribution as per clause 75S.9;
- (c) where land has been identified by the Town to be used for a place of worship, commercial, office, shop, showroom or any other non-residential use, the Cost Contribution will be calculated by multiplying the Cost Contribution per lot by the Modified Code Number;
- (d) where a subdivision is proposed for land on which a dwelling exists and a smaller lot is created to contain the dwelling, the lot containing the dwelling ("the existing house lot") will be subject to a Cost Contribution per lot based on clause 75S.8(3)(a). If, however, the owner of such land can demonstrate that the size of the existing house lot is required to accommodate the dwelling, landscaping and other outbuildings associated with that dwelling and that the actual development potential of that lot may not exist without substantial cost and redevelopment, then the Town may, at its discretion, reduce the Cost Contribution per lot payable for the existing house lot provided any future subdivision or development of the existing house lot will incur further contributions as outlined in clauses 75S.8(2) and 75S.8(3)(a) to (c);
- (e) where a subdivision of the kind contemplated in clause 75S.8(3)(d) is proposed, the Town may impose on the balance of the lot excluding the existing house lot ("the remaining land") a Cost Contribution per lot on the development potential of that lot as prescribed in clause 75S.8(3)(a). The Town may reduce or defer such payment if:
 - (i) the Owner of such a lot can demonstrate that the subdivision was primarily carried out to create the existing house lot and to effect the sale of the remaining

land; and

- (ii) the size of the remaining land is such that it will be developed in stages or will be further subdivided.

(9) Nominal Contributions

75S.9(1) A Nominal Contribution may be approved by the Town for a specified area of land to be used exclusively for private educational establishments, at a rate of 10% of the full value of the educational establishment development approval and the Nominal Contribution will be required as a condition of development or subdivision approval.

75S.9(2) Where a change of land use occurs for land for which previous development had been subject to a Nominal Contribution, an additional Cost Contribution will be required to bring the total Cost Contributions for that land at the date the liability for the additional Cost Contribution falls due, up to the equivalent rate for the new land use on the basis of the Cost Contribution per lot specified in clause 75S.8.

75S.9(3) Where a Cost Contribution has been paid by an Owner and the Town subsequently approves a Nominal Contribution for a specified area of the land for which the Cost Contribution has been paid, the difference between the paid Cost Contribution and the subsequent Nominal Contribution shall be deemed a credit to that Owner.

(10) Infrastructure Works

75S.10(1) The categories of General Infrastructure Works and Specified Infrastructure Works described in sub-clauses 75 S.10(2) and 75S.10(3) respectively below comprise the Infrastructure Works which shall be shared by the Owners located with the Development Contribution Area.

75S.10(2) General Infrastructure Works

- (a) All costs incurred by the Town associated with the preparation, processing and gazettal of the Development Contribution Plans and provisions under this Scheme, including but not limited to any environmental assessment as required by the Department of Environmental (DEP) and Environmental Protection Authority (EPA).
- (b) The acquisition of land, including associated infrastructure and structures, for the roads, intersections, sewerage pumping station(s), and community facilities.
- (c) Any compensation paid or payable for or in respect of the provision of any of the Infrastructure works or facilities referred to in this Part 75S, or in the administration of this Part 75S in relation to the applicable Development Contribution Plan.
- (d) Any consulting fees associated with designing and undertaking of the Infrastructure Works, including but not limited to surveying, engineering, planning, environmental, project management and landscaping.

- (e) The provision or upgrading of any road in the Development Contribution Area, including but not limited to land acquisition, earthworks, shared paths, cycleways, footpaths, road widening, traffic management devices, landscaping, the formation, preparation, priming and sealing of the road and the provision of kerbing, drainage, service ducts, intersection treatments and lighting and costs associated with the relocation of existing services in connection with the road or in the road reserve.
- (f) Any environmental remediation or improvement including the removal of any contaminant and peat associated with the Specified Infrastructure Works stipulated in the Development Contribution Plan.
- (g) All costs incurred by Council associated with the preparation, administration and management of the Development Contribution Plan including but not limited to bank charges, audit fees, office and sundry costs, legal expenses, valuation fees, reviews of land values and costs, caveat and conveyancing fees, quotes and certification of estimated costs, Council staff salaries including a Co-ordinator/Manager of the Development Contribution Plan, any interest costs incurred by Council in respect to loan funds required to provide timely implementation of any of the listed Common Infrastructure works or related costs, any claims for injurious affection and the costs of establishing any required system to facilitate the administration and the ongoing management of Development Contribution Plan along with the specific requirements of the Scheme pertaining thereto.

75S.10(3) Specified Infrastructure Works

A Development Contribution Plan shall stipulate Specified Infrastructure Works required within the Development Contribution Area.

(11) Credits for Infrastructure Works

Where a Credit is recorded in respect to any Owner it may be used as payment of any future Cost Contribution required from that Owner or the Owner may apply for reimbursement, which shall be paid out without any interest payment, when the Town deems sufficient funds have accumulated to cover any such claims and the outstanding infrastructure Works costs are estimated to be fully recoverable from the anticipated future subdivision and development, notwithstanding that where several subdividers have accumulated a Credit, the Town may satisfy refunds in staged payments in proportion to the Credit amounts held by each subdivider.

(12) Provision of Land for Infrastructure Works

Where the Infrastructure Cost Schedule includes a land component for Infrastructure Works on the relevant lot for which a Cost Contribution or Nominal Contribution is due, an Owner shall cede to the Crown or transfer to the Town the required land for the Infrastructure Works at the first stage of subdivision and/or development for that particular landholding or by prior agreement at an alternative date agreed by the Town. If the value of the land determined in accordance with clause 75S.17 exceeds the total Cost Contribution for that Owner, the excess value shall be attributed as a credit to the Owner.

(13) Overdue Cost Contributions

Any overdue Cost Contribution to Infrastructure Works shall be a liquidated debt due to the Town by the Owner of such land and may be recovered by the Town in a court of competent civil jurisdiction.

(14) Prefunding of Infrastructure Works

75S.14(1) An Owner of land within the Development Contribution Area may, with the prior approval of the Town, undertake implementation of any of the Infrastructure Works referred to in clause 75S.10. Where an Owner wishes to undertake implementation of Infrastructure Works, with the exception of land required for Infrastructure Works, the owner shall, before commencing to carry out such works, first lodge a formal claim for the cost of the Infrastructure Works with the Town, which reserves the right to review and accept or reject the claim, and to permit or prevent the Owner from carrying out the works until such time as the Owner's claim has been agreed. The Town will endeavour to respond to an Owner's claim within sixty (60) days.

75S.14(2) If the Town agrees that an Owner can pre-fund the infrastructure Works, the Owner shall at all times maintain proper and itemised records of all relevant expenditure, including receipts and invoices and provide copies of the same to the Town on request. Where the cost of carrying out such works exceeds the amount of the claim originally agreed to by the Town, the Town may accept or reject the additional cost or any part thereof.

75S.14(3) Where the Town accepts a claim for a credit or an entitlement to reimbursement for the carrying out of the implementation of Infrastructure Works, the Town shall record the extent of the claim and if necessary adjust the Development Contribution Plan accordingly.

75S.14(4) Where an Owner seeks a credit for a contribution to Infrastructure Works (whether by the provision of land or the construction of any works) against his Cost Contribution liability and the Town has previously agreed to the carrying out of such works by that Owner on that basis, then the credit to be given to the Owner will be calculated on the basis of the cost agreed by the Town under clauses 75S.14(1) and 75S.14(2).

75S.14(5) Notwithstanding clause 75S.14(4) above, where an Owner has pre-funded Infrastructure Works and the credit allowed by the Town exceeds the Cost Contribution of the Owner under the applicable Development Contribution Plan, the Owner should be refunded the excess after the Town has received sufficient contributions from other Owners in that Development Contribution Area towards meeting the anticipated Infrastructure Costs and having regard to the priority of Infrastructure Works.

