

Part 5A —Structure Planning Areas

Note: This Part includes the procedures for preparation and approval of Structure Plans and Development Contribution Areas, as well as the application of structure plans in the Development zones, the Rural Residential zone, the Special Rural zone, the Landscape zone, Midland Strategic Regional Centre zone and other areas in which structure plans are required.

5A.1 STRUCTURE PLANNING AREAS

5A.1.1 Interpretation

In this part, unless the context otherwise requires:

“Detailed Area Plan” means a plan prepared and adopted pursuant to clause 5A.1.16 of this Part;

“Owner” means an owner or owners of land in the Structure Planning Area; and

“Structure Plan” means a structure plan that has come into effect in accordance with clause 5A.1.12 and includes any Outline Development Plan or Subdivision Guide Plan prepared and approved under the previous town planning scheme of the local government, where applicable to a structure planning area.

“Structure Planning Area” means any of the following:

- (a) Residential Development zone;
- (b) Residential Redevelopment zone;
- (c) Industrial Development zone;
- (d) Rural-Residential zone, Special Rural zone or Landscape zone;
- (e) Midland Strategic Regional Centre zone;
- (f) Any of the Special Use zones for which a structure plan is required as a condition of subdivision or development.

5A.1.2 Purpose of Structure Planning Areas

5A.1.2.1 The purposes of Structure Planning Areas are to:

- (a) Identify areas requiring comprehensive planning; and
- (b) Coordinate subdivision and development in areas requiring comprehensive planning.

5A.1.3 Subdivision and Development in Structure Planning Areas

5A.1.3.1 The subdivision and development of land within a Structure Planning Area is to be generally in accordance with any structure plan that applies to that land.

5A.1.4 Structure Plan required

5A.1.4.1 The local government is not to:

- (a) Consider recommending subdivision; or
- (b) Approve development

of land within a Structure Planning Area unless there is a structure plan for the area or for the relevant part of that area that adequately defines

the comprehensive planning detail required to guide orderly subdivision and development for urban land use.

Note: In the absence of a structure plan for the whole of the Structure Planning Area, a structure plan for part of the area is to accord with the requirements of clause 5A.1.5.2

5A.1.4.2 Notwithstanding clause 5A.1.4.1, a local government may recommend subdivision or approve the development of land within a Structure Planning Area prior to a structure plan coming into effect in relation to that land, if the local government is satisfied that this will not prejudice the specific purposes and requirements of the Structure Planning Area.

5A.1.4.3 Where a proposed Structure Plan imposes a classification on the land included in it by reference to reserves, zones, or the *Residential Design Codes*, and such Proposed Structure Plan requires the preparation of a Development Contribution Plan, the proposed Structure Plan may only be adopted if the subject area is listed in Schedule 13 of the Scheme as a Development Contribution Area.

5A.1.4.4 Where building envelopes are depicted on a Structure Plan, all buildings and effluent disposal facilities shall be located within the building envelopes shown on those plans.

5A1.4.5 Notwithstanding the provisions of sub-clause 5A.1.4.4, Council may approve the construction of the following structures outside of building envelopes:

- (a) Water tanks;
- (b) Windmills;
- (c) Stock watering and feed troughs; and
- (d) Roofed structures open on all sides for the purpose of providing shelter to animals.

5A.1.5 Preparation of proposed structure plans

5A.1.5.1 A proposed structure plan may be prepared by:

- (a) The local government; or
- (b) An owner.

5A.1.5.2 A proposed structure plan may be prepared for all, or part of, a Structure Planning Area.

5A.1.6 Details of proposed structure plan

5A.1.6.1 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) Hydro geological 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:
 - (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) For district structure plans, a map showing proposals for:
 - (i) The pattern of neighbourhoods around town and neighbourhood centres;
 - (ii) Arterial routes and neighbourhood connector streets;
 - (iii) The protection of natural features such as water courses and vegetation;
 - (iv) Major open spaces and parklands;
 - (v) Major public transport routes and facilities;
 - (vi) The pattern and disposition of land uses; and
 - (vii) Schools and community facilities;
- (e) For local structure plans, a map showing proposals for:
 - (i) Neighbourhoods around proposed neighbourhoods and town centres;
 - (ii) Existing and proposed commercial centres;
 - (iii) Natural features to be retained,
 - (iv) Street block layouts;
 - (v) The street network including street types;
 - (vi) Transportation corridors, public transport network, and cycle and pedestrian networks;
 - (vii) Land uses including residential densities and estimates of population;
 - (viii) Schools and community facilities;
 - (ix) Public parklands; and
 - (x) Urban water management areas;

