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# SHIRE OF DERBY/WEST KIMBERLEY

## Town Planning Scheme No. 7

FOR A SPECIAL RURAL ZONE:

**BIRDWOOD RISE  
&  
A RURAL ZONE**

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As Gazetted 14 July 1998

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Department of Planning,  
Lands and Heritage

Prepared by the  
Department of Planning, Lands and Heritage

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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](http://www.dplh.wa.gov.au)  
email: [info@dplh.wa.gov.au](mailto:info@dplh.wa.gov.au)

tel: 08 6551 9000  
fax: 08 6551 9001

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

**SHIRE OF DERBY-WEST KIMBERLEY TPS 7 -TEXT AMENDMENTS**

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# **THE SHIRE OF DERBY/WEST KIMBERLEY**

## **TOWN PLANNING SCHEME NO. 7**

### **FOR A SPECIAL RURAL ZONE**

#### ***BIRDWOOD RISE***

**&**

#### ***A RURAL ZONE***

The Derby/West Kimberley Shire Council, under and by virtue of the powers conferred upon it in that behalf by the *Town Planning and Development Act, 1928* (as amended), hereinafter referred to as the Act, hereby makes the following Town Planning Scheme for the purposes of:

- (a) setting aside land for future public use as reserves;
- (b) controlling land development; and
- (c) other matters authorised by the enabling act.

# **PART I - PRELIMINARY**

## **1.1 CITATION**

This Town Planning Scheme may be cited as the Shire of Derby/West Kimberley Scheme No. 7 (hereinafter called “the Scheme”) and shall come into operation on the publication of the Scheme in the Government Gazette.

## **1.2 RESPONSIBLE AUTHORITY**

The authority responsible for implementing the Scheme is the Council of the Shire of Derby/West Kimberley (hereinafter called “the Council”).

## **1.3 SCHEME AREA**

The Scheme applies to the whole of the land contained within the maps forming part of the Scheme.

## **1.4 CONTENTS OF THE SCHEME**

The Scheme comprises:

- (a) This Scheme Text;
- (b) The Scheme Map; and
- (c) The Subdivision Guide Plan.

## **1.5 ARRANGEMENT OF THE SCHEME TEXT**

The Scheme Text is divided into the following parts:

PART I	Preliminary
PART II	Reserves
PART III	Zones
PART IV	General Development Requirements
PART V	Use and Development of Land
PART VI	Non-Conforming Uses
PART VII	Finance and Administration

## **1.6 SCHEME OBJECTIVES**

The objectives of the Scheme are to:

- (a) make available lots for residential use in a rural setting with appropriate land use and management controls to maintain the rural landscape and amenity; and
- (b) provide a buffer zone between pastoral land and the Special Rural zone in order to protect the amenity of the Special Rural Zone.

## **1.7 INTERPRETATION**

1.7.1 Words and expressions used in the Scheme shall have the respective meanings given to them in Appendix or elsewhere in the Scheme.

1.7.2 Words and expressions used in the Scheme but not defined in Appendix 1, elsewhere in the Scheme or in the Residential Planning Codes shall have their normal and common meanings.

## **PART II - RESERVES**

### **2.1 SCHEME RESERVES**

The land shown as Scheme Reserves on the Scheme Map, hereinafter called “Local Reserves” are lands reserved under the Scheme for the purposes shown on the Scheme Map.

## PART III - ZONES

### 3.1 CLASSIFICATION

3.1.1 There are hereby created the two zones set out hereunder:

- Special Rural Zone - “Birdwood Rise”; and
- Rural Zone.

3.1.2 The zones are delineated and depicted on the Scheme Map according to the legend thereon.

3.1.3 The Scheme sets out against each zone a general statement of objective and development will be in accordance with the provisions adopted for the zone by Council.

### 3.2 ZONING TABLES

3.2.1 The table for each zone sets out a list of permitted uses and when appropriate the conditions if any under which such uses are permitted.

3.2.2 Table 1 - Special Rural zone - Birdwood Rise

USE	PERMISSIBILITY
Aquaculture Caretaker's Dwelling Dwelling House Hobby Farm Home Occupation Industry - Cottage Industry - Rural Intensive Agriculture Public Utility Rural Pursuit	Uses permitted subject to complying with the relevant standards and requirements specified in the Scheme and all conditions (if any) imposed by the Council in granting planning consent.
Not Listed	Uses not listed may be deemed to be prohibited within this zone.

3.2.3 Table 2 - Rural Zone

USE	PERMISSIBILITY
Dwelling House Rural Pursuit Irrigated Fodder production	Uses permitted subject to complying with the relevant standards and requirements specified in the Scheme and all conditions (if any) imposed by the Council in granting planning consent.
Not Listed	Uses not listed may be deemed to be prohibited within this zone.



## **PART IV - GENERAL DEVELOPMENT REQUIREMENTS**

### **4.1 SPECIAL RURAL ZONE - BIRDWOOD RISE**

#### **Objective**

To allow the closer subdivision of land in a rural setting that may be used for rural residential living with limited rural pursuits and retention of rural landscape.

#### **Provisions**

- 4.1.1 Within the zone no building may be erected closer than:
  - a) 20m (twenty metres) to the road frontage of the lot; and
  - b) 15m (fifteen metres) to the side and rear boundaries of the lot.
- 4.1.2 Not more than one private dwelling house and a caretaker's house will be permitted to be erected on a lot within Special Rural Zone - Birdwood Rise.
- 4.1.3 Within the zone a building may not be occupied as a residence unless the building has been approved by the Council in conformity with the Building Code of Australia and the provisions of this Scheme and is connected to an adequate supply of potable water.
- 4.1.4 Noise emitted from electricity generators and engine driven bore pumps shall comply with maximum noise levels set by Category A of the Neighbourhood Noise Levels specified in the Noise Abatement (Neighbourhood Annoyance) Regulations 1979. Noise attenuation shall be achieved through the use of acoustic enclosures, earth mounds and separation from dwellings.
- 4.1.5 Within twelve (12) months of electricity being made available from the Derby town supply owners of land shall make arrangements to connect to the grid.
- 4.1.6 Biodegradable waste may be composted onsite. Composting shall be carried out in a manner which prevents the breeding of insects or vermin. All other waste materials, toxic or otherwise, shall be disposed of at the Derby Refuse Site.
- 4.1.7 No dumping or burning of waste materials permitted in the Special Rural Zone.
- 4.1.8 Fire breaks are to be maintained in accordance with the directions of the Fire Control officer and the Bush Fires Board. These include observing prohibited burning times, obtaining permits for burning and immediate notification of any wildfires to the Fire Control Officer and Bush Fires Board.
- 4.1.9 Any agricultural use must be in keeping with the principles of sound agricultural practice and in this respect the Council may request the advice of Agriculture WA before determining any application.
- 4.1.10 No person shall use or permit to be used any lot for the grazing of animals at an intensity which would adversely affect the pastures of and other vegetation on the lot concerned, the neighbouring lots or be likely to result in soil erosion. Stocking rates shall be in accordance with those specified by Agriculture WA.
- 4.1.11 In order to conserve the natural beauty of the locality, native trees including White Gums and Boabs are to be left standing. Bauhenia, Woollybutts, and Bloodwood trees can be removed only for direct home and outbuilding construction, and are otherwise to be retained. The Wattle Scrub tree may be removed.
- 4.1.12 Future subdivision within the Special Rural Zone - Birdwood Rise shall generally be in accordance with the Subdivision Guide Plan adopted by the Council and forming part of this Scheme.