(15) Ability to Raise Loans to Undertake Infrastructure Works

The Town may raise loans for the purpose of providing the finance necessary for the implementation of Infrastructure Works at a timing and order of prioritisation determined by the Town with any interest or charges incurred in raising loans or carrying out such work deemed to be an Infrastructure Cost.

(16) Infrastructure Cost Schedule

- 75S.16(1) Within 90 days of the Gazettal date of a Development Contribution Plan, the Town is to distribute an Infrastructure Cost Schedule to all Owners in the Development Contribution Area.
- 75S.16(2) The Infrastructure Cost Schedule sets out in detail the calculation of the Cost Contribution for each Owner in the Development Contribution Area.
- 75S.16(3) The Infrastructure Cost Apportionment Schedule is appurtenant to and does not form part of the Scheme.

(17) Valuation

- 75S.17(1) Unless Part 10 of the *Land Administration Act 1997* applies, this clause applies if it is necessary to ascertain the Value of any land for the purposes of this Part 75S.

- 75S.17(2) In clause 75S.17:

"Value" means the capital sum which an unencumbered estate in fee simple of the land might reasonably be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require:

- (i) on the basis that there are no buildings, fences or other improvements of a like nature on the land;
- (ii) on the assumption that any rezoning necessary for the purpose of the development and to which the land may reasonably be made subject has come into force; and
- (iii) taking into account the added value of all other improvements on or appurtenant to the land.

"Valuer" means a licensed valuer agreed by the Town and the Owner, or where the Town and the Owner are unable to reach agreement, a valuer nominated by the President for the time being of the Western Australian Division of the Australian Property Institute.

- 75S.17(3) If an Owner objects to a valuation made by the Valuer, the Owner may give notice to the Town requesting a review of the amount of the Value, at the Owner's expense, within 28 days after being informed of the Value.

- 75S.17(4) If the Valuer does not change the Value of the land to a figure acceptable to the Owner, the Value is to be determined:

- (a) by any method agreed between the Town and the Owner; or
- (b) if the Town and the Owner cannot agree, by arbitration in accordance with the *Commercial Arbitration Act 1985*.

- 75S.17(5) At the request of the Town or the Owner, the Value placed upon the land of an Owner may be revised from time to time by a Valuer. Where such a revision is undertaken, the Valuer may:

- (a) reconsider the Values placed on other land in the Development Contribution Area; and

- (b) make such revisions as considered just and equitable to those Values if the Valuer considers this is necessary as a result of a re-valuation made under clause 75S.17(3).
- 75S.17(6) The date of valuation for the purposes of this Part is the date that the Owner's liability to pay the Owner's Cost Contribution to the Town arises under clause 75S.18, or such other date as is agreed between the Town and the Owner.
- (18) Liability for Cost Contributions
 - 75S.18(1) An Owner is required to make a Cost Contribution in accordance with the provisions of this Part and the applicable Development Contribution Plan.
 - 75S.18(2) An Owner's liability to pay the Owner's Cost Contribution to the Town arises on the earlier of:
 - (a) the Town advising the Owner that is prepared to confirm to the Commission that conditions of subdivision approval supervised by the Town and imposed on an application to subdivide or amalgamate the Owner's land within the Development Contribution Area have been complied with;
 - (b) the Commission endorsing its approval on the Diagram or Plan of Survey of the subdivision of the Owner's land within the Development Contribution Area;
 - (c) the commencement of any development including any new or extended use on the Owner's land within the Development Contribution Area;
 - (d) the time of applying to the Town or Commission for approval of any development including any new or extended use on the Owner's land within the Development Contribution Area; or
 - (e) the Town, with the approval of the Commission, having given notice in writing to the Owner calling upon the Owner to pay the Cost Contribution and the time for payment stipulated in that notice having expired.
 - 75S.18(3) Notwithstanding clause 75S.18(2), an Owner's liability to pay the Owner's Cost Contribution does not arise if the Owner commences development of the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided since the Gazettal of the Development Contribution Plan.
- (19) Payment of Cost Contribution
 - 75S.19(1) The Owner, with the agreement of the Town, is to pay the Owner's Cost Contribution by:
 - (a) cheque or cash;
 - (b) transferring to the Town or a public authority land in satisfaction of the Cost Contribution;
 - (c) some other method acceptable to the Town; or

(d) any combination of these methods,

by an Owner of the Cost Contribution, including a Cost Contribution based upon estimated costs, constitutes full and final discharge of the Owner's liability under the Development Contribution Plan.

(20) Cost Contributions based on Estimates

75S.20(1) Where an Infrastructure Cost Schedule contains estimated costs, such estimated costs are to be reviewed at least annually by the Town:

(a) in the case of land to be acquired, in accordance with clause 75S.17;

(b) in all other cases, in accordance with the best and latest information available to the Town,

until the expenditure on the relevant item of Infrastructure Costs has occurred.

75S.20(2) Where requested in writing by an Owner, the Town is to have such estimated costs independently certified by an appropriate qualified person and must provide such independent certification to an Owner where requested to do so.

75S.20(3) Where any Cost Contribution has been calculated on the basis of an estimated cost, the Town:

(a) is to adjust the Cost Contribution of any Owner in accordance with the revised estimated costs or final expenditure; or

(b) may accept a Cost Contribution, based upon estimated costs, as a final Cost Contribution and enter into an agreement with the Owner accordingly.

75S.20(4) Where an Owner's Cost Contribution is adjusted under clause 75S.20(3), the Town, on receiving a request in writing from an Owner, is to provide the Owner with a copy of estimated costs and the calculation of adjustments.

(21) Revision of Cost Contributions, Estimated Lot Yields and Areas Capable of Being Developed

75S.21(1) The Town shall from time to time review Cost Contributions and the Infrastructure Cost Schedule associated with a Development Contribution Plan provided such reviews are conducted at least on an annual basis.

75S.21(2) The Town shall, at the time it reviews Cost Contributions and the Infrastructure Cost Schedule in a Development Contribution Plan, review:

(a) the Estimated Lot Yield;

(b) the Cost Contribution per lot;

(c) the remaining area of the Development Contribution Plan which is capable of being developed;

having regard for the actual lots produced in the Development Contribution Plan since the last review, the remaining Infrastructure works, any amendments to the Structure Plan or Detailed Area Plan as the case may be and any other factors the Town considers relevant.

- 75S.21(3) When calculating or reviewing Cost Contributions and the Infrastructure Cost Schedule in a Development Contribution Plan, the Town will have regard to the value of the land required for Infrastructure Works and include an amount 10% over and above the Value of such land, to ensure that the Town has or will receive sufficient funds in the relevant Development Contribution Plan account to acquire land for Infrastructure Works, to meet its obligations for appropriate payment to such Owners, and ensure the Infrastructure Works can be completed in a manner that minimises the need for external borrowing. The Town may also apply a further amount above the Value to recognise any compulsory taking of land and/or acquisition of structures.
- 75S.21(4) The Town, in reviewing the various elements pursuant to subclauses 75S.21(1) and 75S.21(2) above, may revise or amend any of those elements and any Cost Contributions payable by an Owner of land in the Development Contribution Plan and Infrastructure Cost Schedule.
- 75S.21(5) Following revision or amendment of the elements mentioned in subclauses 75S.21(1) to 75S.21(3) inclusive, the Town shall notify by way of public advertising the outcome of the review advising of the availability of details concerning the review and revisions and inviting comment.
- 75S.21(6) Following the issue of the invitation pursuant to subclause 75S.21(5), a period of 28 days shall be allowed from the date such advertising commenced for an Owner affected by the review to object to the revision of Cost Contributions and any other finding of the review, other than the assessed Value which shall be dealt with under clause 75S.17. An Owner who lodges an objection under this clause shall submit with the objection supporting evidence from a suitably qualified person in the specific field of the cost revision being objected to and can only object to those elements that have been altered as part of the review. Any objection received by the Town in accordance with this subclause during this period shall be assessed by the Town and if not agreed by the Town, shall be subject to arbitration in accordance with clause 75S.27.