Note: Local Structure Plans may be applied as a basis for coordination of subdivision and development at the local level, and may be applied to residential, rural or industrial estates or to areas in fragmented ownership where there is a need for coordination of development and/or subdivision

- (f) A written report to explain the mapping and to address the following:
 - (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 5A.1.6.1 (b) above, and, in particular, the significance of the conservation, environmental and heritage values of the site;
- (iii) The context analysis including reference to the matters listed in clause 5A.1.6.1 (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; and
- (xi) Fire risk management.

5A.1.6.2 The maps referred to in clause 5A.1.6.1 are to:

- (a) Be drawn to a scale that clearly illustrates the details referred to in clause 5A.1.6.1; and
- (b) Include a north point, visual bar scale, key street names and a drawing title and number.

5A.1.6.3 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 and the *Residential Design Codes* residential density coding, and where the proposed structure plan becomes a structure plan, the local government is to have due regard to such reserves, zones and *Residential Design Codes* residential density coding when recommending subdivision or approving development of land within a Structure Planning Area.

5A.1.6.4 A proposed structure plan must, in the opinion of the local government, be consistent with orderly and proper planning.

5A.1.7 Submission to local government and Commission

- 5A.1.7.1 A proposed structure plan prepared by an owner is to be submitted to the local government.
- 5A.1.7.2 Within seven (7) days of preparing or receiving a proposed structure plan which proposes the subdivision of land, the local government is to forward a copy of the proposed structure plan to the Commission.
- 5A.1.7.3 The Commission is to provide comments to the local government as to whether it is prepared to endorse the proposed structure plan with or without modifications.
- 5A.1.7.4 The Commission must provide its comments to the local government within 30 days of receiving the proposed structure plan.

5A.1.8 Advertising of structure plan

- 5A.1.8.1 Within 60 days of preparing or receiving a proposed structure plan that conforms with clause 5A.1.6 and 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 local government), the local government 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 erected in a conspicuous place or places in the Structure Planning Area, or part of the Structure Planning Area, to which the proposed structure plan applies; and
 - (b) Give notice or require the owner who submitted the proposed structure plan or requested its preparation by the local government 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 local government, are likely to be affected by the adoption of the proposed structure plan;
 - (iii) Such public authorities and other persons as the local government nominates.
- 5A.1.8.2 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 local government 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.

5A.1.9 Adoption of proposed structure plan

- 5A.1.9.1 The local government 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 by an owner, give reasons for this to the owner.
- 5A.1.9.2 (a) In making a determination under clause 5A.1.9.1, the local government is to have due regard to the comments and advice received from the Commission in relation to the proposed structure plan.
- (b) If the Commission requires modifications to the proposed structure plan, the local government is to consult with the Commission prior to making a determination under clause 5A.1.9.1.
- 5A.1.9.3 If the local government, after consultation with the Commission, is of the opinion that a modification to the proposed structure plan is substantial, the local government may:
- (a) Re-advertise the proposed structure plan; or
 - (b) Require the owner who submitted the proposed structure plan to re-advertise the proposed structure plan;
- and thereafter, the procedures set out in clause 5A.1.8.1 onwards are to apply.
- 5A.1.9.4 If within the period referred to in clause 5A.1.9.1, or such further time as may be agreed in writing between the owner who submitted the proposed structure plan and the local government, the local government has not made a determination under clause 5A.1.9.1, the local government is deemed to have refused to adopt the proposed structure plan.

5A.1.10 Endorsement by Commission

- 5A.1.10.1 If the proposed structure plan proposes the subdivision of land, then within seven (7) days of making its determination under clause 5A.1.9.1, the local government is to forward the proposed structure plan to the Commission for its endorsement.
- 5A.1.10.2 As soon as practicable after receiving the proposed structure plan, the Commission is to determine whether to endorse the proposed structure plan.
- 5A.1.10.3 The Commission is to notify the local government of its determination under clause 5A.1.10.2.

5A.1.11 Notification of structure plan

- 5A.1.11.1 As soon as practicable after adopting a proposed structure plan under clause 5A.1.9.1 and if clause 5A.1.10 applies, as soon as practicable

after being notified of the Commission's decision under clause 5A.1.10.3, the local government is to forward a copy of the structure plan to:

- (a) Any public authority or person that the local government thinks fit; and
- (b) Where the structure plan was submitted by an owner, to the owner.