- 4.1.13 There shall be a general presumption against further subdivision of the land contrary to the endorsed Subdivision Guide Plan in the interest of protection and conservation of groundwater resources.
- 4.1.14 The land contained within the Scheme area is located within the proclaimed Canning/Kimberley Groundwater Area and therefore, the establishment of all wells and bores will be subject to the approval and licensing of the Water and Rivers Commission.
- 4.1.15 The total water draw for each lot shall be subject to the approval of the Water and Rivers Commission and shall not in any case exceed a maximum of 40,000 litres per day.
- 4.1.16 On-site effluent disposal shall be by a method approved by the Health Department of Western Australia.
- 4.1.17 Domestic water supply methods shall be in accordance with the Shire of Derby/West Kimberley Health Bylaws 1997.

## **4.2 RURAL ZONE**

### **Objectives**

The objectives of the Rural zone are to:

- (a) ensure the continuation of rural use and encourage where appropriate the retention of pastoral and grazing activities; and
- (b) provide a buffer zone between the Special Rural Zone - Birdwood Rise and adjacent non-zoned pastoral land.

### **Provisions**

- 4.2.1 Within the zone no subdivision will be supported except under conditions normally applied by the Western Australian Planning Commission to rural land.
- 4.2.2 Within the zone no building may be erected closer than:
  - a) 20m (twenty metres) to the road frontage of the lot; and
  - b) 15m (fifteen metres) to the side and rear boundaries of the lot.
- 4.2.3 Not more than one private dwelling house and a caretaker's house will be permitted to be erected on a lot within the Rural zone.
- 4.2.4 Within the Rural zone a building may not be occupied as a residence unless the building has been approved by the Council in conformity with the Building Code of Australia and the provisions of this Scheme and is connected to an adequate supply of potable water.
- 4.2.5 Any agricultural use must be in keeping with the principles of sound agricultural practice and in this respect the Council may request the advice of Agriculture WA before determining any application.
- 4.2.6 No person shall use or permit to be used any lot for the grazing of animals at an intensity which would adversely affect the pastures of and other vegetation on the lot concerned, the neighbouring lots or be likely to result in soil erosion.
- 4.2.7 Stocking rates shall be in accordance with those specified by Agriculture WA.
- 4.2.8 In order to conserve the natural beauty of the locality, native trees including White Gums and Boabs are to be left standing. Bauhenia, Woollybutts, and Bloodwood trees can be removed only for direct home and outbuilding construction, and are otherwise to be retained. The Wattle Scrub tree may be removed.

### **4.3 DISCRETION TO MODIFY DEVELOPMENT STANDARDS**

- 4.3.1 If a development the subject of an application for planning consent does not comply with a standard prescribed by the Scheme with respect to minimum lot sizes, building height, setbacks, site coverage, car parking, landscaping and related matters, the Council may, notwithstanding that non-compliance, approve the application unconditionally or subject to such conditions as the Council thinks fit. The power conferred by this clause may only be exercised if the Council is satisfied that:
- a) approval would not be contrary to the objectives of the Scheme or relevant zone;
  - b) approval of the proposed development would be consistent with the orderly and proper planning of the locality and the preservation of the amenities of the location; and
  - c) the non-compliance will not have any adverse effect upon occupiers or users of the development or the inhabitants of the locality or upon the likely future development of the locality.

## **PART V - USE AND DEVELOPMENT OF LAND**

### **5.1 REQUIREMENT FOR PLANNING APPROVAL**

- 5.1.1 In order to give full effect to the provisions and objectives of this Scheme, all development, including a change in the use of land, except as otherwise provided, requires the prior written approval of the Council in each case. Accordingly, no person shall commence or carry out any development, including a change in the use of any land, without first having applied for and obtained the planning approval of the Council pursuant to the provisions of this Part.
- 5.1.2 The planning approval of the Council is not required for the following development of land:
- a) The use of land in a reserve, where such land is held by the Council or vested in a public authority;
    - (i) for the purpose for which the land is reserved under the Scheme; and
    - (ii) in the case of land vested in a public authority, for any purpose for which such land may be lawfully used by that authority.
  - b) The erection of a boundary fence except as otherwise required by the Scheme.
  - c) The carrying out of any works on, in, over or under a street or road by a public authority acting pursuant to the provisions of any Act.
  - d) The carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building.
  - e) The carrying out of works urgently necessary in the public safety or for the safety or security of plant or equipment or for the maintenance of essential services.

### **5.2 APPLICATION FOR PLANNING APPROVAL**

- 5.2.1 Every application for planning approval shall be made in the form prescribed in Appendix 2 to the Scheme and shall be accompanied by such plans and other information as is required by the Scheme.
- 5.2.2 Unless Council waives any particular requirement every application for planning approval shall be accompanied by:
- a) a plan or plans to a scale of not less than 1:500 showing;
    - (i) street names, Lot numbers(s), north point and the dimensions of the site;
    - (ii) the location and proposed use of the site, including any existing building to be retained and proposed buildings to be erected on the site;
    - (iii) the existing and proposed means of access for pedestrians and vehicles to and from the site;
    - (iv) the location, number, dimensions and layout of all car parking spaces intended to be provided;
    - (v) the location and dimensions of any area proposed to be provided for the loading and unloading of vehicles carrying goods or commodities to and from the site and the means of access to and from those areas;

- (vi) the location, dimensions and design of any open storage or trade display area and particulars of the manner in which it is proposed to develop the same; and
  - (vii) the nature and extent of any open space and landscaping proposed for the site,
- b) plans, elevations and sections of any building proposed to be erected or altered and of any building it is intended to retain; and
- c) any other plan or information that the Council may reasonably require to enable the application to be determined.