(22) Preliminary Contribution Payments

- 75S.22(1) Where an Owner or former Owner of land in a Development Contribution Area has made a Preliminary Contribution Payment towards their Cost Contribution, then the Preliminary Contribution Payment will be credited towards the Cost Contribution required under this Part 75S.
- 75S.22(2) Should an Owner's or former Owner's Preliminary Contribution Payment be less than the required Cost Contribution, the Town may seek a further payment from those Owners who have made such Preliminary Contribution Payments, which represents the difference between such Preliminary Contribution Payments and the amount of the Owner's Cost Contribution calculated as if the payment was made at the time Development Contribution Plan was adopted by the Town. Owners shall make the further payment stipulated by the Town within thirty (30) working days of receiving a written request from the Town.

- 75S.22(3) Should an Owner's or former Owner's Preliminary Contribution Payment be more than the required Cost Contribution, then the Owner is entitled to a credit or refund, which represents the difference between such Preliminary Contribution Payments and the amount of the Owner's Cost Contribution calculated as if the payment was made at the time the Development Contribution Plan was adopted by the Town. If the Owner seeks a refund for the difference, the Town is to endeavour to make such a payment within thirty (30) working days or as soon as the necessary funds are available in the relevant account.

(23) Charge on land

- 75S.23(1) The amount of any Cost Contribution for which an Owner is liable under clause 5A.2.18, but has not paid, is a charge on the Owner's land to which the Cost Contribution relates, and the Town may lodge a caveat, at the Owner's expense, against the Owner's title to that land.
- 75S.23(2) The Town, at the Owner's expense and subject to such other conditions as the Town thinks fit, is to withdraw a caveat lodged under clause 75S.23(1) to permit a dealing and may then re-lodge the caveat to prevent further dealings.
- 75S.23(3) If the Cost Contribution is paid in full, and if requested to do so by the Owner, the Town, at the expense of the Owner, is to withdraw any caveat lodged under clause 75S.23(1).

(24) Administration of Funds

- 75S.24(1) The Town is to establish and maintain a reserve account in accordance with the Local Government Act 1995 for each Development Contribution Area into which Cost Contributions for that Development Contribution Area will be credited and from which all payments for Infrastructure Costs within that Development Contribution Area will be paid. The purpose of such a reserve account or the use of money in such a reserve account is limited to the application of funds for that Development Contribution Area.
- 75S.24(2) Interest earned on Cost Contributions credited to a reserve account in accordance with clause 75S.24(1) is to be applied in the Development Contribution Area to which the reserve account relates.
- 75S.24(3) The Town is to provide to every Owner who has a liability to make a Cost Contribution an audited annual statement of accounts for that Development Contribution Area as soon as practicable after the audited annual statement of accounts becomes available.

(25) Shortfall or Excess in Cost Contributions

- 75S.25(1) If there is a shortfall in the total of Cost Contributions when all Cost Contributions have been made or accounted for in a particular Development Contribution Area, the Town may:
- (a) make good the shortfall from its municipal fund;
 - (b) enter into agreements with Owners to fund the shortfall; or
 - (c) raise loans or borrow from a financial institution,
- but nothing in paragraph 75S.25(1)(a) restricts the right or power of the Town to impose a Differential Rate or a Specified Area Rate to a specified Development Contribution Area in that regard.

75S.25(2) If there is an excess in funds available to the Development Contribution Area when all Cost Contributions have been made or accounted for in a particular Development Contribution Area, the Town is to apply the excess funds for the provision of additional facilities or improvements in that Development Contribution Area.

(26) Powers of the Town

The Town in implementing the Development Contribution Plan has the power to:

- (a) acquire any land or buildings within the Scheme area under the provisions of the Act or the *Land Administration Act 1997*; and
- (b) deal with or dispose of any land which it has acquired under the provisions of the Act in accordance with the law and for such purpose may make agreements with other Owners as it considers fit.

(27) Arbitration

Subject to clause 75S.17(4), any dispute between an Owner and the Town in connection with the Cost Contribution required to be made by an Owner is to be resolved by arbitration in accordance with the *Commercial Arbitration Act 1985*. The arbitrator shall be bound by the provisions of Part 75S.2 and the Development Contribution Plan, including the Infrastructure Cost Schedule.

PART IV - SPECIAL AMENITY, DESIGN AND DEVELOPMENT CONTROL

75. DESIGN ADVISORY COMMITTEE:

- (1) The Council may appoint a Committee to be called the Design Advisory Committee.
- (2) The Committee shall consist of not fewer than three (3) persons chosen from a panel of persons the Council considers qualified, by reason of their respective professions or experience, to advise on matters relating to architectural or landscape design. At any time, not fewer than two (2) members of the Committee shall be architects registered under the Architects Act 1921 as amended or re-enacted from time to time.
- (3) The Council may refer to the Committee for advice any matter relating to the design of any building or landscape and in any other matter relating to any proposed development or the Scheme as the Council thinks fit.
- (4) In giving advice to the Council the Committee shall have regard to the provisions of the Scheme and may, where the Committee considers necessary, make recommendations for amendments to the Scheme.
- (5) The Council shall not be bound to accept any advice given or adopt any recommendation made by the Committee.
- (6) The Council shall make available to any member of the public on request any recommendations made by the Committee following its consideration by Council.

76. DESIGN AND CONSTRUCTION:

- (1) This Clause applies to every application for planning approval with respect to a building.
- (2) Before the Council may approve an application for planning consent to which this Clause applies the Council shall be satisfied that:
 - (a) the appearance of the building will not adversely affect the character or amenity of the locality and will not clash in harmony with the appearance of adjoining or neighbouring buildings;
 - (b) the proposed building, addition or alteration will not have any adverse effect on the privacy of any residential property;
 - (c) if the proposal includes the use of reflective glass, that use will not give rise to any glare or other discomfort to the occupiers or users of any other property or to the users of any public place;
 - (d) all servicing areas and other parts of the land or building, which are likely to be untidy in appearance, will be completely screened from public view and from view from adjoining properties;
 - (e) additions or alterations to an existing building are so designed as to be sympathetic and compatible with that building.

77. Protection of Townscape:

In order to protect the existing townscape from changes of such magnitude or quality as to adversely affect the general character or amenity of the locality of a proposed development, the Council in considering an application for planning approval shall have regard to:

- (1) the scale and architectural form of the proposed development;
- (2) the materials, colours and finishes proposed to be used;

- (3) the scale, architectural form and the materials, colour and general appearance of the buildings in the vicinity;
- (4) the landform and vegetation of the locality as they affect the character of that locality.

78. SCHEDULE OF HISTORIC AND OTHER BUILDINGS AND PLACES:

- (1) The Council shall maintain a Schedule of buildings, objects and places ("the Schedule") which the Council considers to be of architectural, historical or townscape value.
- (2) The Schedule shall be available for inspection by any member of the public on request.
- (3) The Council shall include in the Schedule:
 - (a) any building constructed prior to the year 1910 and which retains substantially its original form and detail as seen from any public place;
 - (b) any building constructed during or after the year 1910 and which the Council considers to have high intrinsic architectural merit or to be an outstanding example of its kind or of historical significance;
 - (c) buildings, objects or places that the Council considers make a positive contribution to the townscape of the district.
- (4) Every building, object or place which is included by the National Trust of Australia (WA) in either the Recorded or the Classified List or which is included by the Australian Heritage Commission in the Register of the National Estate shall be deemed to be included in the Schedule.
- (5) The Council may from time to time add to or delete from the Schedule any building, object or place.
- (6) The Council shall, before including any building, object or place in the Schedule:
 - (a) give to the owner of that building, object or place written notice that the Council proposes to include that building, object or place in the Schedule and specifying a date being not less than three (3) weeks after the notice is given by which submissions may be made to the Council by the owner;
 - (b) advertise notice of the Council's intention in a newspaper circulating in the district and specifying the date by which submissions may be made to the Council by any person interested.
- (7) The Council shall not include a building, object or place in the Schedule without first considering any submissions made within the time limit specified by the notice referred to in sub-clause (6) of this Clause.