5A.1.12 Operation of structure plan

5A.1.12.1 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 5A.1.10.2; or
- (b) On the day on which it is adopted by the local government under clause 5A.1.9.1 in all other cases.

5A.1.12.2 If a provision of a structure plan is inconsistent with a provision of the Scheme, then the provision of the Scheme prevails to the extent of the inconsistency.

5A.1.12.3 Subject to clause 5A.1.12.5, if a Structure Plan imposes a classification on the land included in it by reference to reserves, zones, or the *Residential Design Codes* then:

- (a) The provisions of the Structure Plan apply to the land as if its provisions were incorporated into the Scheme and it is binding and enforceable in the same way as corresponding provisions incorporated in the Scheme; and
- (b) The provisions in the Scheme applicable to land in those classifications under the Scheme apply to the Structure Planning Area.

5A.1.12.4 Without limiting the generality of clause 5A.1.12.3, under a Structure Plan:

- (a) In the areas designated as zones, the permissibility of uses is to be the same as set out in the Zoning Table as if those areas were zones under the Scheme having the same designation;
- (b) The standards and requirements applicable to the zones and residential density code under the Scheme apply to the areas having corresponding designations under the Structure Plan, unless otherwise provided in a detailed area plan;
- (c) The planning approval procedures including the procedures for the approval of uses and developments under the Scheme are to apply as if the land were correspondingly zoned or reserved under the Scheme; and

- (d) Any provision, standard or requirement in the Structure Plan is to be given the same force and effect as if it were a provision, standard or requirement of the Scheme.

5A.1.12.5 A Structure Plan may distinguish between the provisions, requirements or standards which are intended to have effect as if included in the Scheme, and any provisions, requirements or standards which are only for guidance or such other purposes as stipulated in the Structure Plan.

5A.1.12.6 If a provision of a Structure Plan which imposes a classification on the land included in it by reference to reserves, zones or *Residential Design Codes* is inconsistent with a provision of the Scheme, then the provision of the Scheme prevails to the extent of any inconsistency.

5A.1.12.7 It is intended that the Infrastructure Cost sharing provisions in clause 5A.2 will ensure that the cost of providing infrastructure within a Structure Planning Area will be shared equitably between affected landowners. Consequently, it is intended that no claim for compensation for injurious affection will arise as a consequence of any provision in a Structure Plan or Detailed Area plan.

Note: Where the Scheme has been amended in such a way that a structure plan is no longer required for a particular area, any existing structure plan for that area will cease to have effect. It is intended that the Scheme will be amended by rezoning of the land or removal of reference to the requirements for a structure plan, upon the effective completion of subdivision and/or development within structure planning areas.

5A.1.13 Inspection of structure plan

5A.1.13.1 The structure plan and the Commission's notification under clause 5A.1.10.3 is to be kept at the local government's administrative offices and is to be made available for inspection by any member of the public during office hours.

5A.1.14 Variation to structure plan

5A.1.14.1 The local government may vary a structure plan:

- (a) By resolution if, in the opinion of the local government, the variation does not materially alter the intent of the structure plan;
- (b) Otherwise, in accordance with the procedures set out in clause 5A.1.6 onwards.

5A.1.14.2 If the local government varies a structure plan by resolution, and the variation does not propose the subdivision of land, the local government is to forward a copy of the variation to the Commission within 10 days of making the resolution.

5A.1.14.3 If the local government varies a structure plan by resolution, and the variation proposes the subdivision of land, the local government is to forward a copy of the variation to the Commission within 10 days of making the resolution for its endorsement.

5A.1.14.4 As soon as practicable after receiving the copy of the variation referred to in clause 5A.1.14.3, the Commission is to determine whether to endorse the proposed variation.

5A.1.14.5 The Commission is to notify the local government of its determination under clause 5A.1.14.4.

5A.1.14.6 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 5A.1.14.4; or
- (b) On the day on which the local government resolves to make the variation under clause 5A.1.14.1(a).

5A.1.14.7 A variation to a structure plan otherwise than by resolution comes into effect in accordance with clause 5A.1.12.1 as if it were a structure plan.

5A.1.15 Detailed area plan

5A.1.15.1 Where it is considered desirable to enhance, elaborate or expand the details or provisions contained in a structure plan for a particular lot or lots, a detailed area plan may be prepared by:

- (a) The local government; or
- (b) An owner.