### **5.3 CONSULTATIONS WITH OTHER AUTHORITIES**

- 5.3.1 In determining any application for planning approval the Council may consult with any other statutory, public or planning authority and with any other party it considers appropriate.
- 5.3.2 In the case of land reserved under the Scheme for the purposes of a public authority, the Council shall consult that authority before making its determination.

### **5.4 MATTERS TO BE CONSIDERED BY COUNCIL**

- 5.4.1 The Council in considering an application for planning approval shall have due regard to the following:
  - a) the provisions of this Scheme and any other relevant town planning scheme operating within the district;
  - b) any relevant proposed new town planning scheme of the Council or amendment insofar as they can be regarded as seriously entertained planning proposals;
  - c) any approved Statement of Planning Policy of the Commission;
  - d) any other policy of the Commission or any planning policy adopted by the Government of the State of Western Australia;
  - e) any planning policy, strategy or plan adopted by the Council under the provisions of clause 7.6 of this Scheme;
  - f) the preservation of any object or place of heritage significance;
  - g) the requirements of orderly and proper planning;
  - h) the preservation of the amenities of locality;
  - i) any other planning considerations which the Council considers relevant; and
  - j) any relevant submissions or objections received on the application.

### **5.5 DETERMINATION OF APPLICATIONS**

- 5.5.1 In determining an application for planning approval the Council may:
  - a) grant its approval with or without conditions;
  - b) refuse to grant its approval.
- 5.5.2 The Council shall convey its decision to the applicant in the form prescribed in Appendix 3 to the Scheme.

5.5.3 Where the Council grants planning approval, that approval:

- a) continues in force for two years, or such other period as specified in the approval, after the date on which the application is approved; and
- b) lapses if the development has not substantially commenced before the expiration of that period.

5.5.4 Where the Council grants planning approval, the Council may impose conditions limiting the period of time for which the development is permitted.

## **5.6 DEEMED REFUSAL**

5.6.1 An application for planning approval shall be deemed to have been refused where a decision in respect of that application is not conveyed to the applicant by the Council within 60 days of the receipt of it by the Council, or within such further time as agreed in writing between the applicant and the Council.

5.6.2 Notwithstanding that an application for planning approval may be deemed to have been refused under subclause 5.6.1, the Council may issue a decision in respect of the application at any time after the expiry of the 60 day period specified in these clauses, and that decision shall be regarded as being valid.

## **PART VI - NON- CONFORMING USES**

### **6.1 NON-CONFORMING USE RIGHTS**

6.1.1 Except as otherwise provided in this part, no provision of the Scheme shall prevent:

- a) the continued use of any land or building for the purpose for which it was being lawfully used at the time of coming into force of the Scheme; or
- b) the carrying out of any development thereon for which, immediately prior to that time, a permit or permits, lawfully required to authorise the development to be carried out were duly obtained and are current.

### **6.2 EXTENSION OF NON-CONFORMING USE**

6.2.1 A person shall not alter or extend a non-conforming use or erect, alter or extend a building used in conjunction with a non-conforming use without first having applied for and obtained the planning approval of the Council under the Scheme and unless in conformity with any other provisions and requirements contained in the Scheme.

### **6.3 CHANGE OF NON-CONFORMING USE**

6.3.1 Notwithstanding anything contained in the Zoning Table, the Council may grant its planning approval to the change of use of any land from a non-conforming use to another use if the proposed use is, in the opinion of the Council, less detrimental to the amenity of the locality than the non-conforming use and is, in the opinion of the Council, closer to the intended purpose of the zone or reserve.

### **6.4 DISCONTINUANCE OF NON-CONFORMING USE**

6.4.1 When a non-conforming use of any land or building has been discontinued for a period of six months or more such land or building shall not thereafter be used otherwise than in conformity with the provisions of the Scheme.

6.4.2 The Council may effect the discontinuance of a non-conforming use by the purchase of the affected property, or by 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 for that purpose.

### **6.5 DESTRUCTION OF BUILDINGS**

6.5.1 If any building is, at gazettal date, being used for a non-conforming use, and is subsequently destroyed or damaged to an extent of 75% or more of its value, the land on which the building is built shall not thereafter be used otherwise than in conformity with the Scheme, and the building shall not be repaired or rebuilt, altered or added to for the purpose of being used for a non-conforming use or in a manner or position not permitted by the Scheme.

## **PART VII - ADMINISTRATION**

### **7.1 POWERS OF THE SCHEME**

7.1.1 The Council in implementing the Scheme has, in addition to all other powers vested in it, the following powers:

- a) 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 in respect of any matters pertaining to the Scheme.
- b) The Council may acquire any land or buildings within the district pursuant to the provisions of the Scheme or the Act. The Council may deal with or dispose of any land which it has acquired pursuant to the provisions of the Scheme or the Act in accordance with the law and for such purpose may make such agreements with other owners as it considers fit.
- c) An officer of the Council authorised by the Council for the purpose, 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.

### **7.2 OFFENCES**

7.2.1 No person shall depart from or permit or suffer any departure from the requirements and provisions of the Scheme, nor shall any person use or suffer or permit the use of any land or building or undertake or suffer or permit the undertaking of any development within the Scheme Area:

- a) otherwise than in accordance with the provisions of the Scheme;
- b) unless all approvals required by the Scheme have been granted and issued;
- c) unless all conditions imposed upon the grant and issue of any approval required by the Scheme have been and continue to be complied with; and
- d) 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 part have been and continue to be complied with.

7.2.2 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.

### **7.3 COMPENSATION**

7.3.1 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.

7.3.2 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 hereafter, refuses or grants approval subject to conditions such 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.



## **7.4 ELECTION TO PURCHASE AND VALUATION**

- 7.4.1 Where compensation for injurious affection is claimed pursuant to either sub-clauses 7.3.1 or 7.3.2, the Council may, at its option elect to acquire the land so affected instead of paying compensation.
- 7.4.2 Where the Council elects to acquire the land in respect of which the claim for compensation for injurious affection is made, the Council shall give notice of that election to the claimant by notice in writing within three (3) months of the claim for compensation being made.
- 7.4.3 Where the Council elects to acquire land in sub-clause 7.4.1, if the Council and the owner of the land are unable to agree as to the price to be paid for the land by the Council, the price at which the land may be acquired by the Council shall be the value of the land as determined in accordance with sub-clause 7.4.4.
- 7.4.4 The value of the land referred to in sub-clause 7.4.3 shall be the value thereof on the date that the Council elects to acquire the land and that value shall be determined by:
- a) arbitration in accordance with the *Commercial Arbitration Act 1985*; or
  - b) some other method agreed upon by the Council and the owner of the land,
- and the value shall be determined without regard to any increase or decrease, if any, in value attributable wholly or in part of this Scheme.
- 7.4.5 The Council may deal with or dispose of land acquired for a Local Reserve or pursuant to the preceding sub-clause 7.4.4 upon such terms and conditions as it thinks fit provided the land is used for, or preserved for, a use compatible with the use for which it was reserved.