79. PRESERVATION OF HISTORIC AND OTHER BUILDINGS, OBJECTS AND PLACES:

- (1) Where any development involves an alteration to, or the destruction, total or partial of a building, object or place which is:
 - (a) entered in the Schedule;
 - (b) included by the Australian Heritage Commission in the Register of the National Estate;
 - (c) included in the National Heritage Register;

the Council before determining that application may give notice thereof to the National Trust of Australia (WA), the Australian Heritage Commission and such other bodies or persons as the Council thinks fit.

- (2) In determining an application referred to in sub Clause (1) of this Clause the Council shall have regard to any submissions made to the Council with respect to the preservation of the building, object or place involved in that application.

80. PROTECTION OF LANDFORM:

The Council may refuse to approve an application for planning approval if the proposed development will so disturb the natural contour of the land as to have an adverse effect on adjoining property, the privacy thereof or the amenity of the locality.

81. PROTECTION OF VEGETATION:

- (1) In granting an application for planning approval the Council, in addition to any other condition which the Council is required or permitted to impose, may require that:
 - (a) the development be carried out in such a way as to minimise disturbance to existing significant vegetation;
 - (b) any tree or group of trees be preserved or protected.
- (2) The Council may refuse an application for planning approval if the Council considers that the proposed development involves the unnecessary removal of vegetation which is worth preservation.

82. PLANNING POLICIES:

- (1) The Council may prepare a planning policy (herein called a Policy) which may make a provision for any other matters related to the planning or development of the Scheme Area and which may be prepared so as to apply:
 - (a) generally or in a particular class of matter or in particular classes of matters
 - (b) throughout the Scheme Area in one or more parts of the Scheme Areaand may amend or add to or rescind a Policy so prepared.
- (2) A Policy shall become operative only after the following procedures have been completed:
 - (a) The Council having prepared and adopted a draft Policy shall publish a notice once a week for two consecutive weeks in a local paper circulating within the Scheme Area giving details of where the draft Policy may be inspected, and in what form and during what period (being not less than 21 days) submissions may be made.
 - (b) Policies which the Council considers may be inconsistent with other provisions of the Scheme or with State and regional planning policies are to be submitted to the Commission for consideration and advice.
 - (c) The Council shall review the draft Policy in the light of any submissions made and advice received and shall then resolve either to finally adopt the draft Policy with or without modification, or not to proceed with the draft Policy.
 - (d) Following final adoption of a Policy, notification of the final adoption shall be published once in a newspaper circulating within the Scheme Area.

- (3) A Policy may be rescinded by:-
 - (a) Preparation or final adoption of a new Policy pursuant to this clause specifically worded to supersede an existing Policy; and
 - (b) publication of a formal notice of rescission by the Council twice in a local newspaper circulating in the district.
- (4) A Policy shall not bind the Council in respect of any application for planning approval but the Council shall have due regard to the provisions of the Policy and the objectives which the Policy is designed to achieve before making a decision.
- (5) Any Policy prepared under this clause shall be consistent with the Scheme and where any inconsistency arises the Scheme shall prevail.

PART V - PLANNING APPROVAL

83. APPLICATION:

- (1) Subject to sub-clause (2) of this Clause, every application for planning approval shall be made in the form prescribed in Form I A to the Scheme and shall be accompanied by such plans and other information as is required by the Scheme.
- (2) Where, under the provisions of the Metropolitan Region Scheme;
 - (a) approval of the responsible authority is required for the development of land zoned under Part 111 of that Scheme; and
 - (b) the Council has power delegated to it by the Western Australian Planning Commission under the Metropolitan Region Town Planning Scheme Act 1959 as amended and re-enacted, to determine an application for approval to commence and carry out development;

an application for that approval in the Form No.1 prescribed by the Metropolitan Region Scheme, if accompanied by such plans and other information as is required by this Scheme, shall be deemed to be an application under this Scheme for planning approval.

- (3) Every application for planning approval shall be accompanied by:
 - (a) Three (3) copies of plan or plans to a scale of 1:200 or larger, showing:
 - (i) Street names, lot numbers, north point and the dimension of the site;
 - (ii) position by dimension of street trees existing and proposed driveways and permanent street furniture such as bus stops, telephone boxes, power poles and manholes;
 - (iii) the position and size of existing sewers, stormwater drains and other major services on the site;
 - (iv) the location and height of any existing building including buildings on adjoining land, the location of proposed buildings on the land and the type and height of existing fences on adjoining land;
 - (v) the existing contours and proposed finished levels of the land relative to the levels of adjoining land, streets, footpaths and streets and other vehicle carriageways;
 - (vi) details of any retaining walls or embankments required to support any proposed cutting or filling of the existing ground surface;
 - (vii) the existing and the proposed means of access for pedestrians and vehicles to and from the land;
 - (viii) the location, number dimensions and layout of all carparking spaces, accessways and circulation areas intended to be provided and particulars of proposed drainage, lighting and landscaping;
 - (ix) 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 premises and the means of access to and from such area;
 - (x) accurately, the position of and describing the type and height of all trees above 4m on the land and indicating which (if any) of those trees will be removed;
 - (xi) accurately, the position of and describing the type of all significant

vegetation and indicating what part of that vegetation (if any) is to be removed;

- (xii) the location and dimensions of open space areas;
 - (xiii) Schedule of materials and finishes.
- (b) three copies of drawings showing floor plans, elevations and sections, drawn to a scale of 1:100 of any building proposed to be erected or altered and of any building it is intended to retain, all clearly figured and dimensioned and showing relationships of proposed floor levels to proposed finished ground levels;
- (c) three copies of a schedule outlining the type and colour of materials to be used in the construction of buildings, drive-ways, fences and retaining walls;
- (d) any other plan, model or information required to be provided pursuant to the Scheme or that the Council may require to enable the application to be determined.
- (4) An application for planning approval in respect of land which is wholly within a regional reserve shall be referred by the Council to the Commission for determination in accordance with the Metropolitan Region Scheme. No separate determination of the application shall be made by the Council.
- (5) An application for planning approval in respect of land which is wholly within the management area of the Swan River Trust shall be referred by the Council to the Swan River Trust for determination, in accordance with the *Swan River Trust Act 1988*. No separate determination of the application shall be made by the Council.
- (6) An application for planning approval in respect of land which is -
- (a) wholly zoned or reserved by the Scheme, or
 - (b) partly within a regional reserve and partly zoned or reserved by the Scheme, or
 - (c) affected by a gazetted notice of resolution made by the Commission under Clause 32 of the Metropolitan Region Scheme, or
 - (d) within or partly within a Planning Control Area duly declared by the Commission,
- shall be dealt with by the Council in accordance with the requirements of the Notice of Delegation published in the Government Gazette from time to time by the Commission acting pursuant to the provisions of section 20 of the Western Australian Planning Commission Act. Where that notice of Delegation requires the application to be determined by the Commission, the procedure is as follows:
- (i) one copy of the application and supporting papers submitted by the applicant, shall within seven days of receipt of the application, be forwarded by the Council to the Commission for determination pursuant to the provisions of the Scheme and the Metropolitan Region town Planning Scheme or the *Metropolitan Region Town Planning Scheme Act 1959*; and
 - (ii) the Council shall retain the other copy of the application and supporting papers and determine the application in accordance with the provision of the Scheme.
 - (iii) the Council may, within forty two days of receipt of that application (or such further period as the Commission may allow) forward to the Commission its recommendation as to the manner in which the application should be determined.

84. LANDSCAPING REQUIREMENTS:

- (1) Where planning approval has been granted under the Scheme, and a minimum landscaped area of open space is required to be provided under the Scheme or by that approval, a person shall not occupy or use the land or any building the subject of that approval for the purpose for which that approval was given unless and until:
 - (a) the Council has approved a plan showing:
 - (i) the location of every building on the site;
 - (ii) the layout and location of pedestrian spaces, pavements, grassed areas, areas covered with ground cover planting, shrubs and garden beds and the location of existing and proposed trees;
 - (iii) the quantity of shrubs to be planted in each landscaped area and types of existing and proposed trees;
 - (iv) details of any alterations or proposed alterations to the natural contours of the landscaped areas;
 - (b) the landscaped areas have been developed and completed in accordance with the plan approved by the Council.
- (2) Every landscaped area shall be maintained in good order and condition and in accordance with the plans approved by the Council.