5A.1.15.2 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 local government.

5A.1.15.3 When a proposed detailed area plan is prepared under clause 5A.1.15.1, the local government 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 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 local government, are likely to be affected by the adoption of the proposed detailed area plan;
 - (iii) Such public authorities and other persons as the local government nominates.

5A.1.15.4 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 plan may be inspected; and
- (c) Invite submissions to the local government 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.

5A.1.15.5 The local government 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.

5A.1.15.6 If within 60 days of receiving a detailed area plan prepared under clause 5A.1.15.1(b), or such longer period as may be agreed in writing between the owner and the local government, the local government has not made one of the determinations referred to in clause 5A.1.15.5, the local government is deemed to have refused to approve the detailed area plan.

5A.1.15.7 Once approved by the local government, the detailed area plan constitutes a variation of the structure plan and has effect as such.

5A.1.15.8 The local government may vary a detailed area plan in accordance with the procedures set out in clause 5A.1.14 onwards provided such variations do not prejudice the intention of any related structure plan.

5A.1.16 Applications for Review (Appeals)

5A.1.16.1 An owner who has submitted a proposed structure plan under clause 5A.1.7.1 may apply to review, under Part 14 of the Planning Act:

1. Any failure of the local government to advertise, or require the owner to advertise, a proposed structure plan within the required time period under clause 5A.1.8.1;
2. Any determination of the local government:
 - (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.

5A.1.16.2 An owner who has submitted a detailed area plan in accordance with clause 5A.1.15 may apply to review, in accordance with Part 14 of the Planning Act, any discretionary decision made by the local government under clause 5A.1.15.

5A.1.17 Structure Plans and Other Instruments Adopted or Initiated Under Previous Scheme

5A.1.17.1 Where, pursuant to the requirements of the former City of Swan Town Planning Scheme No.9 (District Zoning Scheme) (the “previous scheme”), a Structure Plan, Outline Development Plan, Subdivision Guide Plan, Development Plan, Detailed Area Plan or any similar instrument (a “planning instrument”) had been adopted and was operative at the date of gazettal of this Scheme, the planning instrument shall continue to have effect and may be amended or revoked as if it were a Structure Plan under this Scheme.

5A.1.17.2 Where under the previous scheme the process of adopting a planning instrument had been commenced but was not complete at the date of gazettal of this Scheme, the steps in the process undertaken pursuant to the previous scheme shall be effective as if those steps were undertaken pursuant to this Scheme, and the remaining step or steps in the process necessary for the adoption of the planning instrument may be completed pursuant to this Scheme, as if the planning instrument were a Structure Plan under this Scheme.”

Inserted by Amend. 13 – Gov. Gaz. 16.01.09 (5A1.17 Structure Plans)

5A.2 DEVELOPMENT CONTRIBUTION AREAS

5A.2.1 Development Contribution Areas are shown on the Scheme Map as a DCA with a number and included in Schedule 13.

5A.2.2 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 any underlying zone or reserve and any general provisions of the Scheme.

5A.2.3 Interpretation

In clause 5A.2, unless the context otherwise requires:

'Administrative Costs' includes Administrative Items and such other costs as are reasonably incurred by the City for the preparation, maintenance and implementation of a Development Contribution Plan;

'Administrative Items' mean the administrative matters required to be carried out by or on behalf of the City in order to prepare, maintain and implement a Development Contribution Plan, including financing cost, accounting, planning, engineering, and any other professional services and all costs and expenses incurred by the City in relation to litigation in any Court, Tribunal or arbitration, whether incurred before or after the incorporation of the relevant DCP in Schedule 13;

'Cost Apportionment Schedule' means a schedule prepared and distributed in accordance with clause 5A.2.12;

'Cost Contribution' means the contribution to the cost of infrastructure and administrative costs;

'Development Contribution Area (DCA)' means an area shown on the Scheme Map as DCA with a number and included in Schedule 13;

'Development Contribution Plan (DCP)' means a development contribution plan prepared in accordance with the provisions of the Commission's policy on development contributions and the provisions of this Clause 5A.2 of the Scheme and incorporated in Schedule 13 to this Scheme;

'Development Contribution Plan Report' means a report prepared and distributed in accordance with clause 5A.2.12 of the Scheme;

'Infrastructure' means the standard infrastructure items (services and facilities set out in the Commission's policy on development contributions) and community infrastructure, including recreational facilities; community centres; child care and after school centres; libraries and cultural facilities and such other services and facilities for which development contributions may reasonably be requested having regard to the objectives, scope and provisions of the Commission's policy;

'Infrastructure Cost' means such costs as are reasonably incurred for the acquisition and/or construction of infrastructure; and

'Owner' means an owner of land that is located within a Development Contribution Area.