## **7.5 RIGHTS OF APPEAL**

- 7.5.1 An applicant aggrieved by a decision of the Council in respect of the exercise of a discretionary power under the Scheme may appeal in accordance with Part V of the Act and the rules and regulations made pursuant to the Act.

## **7.6 PLANNING POLICIES**

- 7.6.1 The Council may prepare a planning policy (hereinafter called "a Policy") and may make a provision for any matter related to the planning or development of the Scheme and which may be prepared so as to apply:
- a) generally or in a particular class of matter or in particular classes of matter; and
  - b) throughout the Scheme Area or in one or more h Scheme Area,
- and may amend or add to or rescind a Policy so prepared.
- 7.6.2 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 newspaper 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; and
  - d) following final adoption of a Policy, notification of the final adoption shall be published once in a newspaper circulating within the Scheme Area.
- 7.6.3 The Council shall keep copies of any Policy with the Scheme documents for public inspection during normal office hours.
- 7.6.4 An amendment or addition to a Policy may be made after the Policy has become operative and shall be made in the same manner as provided for the making of a Policy in sub-clause 7.6.2.
- 7.6.5 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.
- 7.6.6 A policy shall not bind 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 its decision.
- 7.6.7 Any Policy prepared under this clause shall be consistent with the Scheme and where any inconsistency arises the Scheme shall prevail.

## **7.7 DELEGATION**

- 7.7.1 The Council may, either generally or in a particular case or cases, by resolution passed by an absolute majority of the Council, delegate to the following eligible persons the authority to deal with an application for Planning Approval made under this Scheme:
  - a) that officer of the Council, holding or eligible to hold a Municipal Town Planners Certificate, appointed to the position of Town Planner for the purpose of the Local Government Act with overall responsibility for the planning functions of the Council or appointed by the Council to supervise the development control functions of the Council; or
  - b) those persons who from time to time occupy the positions referred to in a) above.
- 7.7.2 Any delegation made under sub-clause 7.7.1 shall have effect for the period of twelve (12) months following the resolution unless the Council stipulates a lesser or greater period in the resolution.
- 7.7.3 A delegation of authority pursuant to the provisions of this clause has effect and may be exercised according to its tenor, but is revocable at the will of the Council and does not preclude the Council from exercising the power.
- 7.7.4 The performance of the function by a delegation under sub-clause 7.7.1 shall be deemed to be the performance of the function by the Council in all circumstances where the Council is able to delegate its powers.
- 7.7.5 Without affecting the generality of the provisions of this clause, where in the exercise of any power under this Scheme the Council is required to form any opinion or view or have any state of mind or to consider to have due regard to any matter, then that requirement shall be satisfied if a person exercising delegated authority in respect of that power performs the function.

- 7.7.6 A resolution to revoke or amend a delegation under this clause may be passed by a simple majority.
- 7.7.7 An officer or member exercising the power delegated pursuant to the provisions of this clause shall comply with the provisions of the Scheme governing the exercise of the power by the Council, insofar as such provisions are reasonably applicable.
- 7.7.8 A person who is or has been a delegate of the Council is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any powers conferred, or the carrying out of any duty imposed on the Council by this Scheme.

## **7.8 AMENDMENTS TO THE SCHEME**

- 7.8.1 The Council shall keep the Scheme under constant review and where appropriate carry out investigations and study with a view to maintaining the Scheme as an up-to-date and efficient means for pursuing community objectives regarding development and land use.
- 7.8.2 The Council may, from time to time, initiate an amendment to the Scheme in accordance with the Act and Regulations and shall give consideration to any application to have the Scheme amended.
- 7.8.3 In the case of a proposed amendment to the zoning of land other than requested by the owner, the Council shall before initiating any amendment to the Scheme, invite comment from the owner of the land concerned.
- 7.8.4 Council shall take into consideration any comments or submissions received in respect of a proposed amendment to the Scheme and shall only proceed with the amendment where it is satisfied the amendment would be consistent with the objectives of the Scheme and would not be contrary to public interest.

## **7.9 NOTICE FOR REMOVAL OF CERTAIN BUILDINGS**

- 7.9.1 Twenty eight (28) days written notice is hereby prescribed as the notice to be given pursuant to section 10 of the Act for the removal of certain buildings.
- 7.9.2 Council may recover expenses under section 10(2) of the Act in a court of competent jurisdiction.

**APPENDIX 1 - INTERPRETATIONS**

**absolute majority:** has the same meaning as given to it in the *Local Government Act 1960*.

**Act:** means the *Town Planning and Development Act 1928* (as amended).

**advertisement:** means any word, letter, model, sign, placard, board, notice device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and includes any hoarding or similar structure used, or adapted for use, for the display of advertisements.

**amenity building:** means a building or part of a building used by employees or persons otherwise engaged in the conduct of an industry of business on the same site, for their personal comfort, convenience or enjoyment of leisure, but not used or intended for use for the work of the industry or business.

**ancillary use:** means a use which is incidental to the predominant use of land and buildings.

**appendix:** means an appendix to the Scheme.

**aquaculture:** means any fish farming operation for which a fish farm licence issued pursuant to the provisions of Part V of the *Fisheries Act 1905* (as amended) and the Fisheries Regulations 1938 (as amended) is required.

**authorised officer:** means an officer of the Council, authorised by the Council to exercise all or some of the powers of the Council under this Scheme.

**Building Code of Australia:** means the Building Code of Australia 1988 (as amended).

**building envelope:** means an area of land within a lot marked on a plan within which all buildings on the lot must be contained.

**building line:** means the line between which and any public place or public reserve a building may not be erected except by or under the authority of an Act.

**Building Setback:** means the shortest horizontal distance between a boundary or other specified point and the position at which a building may be erected.

**Caretaker's dwelling:** means a building used as a dwelling by a person having the care of the building, plant, equipment or grounds associated with an industry, business, office or recreation area carried on or existing on the same site.

**child family care centre:** means a Child Minding Centre conducted in a private dwelling where children are received for care but does not include a Child Day Care Centre.

**Commission:** means the State Planning Commission constituted under the *State Planning Commission Act 1985* (as amended).

**community purpose:** means the use of land or buildings designed or adapted primarily for the provision of educational, social and recreational facilities and services by organisations involved in activities for community benefit.