85. FORM OF APPROVAL/REFUSAL OF APPLICATION:

- (1) Where:
 - (a) an application for planning approval is made in the form prescribed in Form 1A to the Scheme; or
 - (b) an application is made for approval to commence and carry out development in Form No.1 prescribed by the Metropolitan Region Scheme and, pursuant to Clause 82 of this Scheme, that application is deemed to be an application for planning approval under this Scheme;

the Council shall issue its decision on the application in the Form No. 2 prescribed by the Metropolitan Region Scheme.
- (2) Where, an application for approval to commence and carry out development under the Metropolitan Region Scheme is not deemed to be an application for planning approval under Clause 82 of this Scheme, the Council shall issue its decision on the application for planning approval in the form prescribed in Form No.2A to this Scheme.

86. DETERMINATION OF APPLICATION:

- (1) In determining an application for planning approval the Council may consult with any authority which, or person who, in the circumstance, it thinks appropriate.
- (2) The Council having regard to:
 - (a) any matter which it is required by the Scheme to consider;
 - (b) the purpose for which the land is zoned or reserved for use under the Scheme;
 - (c) the purpose for which the land is zoned under the Metropolitan Region Scheme;
 - (d) the purpose for which land in the locality is used;

- (e) the orderly and proper planning of the locality and the preservation of the amenities of the locality;
- (f) any statement of planning policy adopted by the Council relating to specific areas or building types;

may refuse to approve any application for planning approval. Where Council grants its approval, it may do so subject to such conditions as it may deem fit.

(3) Nothing in the Scheme which:

- (a) requires or enables the Council to take any particular step;
- (b) requires or enables the Council to consider or take into account any particular matter or thing with respect to development or with respect to an application for planning approval;
- (c) empowers the Council to refuse an application for planning approval on particular grounds or to approve the application subject to the imposition of conditions relating to any particular matter or thing;

shall in any way effect, prejudice or restrict the generality of the provisions of sub-clause (2) of this Clause.

- (4) Where the Council approves an application for planning approval under this Scheme, the Council may limit the time for which that approval remains valid.

87. CONDITIONAL APPROVALS:

If the Council approves of an application for planning approval subject to conditions, the development, the subject of that application shall not be carried out and the land shall not be used for any purpose unless those conditions have been and continue to be complied with or otherwise than in accordance with those conditions.

88. DEEMED REFUSAL:

- (1) An application for planning approval shall be determined to have been refused where a decision in respect of that application is not conveyed to the applicant by the Council:
 - (a) within 60 days of the receipt of the application by the Council; or
 - (b) within such further period as agreed in writing between the applicant and the Council within the 60 day period.
- (2) Notwithstanding that an application for planning approval may be deemed to have been refused under sub-clause (1) the Council may issue a decision in respect of the application after the expiry of the 60 days and that decision shall be regarded as being valid.

PART VI - FINANCE, ADMINISTRATION, APPEALS AND OFFENCES

89. PURCHASE AND DISPOSAL OF LAND:

The Council may acquire any land within the District by agreement for the purpose of securing any objective of the Scheme. The Council may deal with or dispose of any land which it owns or which it has acquired pursuant to the provisions of the Scheme or the Act in accordance with law and for such purpose may make such agreement with other owners as it deems fit.

90. AGREEMENT:

The Council may enter into any agreement with any owner, occupier or other person having an interest in land affected by the provisions of the Scheme for the purpose of securing any of the objectives of the Scheme.

91. ENTRY TO PREMISES:

An officer of the Council, authorised by the Council for the purpose, may, at all reasonable times enter any building or land for the purpose of ascertaining whether the provisions of the Scheme are being observed.

92. COMPENSATION:

- (1) Except as otherwise provided, the time limit for the making of claims for compensation for injurious affection pursuant to Section 11 of the Act resultant from the making of, or the making of an amendment to, the Scheme is six (6) months from the date of publication of the Scheme or the Scheme Amendment in the Government Gazette.
- (2) Where, in respect of any application for planning approval to commence and carry out development on land reserved under this Scheme, the Council or any appellate body thereafter, refuses or grants approval subject to conditions that the effect of the decision is to permit the land to be used or developed for no purpose other than a public purpose, the owner of the land, may within six (6) months of the date of the relevant decision claim compensation from the Council for injurious affection.

93. NOTICES:

- (1) Any notice given by the Council under Section 10(1) of the Act shall be a thirty (30) day notice under the hand of the Chief Executive Officer sent by registered post to the owner and occupier (if any) of the land affected by the notice.
- (2) The Council may recover expenses under Section 10(2) of the Act in any manner in which the Council is from time to time entitled to recover rates levied by the Council.

94. APPEALS:

Subject to the provisions of the Act, an applicant for planning approval has a right of appeal under this Scheme in respect of the exercise by the Council of a discretionary power.

95. OFFENCES:

Subject to Division III of Part 2 of the Scheme a person shall not erect, alter or add to a building or use or change the use or suffer or permit the use of or suffer or permit a change of the use of any land, building or part of a building for any purpose:

- (1) other than a purpose permitted or approved of by the Council in the zone in which that land or building is situated;
- (2) unless all approvals, consents or licences required by the Scheme have been granted or issued;

- (3) unless all conditions imposed upon the grant or issue of any approval, consent or licence required by the Scheme have been and continue to be complied with;
 - (4) unless all standards laid down and all requirements prescribed by the Scheme or determined by the Council pursuant to the Scheme with respect to that building or that use of that land or building or that part have been and continue to be complied with.
 - (5) Any person who fails to comply with any of the provisions of the Scheme is guilty of an offence and without prejudice to any other remedy given herein is liable to such penalties as are prescribed by section 10 of the Act.
96. Where the Council has granted planning approval for the development of the land on a condition which involves the maintenance or continuance of the state or condition of any place, area, matter or thing a person shall not use that land for any purpose while the state or condition of that place, area, matter or thing is not being maintained or continued in accordance with that condition.
97. The owner and occupier of land in the District shall ensure that any building in that land is maintained in good order and repair and that the appearance and state of that building does not adversely affect the amenity of the locality. A building shall not be constructed or finished with reflective surfaces that may adversely affect the amenity of the area.
- 98. DELEGATION:**
- (1) The local government may, in writing and either generally or as otherwise provided by the instrument of delegation, delegate to a committee or the CEO, within the meaning of those expressions under the *Local Government Act 1995*, the exercise of any of its powers or the discharge of any of its duties under the Scheme other than this power of delegation.
 - (2) The CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under sub-clause 98(1).
 - (3) The exercise of the power of delegation under sub-clause 98(1) requires a decision of an absolute majority as if the power had been exercised under the *Local Government Act 1995*.
 - (4) Sections 5.45 and 5.46 of the *Local Government Act 1995* and the regulations referred to in section 5.46 apply to a delegation made under this clause as if the delegation were a delegation under Division 4 of Part 5 of that Act.

AMD 125 GG 17/3/15

APPENDICES

APPENDIX I - (FORM 1A) APPLICATION FOR PLANNING APPROVAL FORM 1A

TOWN OF CLAREMONT

TOWN PLANNING SCHEME NO. 3

Application For Planning Approval

Name of Owner of Land)
on which development)
proposed)

Surname:
Christian Names:
Address in Full:

.....
.....

Submitted by:

Address for Correspondence:

Locality of Development:

Titles Office Description of Land:

Lot No: Street: Loc. No:

Plan or Diagram: Certificate of Title Vol: Fol:

The type of development proposed and the nature of the proposed buildings are as follows:

.....
.....
.....
.....
.....
.....
.....

