

Part 11 — Enforcement and Administration

11.1 Powers of the Local Government

- 11.1.1 The local government in implementing the Scheme has the power to –
- (a) Enter into an agreement with any owner, occupier or other person having an interest in land affected by the provisions of the Scheme in respect of any matter pertaining to the Scheme;
 - (b) Acquire any land or buildings within the Scheme area under the provisions of the Scheme or the Planning Act; and
 - (c) Deal with or dispose of any land which it has acquired under the provisions of the Scheme or the Planning Act in accordance with the law and for such purpose may make such agreements with other owners as it considers fit.
- 11.1.2. An employee of the local government authorised by the local government may, at all reasonable times and with such assistance as may be required, enter any building or land for the purpose of ascertaining whether the provisions of the Scheme are being observed.

11.2 Removal and Repair of Existing Advertisements

- 11.2.1 In this clause 11.2 the term “owner” means the owner of the land on or over which an advertisement is displayed.
- 11.2.2 Where an existing advertisement at, or at any time after, the coming into force of the Scheme, is, in the opinion of the local government, in conflict with the amenity of the locality, the local government may by written notice (giving clear reasons) require the owner to remove, relocate, repair, adapt or otherwise modify the advertisement.
- 11.2.3 Where, in the opinion of the local government, an advertisement has deteriorated to a point where it is in conflict with the aims of the Scheme or it ceases to be effective for the purpose for which it was erected or displayed, the local government may by written notice require the owner to –
- (a) Repair, repaint or otherwise restore the advertisement to a standard specified by the local government in the notice; or
 - (b) Remove the advertisement.
- 11.2.4 For the purpose of clauses 11.2.1 and 11.2.2 any notice is to be served on the owner and is to specify –
- (a) The advertisement the subject of the notice;
 - (b) Full details of the action or alternative courses of action to be taken by the owner to comply with the notice; and
 - (c) The period, being not less than 60 days from the date of the local government’s determination, within which the action specified is to be completed by the owner.
- 11.2.5 A person on whom notice is served under this clause may apply under Part 14 of the Planning Act to review the determination of the local government.

11.3 Delegation of Functions

- 11.3.1 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.

- 11.3.2 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 clause 11.3.1.
- 11.3.3 The exercise of the power of delegation under clause 11.3.1 requires a decision of an absolute majority as if the power had been exercised under the *Local Government Act 1995*.
- 11.3.4 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.

11.4 Advisory Committees

- 11.4.1 The Council may from time to time establish Advisory Committees to advise it on any matters in the Scheme subject to such terms of reference, procedures and conditions of office as it thinks fit.
- 11.4.2 An Advisory Committee shall be chaired by the Mayor of the Council or a nominee, and subject to any provision of this Scheme dealing with membership of an Advisory Committee for any specific purpose, the membership of an Advisory Committee may comprise of community representatives and/or technical experts who in the opinion of the Council have the relevant knowledge, experience or expertise to give fair and reasoned advice on the matters referred to the Committee.
- 11.4.3 A member of an Advisory Committee shall not discuss or vote on any matter before the Committee in which that member has a pecuniary interest.
- 11.4.4 When dealing with any matter involving an application for Development Approval or when considering a Structure Plan or when dealing with any other matter involving a development proposal, the Council shall have due regard to any relevant recommendation of an Advisory Committee. *Modified by Amendment 74 - Gazetted 8/10/2013*

11.5 Person must comply with Provisions of Scheme

- 11.5.1 A person must not –
 - (a) Contravene or fail to comply with the provisions of the Scheme;
 - (b) Use any land or commence or continue to carry out any development within the Scheme area –
 - (i) Otherwise, than in accordance with the Scheme;
 - (ii) Unless all approvals required by the Scheme have been granted and issued;
 - (iii) Otherwise, than in accordance with any conditions imposed upon the grant and the issue of any approval required by the Scheme; and
 - (iv) Otherwise, than in accordance with any standards laid down and any requirements prescribed by the Scheme or determined by the local government under the Scheme with respect to that building or that use.
 - (v) Contrary to any directive issued under section 214 of the Planning Act.

- Note: 1. Section 218 of the Planning Act provides that a person who contravenes –
- (a) a town planning scheme; or
 - (b) any condition imposed with respect to a development by a responsible authority pursuant to its powers under a town planning scheme,
- commits an offence. Penalty: \$50 000, and a daily penalty of \$5 000.
2. Section 223 provides similar penalties for failure to comply with a section 214 direction.

11.6 Compensation

- 11.6.1 A person whose land or property is injuriously affected by the making or amendment of the Scheme may make a claim for compensation under section 173 of the Planning Act –
- (a) In any case, within six (6) months of the date of publication of notice of the approval of the Scheme or the amendment, as the case requires, in accordance with the *Town Planning Regulations 1967*; or
 - (b) Where the land has been reserved for a public purpose and —
 - (i) An application made under the Scheme for approval to carry out development on the land is refused; or
 - (ii) An application made under the Scheme for approval to carry out development on the land is granted subject to conditions that have the effect of permitting the land to be used or developed for no purpose other than a public purpose,not later than six (6) months after the application is refused or the permission granted.
- 11.6.2 A person whose land or property is injuriously affected by the making of a Scheme may not claim compensation for that injurious affection more than once under clause 11.6.1.

- Note: 1. A claim for compensation in respect of the refusal of planning approval or the imposition of conditions on land reserved under the Metropolitan Region Scheme should be made under the Planning Act.
2. A claim for compensation under section 173 of the Planning Act may be made in the Form No. 7 in Appendix A of the *Town Planning Regulations 1967*.

11.7 Purchase or Taking of Land

- 11.7.1 If, where compensation for injurious affection is claimed under the Planning Act, the local government elects to purchase or take the land compulsorily the local government is to give written notice of that election to the claimant within three (3) months of the claim for compensation being made.
- 11.7.2 The local government may deal with or dispose of land acquired by it for the purpose of a Local Reserve upon such terms and conditions as it thinks fit but the land must be used, and preserved, for a use compatible with the purpose for which it is reserved.

- Note: Part 11, Division 4 of the Planning Act empowers the local government to purchase or compulsorily acquire land comprised in a scheme.

11.8 Notice for Removal of Certain Buildings

- 11.8.1 Under section 214 (6) of the Planning Act, not less than 60 days written notice is prescribed as the notice to be given for the removal of a building or other work referred to in that subsection.
- 11.8.2 The local government may recover expenses under section 215 (2) of the Planning Act in a court of competent jurisdiction.

11.9 Control of Over Stocking

- 11.9.1 Where in the opinion of Council the livestock keeping is causing adverse environmental, health or amenity impacts, the Council may by written notice (giving clear reasons) require the owner of the land to:
- (a) Take action to temporarily or permanently reduce the amount of stock kept on the land; or
 - (b) Remove all the stock from the land either temporarily or permanently; or
 - (c) Rectify the adverse impacts of the livestock keeping.
- 11.9.2 For the purposes of this clause, any notice to be served on the owner of the livestock is to specify:
- (a) The livestock the subject of the notice;
 - (b) Full details of the action or alternative courses of action to be taken by the owner to comply with the notice; and
 - (c) The period, being not less than 60 days from the date of Council's determination, within which the action specified is to be completed by the owner.
- 11.9.3 A person on whom notice is served under this clause may appeal under Part 14 of the Planning Act against the determination of Council.