**conservation:** means, in relation to any place or heritage precinct, the management of that place or precinct in a manner that will:

- (a) enable the cultural heritage significance of that place or precinct to be retained; and
- (b) yield the greatest sustainable benefit for the present community without diminishing the cultural heritage significance of that place or precinct, and may include the preservation, stabilisation, protection, restoration, reconstruction, adaptation and maintenance of that place or precinct in accordance with relevant professional standards, and the provision of an appropriate visual setting.

**Council:** means the executive body of the Shire of Derby/West Kimberley.

**cultural heritage significance:** means, in relation to a place or heritage precinct, the relative value which that place or precinct has in terms of its aesthetic, historic, scientific or social significance, for the present community and future generations.

**cultural use:** means any use aimed at the improvement or refinement of people by entertainment and/or education.

**curtilage:** in relation to a dwelling means the yard of the dwelling, or an area in the immediate vicinity of the dwelling on the same lot used for purposes ancillary to the dwelling. The curtilage shall not include the area located between the street frontage of the lot and the dwelling thereon except with the special approval of the Council. The term shall have a like meaning in relation to land around buildings other than dwellings.

**development:** shall have the same meaning given to it in and for the purposes of the Act but shall also include:

in relation to any building, object structure or place entered in the Heritage List or contained within a heritage precinct, any act or thing that:

- (a) is likely to change the character of the place or the external appearance of any building;  
or
- (b) would constitute an irreversible alteration to the fabric of any building.

**District:** means the Municipal District of the Shire of Derby/West Kimberley.

**educational establishment:** means a school, college, university, technical institute, academy or other educational centre, but does not include a reformatory.

**effective Frontage:** means the width of a lot at the minimum distance from the street alignment at which buildings may be constructed, and shall be calculated as follows:

- (a) where the site boundaries of a lot are parallel to one another, the length of a line drawn at right angles to such boundaries.
- (b) where the side boundaries of a lot are not parallel to one another, the length of a line drawn parallel to the street frontage and intersecting the side boundaries at the minimum distance from the street alignment at which the buildings may be constructed.
- (c) where a lot is of such irregular proportions or on such steep grade that neither of the foregoing methods can reasonably be applied, such length as determined by the Council.

**facade:** means the exposed faces of a building towards roads or open space or the frontal outward appearance of the building.

**floor area:** shall have the same meaning given to it in and for the purposes of the Building Code of Australia 1988 (as amended).

**frontage:** means the boundary line or lines between a site and the street or streets upon which the site abuts.

**gazettal date:** means the date on which notice of the Minister's approval on this Scheme is published in the Government Gazette.

**gross floor area:** shall have the same meaning as Floor Area in the Building Code of Australia.

**gross leasable area:** means, in relation to a building, 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 the outside faces of external walls or the building alignment, including shop fronts, basements, mezzanines and storage areas.

**height:** when used in relation to a building that is used for:

- (a) residential purposes, has the same meaning given to it in and for the purpose of the Residential Planning Codes; or
- (b) purposes other than residential purposes, means the measurement taken from the natural ground level immediately in front of the centre of the face of the building to a level of the top of the eaves, parapet or flat roof, whichever is the highest.

**heritage precinct:** means a precinct of heritage value having a distinctive nature, which may contain elements of only minor individual significance but heightened collective significance, and within whose boundaries controls may be necessary to retain and enhance its character.

**heritage list:** means the Municipal Inventory, as amended from time to time, prepared by the Council pursuant to Section 45 of the *Heritage of Western Australia Act 1990* (as amended), or such parts thereof as described in the Heritage List.

**hobby farm:** means the use of land for the agistment of horses, the growing of vegetables, fruit and flowers and the keeping of domestic poultry for private use only and not for commercial purposes or sale and shall include any buildings normally associated therewith.

**home occupation:** means a business or activity carried out within a dwelling house or the curtilage of a house by a person resident therein or within a domestic outbuilding by a person resident in the dwelling house to which it is appurtenant that:

- (a) entails the conduct of a business, office, a workshop only, and does not entail the retail sale or display of goods of any nature;
- (b) does not cause injury to or prejudicially affect the amenity of the neighbourhood;
- (c) does not detract from the residential appearance of the dwelling house or domestic outbuilding;
- (d) does not entail employment of any person not a member of the occupier's household;
- (e) does not occupy an area greater than 20 m<sup>2</sup>;
- (f) does not display a sign exceeding 0.2m<sup>2</sup> in area.
- (g) in the opinion of the Council is compatible with the principal uses to which land in the zone in which it is located may be put;
- (h) will not result in the requirement for a greater number of parking facilities than normally reserved for a single dwelling, and will not result in a substantial increase in the amount of vehicular traffic in the vicinity;
- (i) does not entail the presence, parking and garaging of a vehicle of more than two (2) tonnes tare weight;

**industry - cottage:** means a business, professional service, trade or light industry producing arts and craft goods which cannot be carried out under the provisions relating to a "home occupation" and which, in the opinion of Council:

- (a) does not cause injury to or prejudicially affect the amenity of the neighbourhood;
- (b) where operated in a Residential Zone, does not entail the employment of any person other than a member of the occupier's household;
- (c) is conducted in an out-building which is compatible within the principal uses to which land in the zone in which it is located may be put;
- (d) does not occupy an area in excess of 50m<sup>2</sup>;
- (e) does not display a sign exceeding 0.2m<sup>2</sup> in area.

**industry - rural:** means an industry handling, treating, processing or packing primary products grown, reared or produced in the locality, and a workshop servicing plant or equipment used for rural purposes in the locality;

**intensive agriculture:** means the use of land for the purposes of trade, commercial reward or gain, including such buildings and earthworks normally associated with the following:

- (a) the production of grapes, vegetables, flowers, exotic and native plants, fruit and nuts;
- (b) the establishment and operation of plant and fruit nurseries;
- (c) the development of land for irrigated fodder production and irrigated pasture (including turf farms);
- (d) the development of land for the keeping, rearing or fattening of pigs, poultry (for either egg or meat production), rabbits (for either meat, or fur production), and other livestock in feedlots;
- (e) dairy milking sheds;
- (f) the development of land for the keeping, rearing or fattening of other livestock above those stocking rates recommended by Agriculture Western Australia in consultation with surrounding farms for the applicable pasture type;
- (g) aquaculture.

**land:** shall have the same meaning given to the term in and for the purposes of the Act.

**lot:** shall have the same meaning given to the term in and for the purposes of the Act, and “allotment” has the same meaning.

**Minister:** means the Minister for Planning or the Minister of the Western Australian Government responsible for town planning.