5A.2.4 Purpose

The purpose of having Development Contribution Areas is to:

- (a) Provide for the equitable sharing of the costs of infrastructure and administrative costs between owners;
- (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.

5A.2.5. Development Contribution Plan Required

5A.2.5.1 A Development Contribution Plan is required to be prepared for each Development Contribution Area.

5A.2.5.2 Where a Development Contribution Area is prescribed in the Scheme, all owners within that Development Contribution Area are required to make a Cost Contribution in accordance with the applicable Development Contribution Plan contained in Schedule 13.

5A.2.6 When a Development Contribution Plan has effect

5A.2.6.1 A Development Contribution Plan does not have effect under this Scheme until it has been incorporated in Schedule 13 as part of the Scheme.

5A.2.7 Subdivision, Strata Subdivision, Survey Strata Subdivision and Development

5A.2.7.1 The City shall not withhold its support for subdivision, strata subdivision or survey strata subdivision or refuse to approve a development solely for the reason that a development contribution plan is not in effect, there is no approval to advertise a development contribution plan or that there is no other arrangement with respect to an owner's contribution towards the provision of community infrastructure.

5A.2.7.2 Notwithstanding clause 5A.2.6.1, the Commission or the City by a condition of subdivision or development approval or otherwise, may require an owner to make a Cost Contribution in accordance with a draft or proposed DCP or to enter into an agreement with the City for that purpose and such a condition or agreement may give effect to a draft or proposed DCP before it has been incorporated in Schedule 13 of the Scheme.

5A.2.8 Guiding Principles for Development Contribution Plans

The Development Contribution Plan for any Development Contribution Area is to be prepared in accordance with the following principles:

- (a) Need and nexus

The need for the infrastructure included in the plan must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).

(b) Transparency

Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.

(c) Equity

Development contributions should be levied from all developments within a Development Contribution Area, based on their relative contribution to need.

(d) Certainty

All development contributions should be clearly identified and methods of accounting for cost adjustments determined at the commencement of a development.

(e) Efficiency

Development contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery costs.

(f) Consistency

Development contributions should be applied uniformly across a Development Contribution Area and the methodology for applying contributions should be consistent.

(g) Right of consultation and review

Owners have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe the calculation of the costs of the contributions is not reasonable.

(h) Accountable

There must be accountability in the manner in which development contributions are determined and expended.

5A.2.9 Recommended content of Development Contribution Plans

5A.2.9.1 The Development Contribution Plan is to specify:

- (a) The Development Contribution Area to which the Development Contribution Plan applies;
- (b) The infrastructure and administrative items to be funded through the Development Contribution Plan;
- (c) The method of determining the Cost Contribution of each Owner; and
- (d) A reference that the priority and timing for the provision of infrastructure is set out in the Cost Schedules and Capital Expenditure Plan.

5A.2.10 Period of Development Contribution Plan

5A.2.10.1 A Development Contribution Plan shall specify the period during which it is to operate.

5A.2.11 Land excluded

In calculating both the area of an Owner's land and the total area of land in a Development Contribution Area, the area of land provided in that Development Contribution Area for:

- (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; and
- (d) Such other land as is set out for this purpose in the Development Contribution Plan;

is to be excluded.

5A.2.12 Development Contribution Plan Report and Cost Apportionment Schedule

5A.2.12.1 Within 90 days of the Development Contribution Plan coming into effect, the City is to adopt and make available a Development Contribution Plan Report and Cost Apportionment Schedule to all owners in the Development Contribution Area.

5A.2.12.2 The development contribution plan report and the cost apportionment schedule shall set out in detail the calculation of the cost contribution for each owner in the development contribution area, based on the methodology provided in the development contribution plan, and shall take into account any proposed staging of the development.

5A.2.12.3 The Development Contribution Plan Report and Cost Apportionment Schedule do not form part of the Scheme, but once adopted by the City they are subject to review as provided for under Clause 5A.2.13.2.