The approximate cost of proposed development is

The estimated time of completion is

The approximate number of persons to be employed when the development is complete is

Three copies of the Site Plan and other necessary plans of the proposals are submitted with this application.

.....
Signed by the Owner of the Land

Dated this..... day of..... 19.....

Note: Separate applications are required to be submitted to the Council for:

- (i) Approval to Commence Development under the Metropolitan Region Scheme (Form 1);
- (ii) A building licence (where applicable).

APPENDIX II - (FORM 2A) PLANNING APPROVAL/REFUSAL OF PLANNING APPROVAL

FORM 2A

TOWN OF CLAREMONT
TOWN PLANNING SCHEME NO. 3

**Planning Approval
Refusal Of Planning Approval**

Application Date:.....

Applicant:Owner of Land:

Details of Land:

Lot No: Street: Loc. No:

Certificate of Title Volume:.....Folio:

Conditions of Approval (where applicable):

.....
.....
.....
.....
.....

Signed:.....
Chief Executive Officer

.....
Date:

This application is valid only if the development is commenced within 24 months of the date of approval.

APPENDIX III - DIMENSIONS OF CAR PARKING

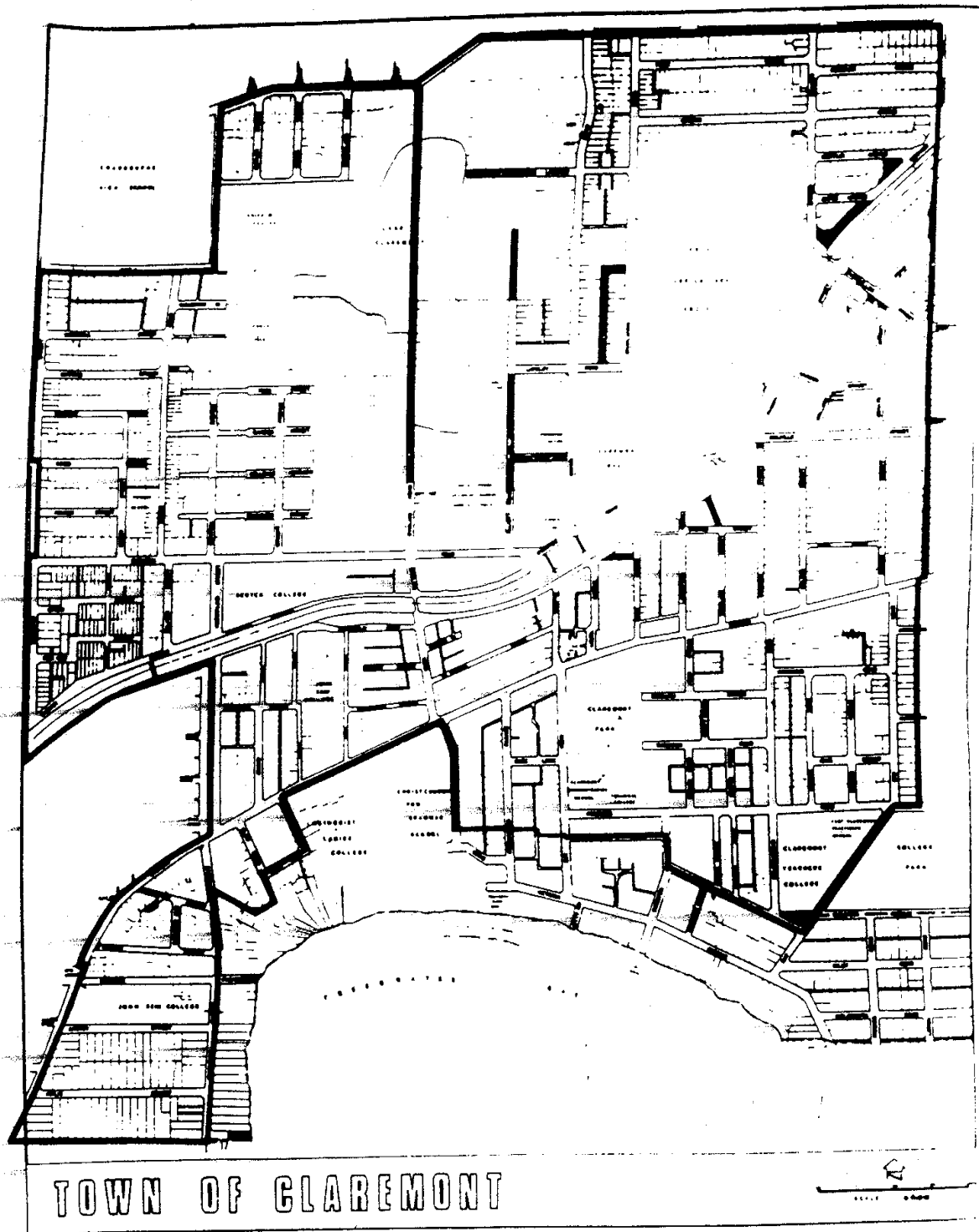
DELETED BY AMD 123 GG 20/01/17

APPENDIX IV - RESIDENTIAL PLANNING CODES

RESIDENTIAL PLANNING CODES

The Residential Planning Codes will be adopted in accordance with the Town Planning Board Policy No. 7A and are available with the Scheme Text for perusal.