**net lettable area (nla):** means the area of all floors confined within the finished surfaces of permanent walls but excludes the following areas;

- (a) all stairs, toilets, cleaners cupboards, lift shafts and motor rooms, escalators, tea rooms and plant rooms, and other service areas;
- (b) lobbies between lifts facing other lifts serving the same floor;
- (c) areas set aside as public space or thoroughfares and not for the exclusive use of occupiers of the floor or building;
- (d) areas set aside for the provision of facilities or services to the floor or building where such facilities are not for the exclusive use of occupiers of the floor or building.

**non-conforming use:** means any use of land or building which, was lawful immediately prior to the coming into operation of this Scheme, but is not in conformity with the provisions of this Scheme.

**owner:** in relation to any land includes the Crown and every person who jointly or severally whether at law or in equity:

- (a) is entitled to the land for an estate in fee simple in possession; or
- (b) is a person to whom the Crown has lawfully contracted to grant the fee simple of the land; or
- (c) is a lessor licensee from the Crown; or
- (d) is entitled to receive or is in receipt of, or if the land were let to a tenant, would be entitled to receive the rents and profits thereof, whether as a beneficial owner, trustee, mortgagee in possession, or otherwise.

**outbuilding:** As per BCA.

**place:** means an area of land sufficiently identified by survey, description or otherwise as to be readily ascertainable, and includes:

- (a) an area of land situated below low water mark on the seashore or on the bank of tidal waters, or in the bed of any watercourse, lake or estuary;
- (b) any works or buildings situated there, their contents relevant to the purpose of this Scheme, and such of their immediate surroundings as may be required for the purposes of the conservation of those works or buildings; and
- (c) as much of the land beneath the place as is required for the purposes of its conservation.

**plant nursery:** means any land or buildings used for the propagation, rearing and sale of plants and the storage and sale of products associated with horticultural and garden decor.

**plot ratio:** shall have the same meaning given to the term in the Building Code of Australia except for residential dwellings where the term shall have the same meaning given to it in the Residential Planning Codes.

**potable water:** means water in which level of physical, chemical and bacteriological constituents do not exceed the maximum permissible levels set out in 'International Standards for Drinking Water' published by the World Health Organisation.

**poultry farm:** means any land or buildings used for hatching, rearing or keeping of poultry for either egg or meat production which does not constitute an offensive trade within the meaning of the *Health Act 1911 - 1990* (as amended).

**public authority:** shall have the same meaning given to it in and for the purposes of the Act.

**public exhibition:** means any building or land used for the display of materials, for promotion of artistic, cultural or educational purposes.

**public utility:** means any work or undertaking constructed or maintained by a public authority or the Council as may be required to provide water, sewerage, electricity, gas, drainage, communications or other similar services.

**recreation public:** means land used for a public park, public gardens, foreshore reserve, playground or other grounds for recreation which are usually open to the public without charge.

**reserve:** means any land reserved for a public purpose.

**Residential Planning Codes:** means the Residential Planning Codes, in Appendix 2 to the Western Australian Planning Commission Statement of Planning Policy No. 1.

**restricted premises** means and land or building, part or parts thereof, used or designed to be used primarily for the sale of retail or wholesale, or the offer for hire, loan or exchange, or the exhibition, display or delivery of:

- (a) publications that are classified as restricted publications pursuant to the *Indecent Publications and Articles Act 1902* (as amended); or
- (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.

**rural pursuit:** means the use of land for any of the purposes set out hereunder and shall include such buildings normally associated therewith:

- (a) the rearing or agistment of goats, sheep, cattle or beasts of burden;
- (b) the stabling, agistment or training of horses;
- (c) the growing of trees, plants, shrubs, or flowers for replanting in domestic, commercial or industrial gardens;
- (d) the sale of produce grown solely on the lot;

but does not include intensive agriculture.

**sign:** means uses carried out under the interpretation of Rural Pursuit, but does not include:

- a) any commercial production;
- b) any use which involves ground water consumption greater than the allowance determined by Water Corporation;
- (c) piggeries or other intensive animal husbandry;
- (d) except with the consent of the Council, the stabling, agistment, or training of horses;
- (e) other uses considered by Council to be detrimental to the public health or amenity of the area.

**stable:** means any land, building or structure used for the housing, keeping and feeding of horses, asses and mules and associated incidental activities.

**stockyards:** means any land, building or other structure used for holding and/or sale of animal stock.



**storage yard:** means any land use for the storage of goods.

**structure plan:** means a plan which indicates broad land use options for the development and subdivision of an area and provides a policy framework for such future subdivision and development.

**zone:** means a portion of the Scheme area shown on the map by distinctive colouring, patterns, symbols, hatching, or edging for the purpose of indicating the restrictions imposed by the Scheme on the use and development of land, but does not include reserved land.

**zoological gardens:** means any land or buildings used for the keeping, breeding or display of fauna and the term includes Zoo but does not include kennels or keeping, breeding or showing of domestic pets.

## APPENDIX 2 – APPLICATION FOR APPROVAL

Shire of Derby/West Kimberley

### APPLICATION FOR APPROVAL

PLEASE TICK WHICH APPROVAL IS BEING SOUGHT & FILL IN THE APPROPRIATE SECTION(S) ONLY:

Planning Approval

☐

Building Licence

☐

Demolition Licence

☐

Sign Licence

☐☐

#### PROPERTY DETAILS:

Lot No.\* ..... House/Street No. .... Location No.\* ..... Plan or Diagram\* .....

Certificate of Title: ..... Vol.\* ..... Folio: ..... Lot Area (m<sup>2</sup>)

Title Encumbrances\* .....

Street Name ..... Suburb .....

Nearest Street Intersection\* .....

Ward\* .....

*\*Note:..... These details should be provided where known to assist in the processing of this application.*

☐

#### OWNER DETAILS (IF PLANNING CONSENT IS REQUIRED):

Name .....

Address (Postal) .....

Postcode .....

Phone (Work) ..... (Home) ..... Fax .....

Contact Person .....

Signature(s) .....

Signature(s) ..... Date .....

The signature of the landowner(s) is required for Planning Approval. This application will not proceed without that signature.

☐

#### APPLICANT DETAILS: (To be completed **only** if different from the owner)

Name .....

Address (Postal) .....

.....Postcode .....

Phone (Work) ..... (Home) ..... Fax .....

Contact Person .....

Signature(s) ..... Date .....

#### OFFICE USE ONLY

Accepting Officer's Initials:

Date Received:

Application No:

## APPENDIX 2

### ☐ PLANNING APPROVAL:

Existing Building/Land Use .....

Approx. Cost of Development ..... Est. Date of Completion .....

Description of Development/or Proposed use .....