5A.2.13 Cost Contributions based on estimates

5A.2.13.1 The determination of infrastructure costs and administrative costs is to 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 local government and adjusted accordingly, if necessary.

5A.2.13.2 Where a cost apportionment schedule contains estimated costs, such estimated costs are to be reviewed at least annually by the local government:

- (a) In the case of land to be acquired, in accordance with clause 5A.2.14; AND
- (b) In all other cases, in accordance with the best and latest information available to the local government,

until the expenditure or liability on the relevant item of infrastructure or administrative costs has occurred.

- 5A.2.13.3 The City is to have such estimated costs independently certified by an appropriately qualified person whenever any estimate is first proposed or is amended and must make available such independent certification where requested to do so by an Owner.
- 5A.2.13.4 Where any cost contribution has been calculated on the basis of an estimated cost, the local government:
- (a) Is to adjust the cost contribution of any owner in accordance with the revised estimated costs; and
 - (b) May accept a cost contribution, based upon estimated costs, as a final cost contribution and enter into an agreement with the owner accordingly. Such an agreement may stipulate that a Cost Contribution based on estimated costs may be revised when the costs are finally determined.
- 5A.2.13.5 Where an owner's cost contribution is adjusted under clause 5A.2.13.4, the local government, 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.
- 5A.2.13.6 If an owner objects to the amount of a cost contribution, the owner may give notice to the local government requesting a review of the amount of the cost contribution by an appropriate qualified person ('independent expert') agreed by the local government and the owner at the owner's expense, within 28 days after being informed of the cost contribution.
- 5A.2.13.7 If the independent expert does not change the cost contribution to a figure acceptable to the owner, the cost contribution is to be determined:
- (a) By any method agreed between the local government and the owner; or
 - (b) If the local government and the owner cannot agree on a method pursuant to (a) or on an independent expert, by arbitration in accordance with the *Commercial Arbitration Act 1985*, with the costs to be shared equally between the local government and Owner.

5A.2.14 Valuation of land

5A.2.14.1 Clause 5A.2.14 applies in order to determine the value of land to be acquired for the purpose of providing Infrastructure under the Development Contribution Plan.

5A.2.14.2 In clause 5A.2.14:

'Value' means the fair market value of land, at a specified date, which is defined as the capital sum that would be negotiated in an arms length transaction in an open and unrestricted market, assuming the highest and best use of the land with all its potential and limitations (other than the limitation arising from the transaction for which the land is being valued), wherein the parties act knowledgeably, prudently and without compulsion to buy or sell.

'Valuer' means a licensed Valuer as defined in the *Land Valuers Licensing Act 1978* agreed by the City and the Owner, or where the City and the Owner are unable to reach agreement, a Valuer appointed by the President of the Western Australian Division of the Australian Property Institute.

- 5A.2.14.3 If an Owner objects to a valuation made by the Valuer, the Owner may give notice to the City requesting a review of the amount of the Value, at the Owner's expense, within 28 days after being informed of the Value.
- 5A.2.14.4 If, following an initial valuation or a review, the Valuer's determination of the Value of the land is still not a figure acceptable to the owner, the Value is to be determined:
- (a) By any method agreed between the City and the Owner; or
 - (b) If the City and the Owner cannot agree, either may apply to the State Administrative Tribunal for a review of the matter under part 14 of the *Planning and Development Act 2005*.

5A.2.15 Liability for Cost Contributions

- 5A.2.15.1 An Owner is required to make a Cost Contribution in accordance with the applicable Development Contribution Plan and the provisions of clause 5A.2.
- 5A.2.15.2 An Owner's liability to pay the Owner's Cost Contribution to the City arises on the earlier of:
- (a) The Western Australian Planning Commission endorsing its approval on the deposited plan or survey strata plan of the subdivision of the Owner's land within the Development Contribution Area;
 - (b) The commencement of any development on the Owner's land within the Development Contribution Area;
 - (c) The approval of any strata plan by the City or Western Australian Planning Commission on the Owner's land within the Development Contribution Area; or
 - (d) The approval of a change or extension of use by the City on the Owner's land within the Development Contribution Area.
- 5A.2.15.3 Notwithstanding clause 5A.2.15.2, an Owner's liability to pay the Owner's cost contribution does not arise if the Owner commences:
- (a) Development of the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided or strata subdivided since the coming into effect of the Development Contribution Plan;
 - (b) A change of use where no development is proposed;
 - (c) A subdivision and/or development which is defined as 'public works' under the Public Works Act;
 - (d) Development of Fencing and Retaining Walls;