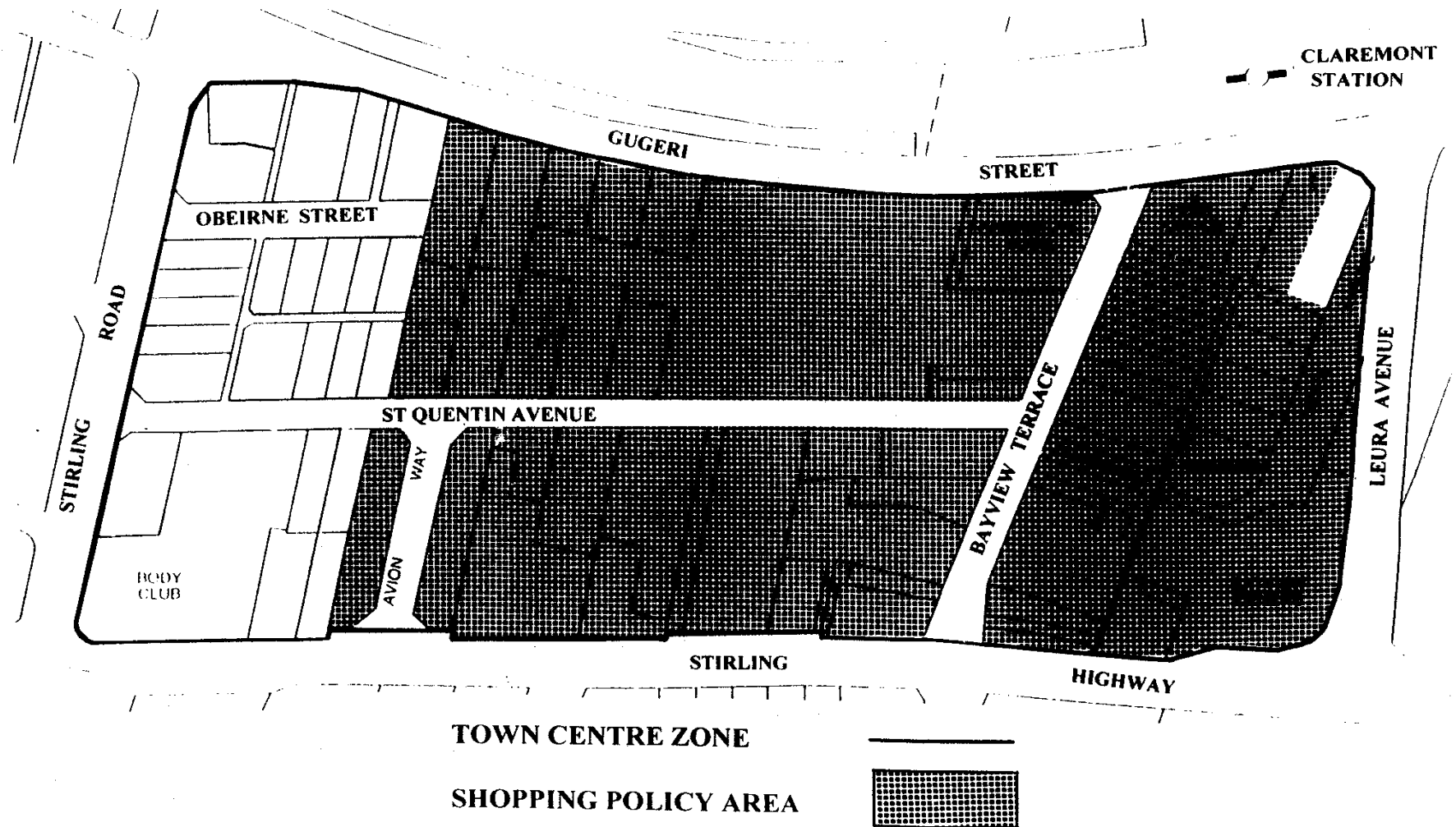
APPENDIX V - TOWN OF CLAREMONT MAP



Q2

APPENDIX VI - TOWN CENTRE POLICY

Including Lots 74, Pt 24, 101 and 26 St Quentin Avenue, Lots 10, 11, 12, 13 and 14 O'Beirne Street, Lot 100 Guger Street, a portion of the O'Beirne Street Road Reserve and all of Road No. 18062 within the Shopping Policy Area of the Town Centre Zone as depicted on the Scheme Amendment Map. AMD 94 GG 13/5/05



APPENDIX VII - LOCATION PARTICULARS

| Location | Particulars of Land | Permitted Use | Standards/Conditions |
|---|--|--|--|
| No. 5 Queenslea Drive | Lots 2, 3, 4, Pt 5, 12, 53 and 54 of Swan Location 718 on Certificate of Title 1558, 1050 Folio 232 and 508. | Hospital not exceeding 77 beds, operating theatre, radiology and physiotherapy facilities. | Prior to applying for planning approval the applicant is to undertake a traffic study to determine the effect that the proposed development will have on the nearby school and residents in the locality. Should the traffic study, in Council's opinion, indicate that the development will create a traffic hazard, the applicant is to suitably modify the development to satisfy Council's requirements with respect to traffic. |
| No. 2 Devon Road | Lot 97 of Swan Location P1062 on Certificate of Title Vol. 1062, 1168 Folio 815, 390. | Veterinary Clinic and Veterinary Hospital only. | <ol style="list-style-type: none"> Lot 97 shall be used for Veterinary Clinic/Veterinary Hospital only and for no other use. Lot 97 shall not be used for the use of a Veterinary Clinic or Veterinary Hospital unless a minimum of 6 car parking spaces, of the dimensions and configuration depicted in Appendix III of the Scheme Text, are provided on that lot. |
| No. 264 Stirling Highway | Lot 1 of Swan Location 621 on Plan 1133 and a portion of Certificate of Title Volume 1738, Folio 887 and 889. | All the uses that the land may be used for in the Highway Zone as determined by Table 1 Land Use Table and in addition may be used for the purpose of conducting civil ceremonies. | A minimum of 22 car bays are to be available for the wedding guests. |
| No. 26 Vaucluse Street | Portion of Swan Location 62 being Lot 36 on Plan 1234 and a portion of the land subject to Certificate of Title Volume III, Folio 465. | Office | Gross Leaseable area of building not to exceed 200m ² . |
| No. 141 Claremont Crescent, Swanbourne <i>AMD 77 GG 28/1/00</i> <i>AMD 91 GG 9/12/03</i> | Lot 77 of Swan Location P1069 on Certificate of Title Volume 2189 Folio 78 | Aged Persons Dwellings and Ancillary Uses only | <ol style="list-style-type: none"> The subject land shall be used for aged persons' housing and ancillary uses only. The subject land shall not be used for aged persons' housing unless: a total of 40 car parking bays are to be provided on site and an additional 26 visitor car parking bays located on the subject land. A minimum of 10 car parking bays to be for the exclusive use of visitors to the site. |
| No. 75 Graylands Road <i>AMD 67 GG 24/12/99</i> | Swan Location 429 being Lot 87 Certificate of Title Volume 188 Folio 103 | School, Church, Residential R30 | The maximum number of students attending this school at any one time shall not exceed forty. No additional buildings other than those required for the provision of additional ablution facilities to be constructed on the property. |

| Location | Particulars of Land | Permitted Use | Standards/Conditions |
|---|---|--|--|
| No. 59 Bay View Terrace | Lot 14 of Swan Location 350 being that land described in Certificate of Title 335 Folio 074 | Three dwellings | Construction of one single storey and two, two storey brick and tile dwellings, in accordance with the drawings dated 16 December 1996 and endorsed by the Chief Executive Officer as the drawings referred to in this amendment. |
| 10 Albert Street and 5 Dean Street | A portion of Lot 32 of Swan Location 702 on Certificate of Title Volume 1923 Folio 864 and a portion of Lot 12 of Swan Location 702 on Certificate of Title Volume 1009 Folio 471, as shown on the Scheme Map. <i>AMD 105 GG 4/12/07</i> | Aged Care Facility and ancillary uses. | <ol style="list-style-type: none"> 1. The subject site shall be used for aged persons' accommodation and ancillary uses only. 2. The following development standards shall apply to the subject site: <ol style="list-style-type: none"> a) A maximum of eighty beds; b) Maximum plot ratio of one; c) Minimum landscaped open space to be 30% of site; d) Maximum building height to be 12.0 metres to underside of eaves measured from natural ground level immediately below the eaves; |
| 10 Albert Street and 5 Dean Street | A portion of Lot 32 of Swan Location 702 on Certificate of Title Volume 1923 Folio 864 and a portion of Lot 12 of Swan Location 702 on Certificate of Title Volume 1009 Folio 471, as shown on the Scheme Map. (Cont'd) <i>AMD 105 GG 4/12/07</i> <i>CORRECTION NOTICE AMD 105 GG 18/12/07</i> <i>(Inserting clause (g))</i> <i>CORRECTION NOTICE AMD 105 GG 28/3/08 (Adding word "Correction" to prev notice 18/12/07)</i> | Aged Care Facility and ancillary uses. | <ol style="list-style-type: none"> e) Minimum setback to Dean Street to be 4.0 metres. Minor incursions such as porches, balconies or verandahs may project not more than one metre into the setback area. f) One car parking bay per five beds and one per two employees (on-site at any one time) shall be provided on the site. g) The above development standards shall apply to the subject site. A variation to the development standards may be agreed by Council following advertising of the proposed variation to any affected adjoining or nearby landowners/ occupiers. 3. The provisions of clause 37A (Non-residential development abutting a Residential Zone) shall not apply to the subject site. |
| No. 10 (Lot 108) Melville Street, Claremont <i>AMD 106 GG 18/12/07</i> | Lot 108 of Swan Location 2106 on Certificate of title Volume 1054, Folio 790 on Plan 4664. | Playground for St Thomas' School | <ol style="list-style-type: none"> 1. The subject site shall be used playground for students at St Thomas' School and any other occasional use that is ancillary to that use. 2. Development on the site shall be limited to single storey buildings not exceeding a gross area of 25m² and unenclosed buildings not exceeding a gross area of 60m². |
| No. 355 Stirling Highway | <i>DELETED BY AMD 137 GG 06/12/19</i> | | |