### ☐ BUILDING LICENCE

<b>Type of Work:</b> 1A <input type="checkbox"/> New Building 1B <input type="checkbox"/> Display Home 1C <input type="checkbox"/> Preliminary Application <input type="checkbox"/> Other (specify)	<b>New Buildings</b> 2A <input type="checkbox"/> Habitable 2B <input type="checkbox"/> Internal Additions 2C <input type="checkbox"/> Garage 2D <input type="checkbox"/> Carport 2E <input type="checkbox"/> Verandah <input type="checkbox"/> Other (specify)	<b>Alterations/Internal Additions</b> 9A <input type="checkbox"/> Habitable 9B <input type="checkbox"/> Workshop 9C <input type="checkbox"/> Carport 9D <input type="checkbox"/> Above ground pool 9E <input type="checkbox"/> Below ground pool 9I <input type="checkbox"/> Garage 9J <input type="checkbox"/> Other (specify)	<b>Outbuildings</b> 11 <input type="checkbox"/> Separate House 12 <input type="checkbox"/> Kit House 22 19 <input type="checkbox"/> Transportable	<b>Multi-Residential</b> 21 <input type="checkbox"/> Single storey <input type="checkbox"/> 2 or more storey 23 <input type="checkbox"/> 1 or 2 storey flat/units <input type="checkbox"/> Other (specify)	<b>Other</b> <input type="checkbox"/> Other (specify)
---	--	--	--	--	--

<b>Materials</b> 11A <input type="checkbox"/> Double Brick 12 <input type="checkbox"/> Brick Veneer 11B <input type="checkbox"/> Thermalite Interior 60A <input type="checkbox"/> 'Colorbond' Walls 60B <input type="checkbox"/> 'Zincalume' Walls 60C <input type="checkbox"/> Steel Columns 60D <input type="checkbox"/> Timber Posts 50A <input type="checkbox"/> Fibreglass (pools) <input type="checkbox"/> Other (specify)	<b>Walls</b> 20A <input type="checkbox"/> Concrete - 85mm 20B <input type="checkbox"/> Concrete - Other 10 <input type="checkbox"/> Timber <input type="checkbox"/> Other (specify)	<b>Floor</b> 10 <input type="checkbox"/> Tiles 60A <input type="checkbox"/> 'Colorbond' 60B <input type="checkbox"/> 'Zincalume' <input type="checkbox"/> Other (specify)	<b>Roof</b> 10 <input type="checkbox"/> Tiles 60A <input type="checkbox"/> 'Colorbond' 60B <input type="checkbox"/> 'Zincalume' <input type="checkbox"/> Other (specify)
---	---	---	--

Builder Name .....

Address (Postal) .....

Registration No. .... Phone ..... Fax .....

Building Details: Area (m<sup>2</sup>) ..... Outbuilding Area (m<sup>2</sup>) .....

Contract Value \$..... Building Height..... Signature .....

### ☐ DEMOLITION LICENCE:

Application to be made on separate form.

### ☐ SIGN LICENCE:

Type of Sign .....

Position .....

Dimensions ..... Materials .....

Illumination - Internal/External .....

Wording/Illustration (Plan/Design attached) .....

## APPENDIX 3 – GRANT OF PLANNING CONSENT

SHIRE OF DERBY/WEST KIMBERLEY

TOWN PLANNING SCHEME NO. 7

### GRANT OF PLANNING CONSENT

**APPLICANT:**

**OWNER:**

**POSTAL ADDRESS:**

**PROPOSAL:**

**DATE OF ISSUE:**

Planning consent for the above proposal is GRANTED in accordance with plans submitted on ..... and submitted to the following conditions:

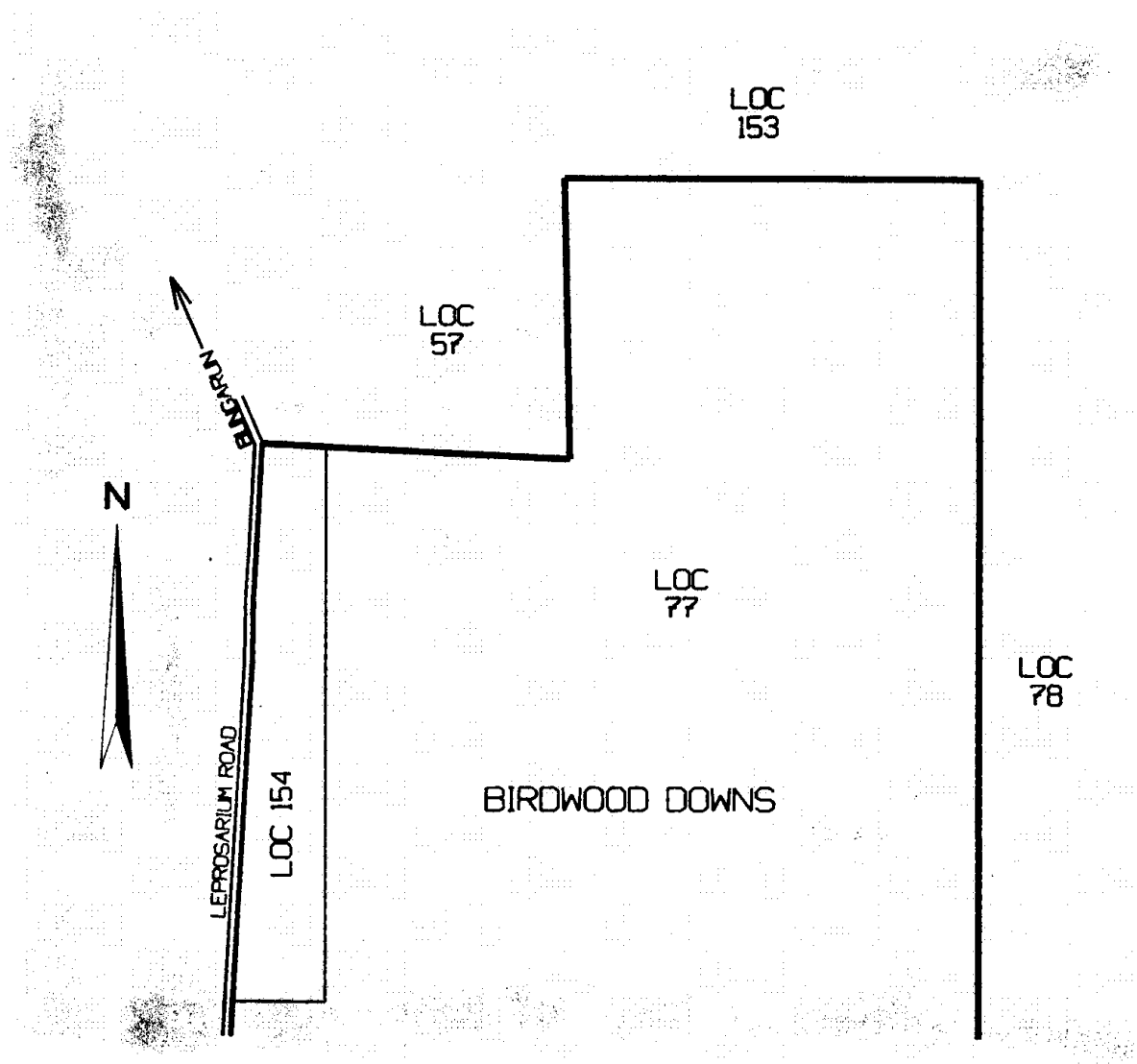
- 1.
- 2.
- 3.
- 4.