- (e) Development of a Home Business, Home Occupation or a Home Office;
- (f) Development of Advertisement or Signage;
- (g) The Parking of a Commercial Vehicle;
- (h) Development of a Land Sales Office;
- (i) The Stock-piling or storing of earthwork material;
- (j) Development of Water Storage Tanks;
- (k) Subdivision and Development solely within the portion of land that for whatever reason is outside a DCA boundary;
- (l) Subdivision solely for the purpose of acquiring a truncation and/or to widen a road;
- (m) Subdivision and Development solely for the purpose of acquiring and/or developing infrastructure listed in an approved Development Contribution Plan, or;
- (n) Any other forms of subdivision or minor or incidental development that does not have a connection (nexus) between the subdivision or development and the demand for the infrastructure included in the Development Contribution Plan.

5A.2.15.4 Where a Development Contribution Plan expires in circumstances contemplated by Clause 5A.2.10, an Owner's liability to pay the Owner's Cost Contribution under that Development Contribution Plan shall never the less continue in effect and in the event that no subsequent Development Contribution Plan comes into operation, an outstanding contribution of any owner shall be carried over by the City and be recovered at one of the times and in accordance with one of the processes provided for in Clause 5A.2.15.2.

5A.2.16 Payment of Cost Contribution

5A.2.16.1 The Owner, with the agreement of the City, is to pay the Owner's Cost Contribution by:

- (a) Cheque or cash;
- (b) Transferring to the City or a public authority land in satisfaction of the Cost Contribution;
- (c) Transferring or providing to the City or a public authority infrastructure works in satisfaction of the Cost Contribution;
- (d) Some other method acceptable to the local government; or
- (e) Any combination of these methods.

5A.2.16.2 The Owner, with the agreement of the City, may pay the Owner's Cost Contribution in a lump sum, by instalments or in such other manner acceptable to the City.

5A.2.16.3 Payment by an Owner of the Cost Contribution, including a Cost Contribution based upon estimated costs in a manner acceptable to the City, constitutes full and final discharge of the Owner's liability under the Development Contribution Plan and the City shall provide certification in writing to the owner of such discharge if requested by the Owner.

5A.2.17 Charge on land

5A.2.17.1 The amount of any Cost Contribution for which an Owner is liable under clause 5A.2.15, but has not paid, is a charge on the Owner's land to which the Cost Contribution relates, and the City may lodge a caveat, at the Owner's expense, against the Owner's certificate of title to that land.

5A.2.17.2 The City, at the Owner's expense and subject to such other conditions as the City thinks fit, can withdraw a caveat lodged under clause 5A.2.17.1 to permit a dealing and may then re-lodge the caveat to prevent further dealings.

5A.2.17.3 If the Cost Contribution is paid in full, the City, if requested to do so by the Owner and at the expense of the Owner, is to withdraw any caveat lodged under clause 5A.2.17.1.

5A.2.18 Administration of Funds

5A.2.18.1 The City is to establish and maintain a reserve account(s) 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 the infrastructure costs and administrative 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.

5A.2.18.2 Interest earned on Cost Contributions credited to a reserve account, is to be applied to expenses for the Development Contribution Area to which the reserve account relates.

5A.2.18.3 The City is to publish an audited annual statement of accounts for that Development Contribution Area as soon as practicable after the audited annual statement of accounts becomes available.

5A.2.19 Shortfall or Excess in Cost Contributions

5A.2.19.1 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 City 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;

5A.2.19.2 Nothing in clause 5A.2.19.1 restricts the right or power of the City to impose a differential rate or specified area rate to a specified Development Contribution Area in that regard.

5A.2.19.3 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 City is to refund the excess funds to contributing Owners for that Development Contribution Area. To the extent, if any, that it is not reasonably practicable to identify Owners and/or their entitled amount of refund, any excess in funds shall be applied to the provision of additional facilities or improvements in that Development Contribution Area.

5A.2.20 Powers of the City

The City 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 Planning Act; and
- (b) Deal with or dispose of any land which it has acquired under the provisions of the Planning Act in accordance with the law and for such purpose may make such agreements with other owners as it considers fit.

5A.2.21 Arbitration

Subject to clauses 5A.2.14.3 and 5A.2.14.4, any dispute between an Owner and the City 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*.

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