| Location | Particulars of Land | Permitted Use | Standards/Conditions |
|--|---|---|---|
| No. 328 Stirling Highway, Claremont. <i>AMD 118 GG 12/11/10</i> | Swan Locations 9582, 9723 and 10240, being all of the land on Certificate of Title Volume 1873 Folio 529. | Civic Building, Consulting Room, Dwelling (self contained), Home Occupation, Office. | Development on the subject site shall be in accordance with the development standards applicable to the Highway Zone, Density not to exceed R40. |
| Nos. 118, 118A, 120 and 122 Guger Street, Nos. 3 and 5 Loch Street, No. 51 College Road <i>AMD 113 GG 7/10/13</i> | Lots 4, 22 and 25 Guger Street, Lot 26 Loch Street and Lot 20 College Road, Claremont | Uses as per the Residential column in Table 1. | A density coding of R80 applies to the land. No building shall exceed three storeys or a maximum of 12.5 metres. All development shall be in accordance with an approved Detailed Area Plan. |
| No. 301 Stirling Highway, Claremont | <i>DELETED BY AMD 137 GG 06/12/19</i> | | |
| 414 Stirling Highway, Claremont <i>AMD 136 GG 06/12/19</i> | Lot 11 on Certificate of Title Volume 2031 Folio 879. | Uses to be determined in accordance with the Residential Column in Table 1, excepting 'Office', 'Shop (Small)', 'Shop (intermediate)', and 'Retail Store' and 'Showroom' uses, which are (P) permitted uses. A density of R30 applies to the land. | <ol style="list-style-type: none"> 1. An Office, Shop (Small), Shop (Intermediate) or Retail Store land use may locate within the confines of the existing building only. 2. A minimum of 18 car bays are to be made available for tenant and customer parking for the Office, Shop (Small), Shop (Intermediate), Retail Store or Showroom land uses. |

APPENDIX VIII - REQUIREMENTS APPLICABLE TO LOTS 78 & 79 STIRLING HIGHWAY

Requirements Applicable To

Lots 78 & 79 Stirling Highway

1. 25 car parking spaces shall be provided on the land in addition to the number of required pursuant to Table No. 2.
2. Within 3 months after the date of the grant of planning approval by the Council of a use referred to in Clause 64A(3), a portion of the land being 8m wide and extending from Stirling Highway to St. Quentin Avenue and have its eastern boundary not less than 19m from the eastern boundary of the land and all that land within 3m of the Stirling Highway frontage shall be transferred to the Council in fee simple free of encumbrances and free of cost for the purpose of providing a new road, which is to be dedicated to public use.
3. Within 1 month after a written request by the Council to do so, or after the transfer of the portion of land referred to in Clause 2 of the Appendix to the Council, whichever occurs later:
 - (a) the portion shall be paved and drained to the specifications of the Council;
 - (b) not less than 6 trees of a type approved by the Council and having a height of not less than 4m shall be planted within the portion in positions approved by the Council and the trees shall be fitted with tree guards of a type approved by the Council; and
 - (c) street lights shall be provided in the portion to the Council's specifications.
4. The minimum building setbacks from Stirling Highway shall be 3m.
5. The minimum building setback from St. Quentin Avenue shall be 1.5m.
6. A pedestrian accessway of not less than 1.2m in width shall be constructed and maintained to provide access along not less than 30% of the length of the eastern boundary and of the western boundary of the land.
7. 2 bulk rubbish enclosures shall be provided and maintained adjacent to the portion of land referred to in Clause 2 of this Appendix. The enclosures shall have minimum dimensions of 2m in length, 1.2m in width and 2m in height.
8. 2 rubbish bin enclosures shall be provided on the eastern and western sides of the portion of land referred to in Clause 2 of this Appendix. The enclosures shall be of dimensions sufficient to accommodate 16 rubbish bins each having a capacity of 240litres.
9. Public toilets shall be provided at ground level in addition to any staff toilets. The public toilets shall comply with the Australian Standard 1428 - 1977 Design Rules for Access by the Disabled.
10. Provision shall be made for public pedestrian access from the land to Lot 103 Stirling Highway adjoining the land to the east which access shall be not less than 3m in width.

APPENDIX IX - NOTICE OF APPLICATION TO USE OR DEVELOP LAND

Form of Newspaper Notice

TOWN OF CLAREMONT

Notice of Application To Use or Develop Land

Notice is hereby given that

(1)

.....

has applied to the Town of Claremont for approval to

(2)

.....

.....

.....

.....

.....

on land situated at (3)

.....

.....

being (4)

Any person wishing to object or otherwise comment on this proposal, should do so in writing to reach the Chief Executive Officer, 308 Stirling Highway, Claremont, 6010, no later than (5)

- (1) Insert name of applicant.
- (2) Insert the particulars of the proposed land use or development.
- (3) Insert the postal address of the land subject of the application.
- (4) Insert the title description of the land subject of the application.
- (5) Insert the date which should be not less than 3 weeks after the date when the advertisement first appears in the newspaper.

**APPENDIX X - FORM OF NEWSPAPER NOTICE/NOTICE OF APPLICATION
TO USE OR DEVELOP LAND**

Form of Site Notice

TOWN OF CLAREMONT

Notice Of Application To Use Or Develop Land

Notice is hereby given that

(1)
.....

has applied to the Town of Claremont for approval to

(2)
.....
.....
.....

on this land, being (3)
.....
.....

and being (4)
.....

Any person wishing to object or otherwise comment on this proposal, should do so in writing to reach the Chief Executive Officer, 308 Stirling Highway, Claremont, 6010, no later than (5)_____

- (1) Insert name of applicant.
- (2) Insert the particulars of the proposed land use or development.
- (3) Insert the postal address of the land subject of the application.
- (4) Insert the title description of the land subject of the application.
- (5) Insert the date which should be not less than 3 weeks after the date when the advertisement of the proposed development first appeared in the newspaper circulating in the locality.

APPENDIX XI - STREETS DEEMED TO CARRY HIGH VOLUMES OF TRAFFIC

STREETS DEEMED TO CARRY HIGH VOLUMES OF TRAFFIC

Alfred Road
Ashton Avenue
Barnfield Road
Bay Road
Bay View Terrace
Bindaring Parade
Chancellor Street
Claremont Crescent
Davies Road
Graylands Road
Gugeri Street
Judge Avenue
Leura Avenue
Loch Street
Melville Street
Osborne Parade
Princess Road
Queenslea Drive
Richardson Avenue
Servetus Street
Shenton Road
Stirling Highway
Stirling Road
Stubbs Terrace
Victoria Avenue

SCHEDULE 1

| | Location | Particulars of Land | Purpose and Requirements |
|----|--|---|---|
| 1 | Claremont North East Precinct <i>AMD 130 GG 17/01/17</i> | Claremont North East Precinct Structure Plan area as shown as Development zone on the Scheme Map and generally bounded by Lapsley Road, Davies Road, Shenton Road, Claremont Crescent, railway line and Graylands Road. | <ol style="list-style-type: none"> 1. Allow for private landowner arrangements to apply administered by LandCorp in lieu of arrangements under Clause 755 of the Scheme. 2. Car parking requirements under Table 2 of TPS No. 3 do not apply. Car parking requirements shall be as per the approved Claremont North East Precinct Structure Plan. |
| 2. | 1 Airlie Street, Claremont <i>AMD 126 GG 12/09/2014</i> <i>AMD 141 GG 14/02/2020</i> | Lot 412 on Certificate of Title Volume 1676, Folio 186 | The use of the site for Dwellings (Self Contained) and aged persons' accommodation purposes and ancillary commercial, community and/or recreational uses in accordance with a Structure Plan approved pursuant to Schedule 2, Part 4, clauses 14 – 29 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> . |

ADOPTION

Adopted by resolution of the Council of the TOWN OF CLAREMONT at the ORDINARY Meeting of the Council held on the 28th day of August 1995.

.....
MAYOR

.....
CHIEF EXECUTIVE OFFICER

FINAL APPROVAL

Adopted for final approval by resolution of the TOWN OF CLAREMONT at the ORDINARY Meeting of the Council held on the 25th day of August 1997 and the Common Seal of the TOWN OF CLAREMONT was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....
MAYOR

.....
CHIEF EXECUTIVE OFFICER

Recommended/submitted for final approval

.....
**FOR CHAIRPERSON,
WESTERN AUSTRALIAN PLANNING COMMISSION**

..... Date

Final approval granted

.....
MINISTER FOR PLANNING

..... Date