If the development, the subject of this approval, is not substantially commenced within a period of 12 months from the date of this letter, the approval shall lapse and be of no further approval of Council having first been obtained.

Under the Town Planning and Development Act 1928 (as amended) you have the **right of appeal** to Council and/or the Minister for Planning within 60 days of granting of this consent if you consider any or all of the conditions contained within the consent to be unreasonable.

This Planning Consent does not constitute a Building Licence in terms of the Local Government Act. The application has now been passed to the Building Surveyor for the processing of a **Building Licence**.

Meredith Kenny  
SHIRE PLANNER



EXISTING AREA MAP

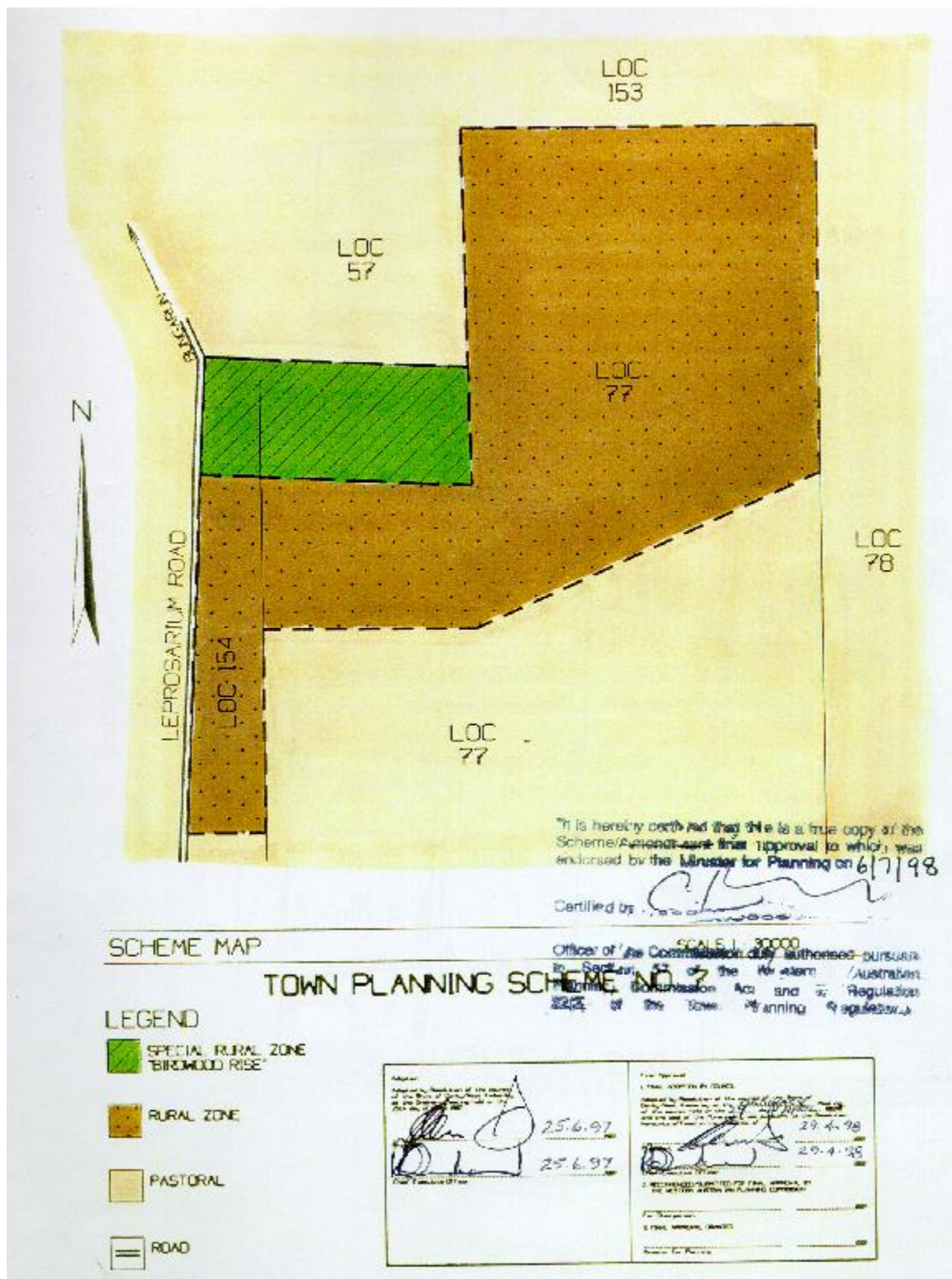
SCALE 1 : 30000

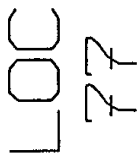
## TOWN PLANNING SCHEME NO. 7

### LEGEND

 PASTORAL LAND

 PUBLIC ROAD





## ADOPTION

Adopted by resolution of the Council of the Shire of Derby/West Kimberley at the **Ordinary** meeting of the Council held on the 25th Day of June, 1997.

.....  
PRESIDENT

.....  
CHIEF EXECUTIVE OFFICER

## FINAL APPROVAL

Adopted for final approval by resolution of the Council of the Shire of Derby/West Kimberley at the **Ordinary** meeting of the Council held on the **29th** day of **April, 1998** and the seal of the Municipality was pursuant to that Resolution hereunto affixed in the presence of:

.....  
PRESIDENT

.....  
CHIEF EXECUTIVE OFFICER

This Scheme Text is to be read in conjunction with the approved maps of the Scheme described in this Scheme and to which formal approval was given by the Hon. Minister for Planning on the date shown below.

RECOMMENDED/SUBMITTED for Final Approval by the Western Australian Planning Commission

.....  
FOR CHAIRPERSON OF THE WESTERN  
AUSTRALIAN PLANNING COMMISSION

.....  
Date

FINAL APPROVAL GRANTED

.....  
MINISTER FOR PLANNING

.....  
Date      6 JULY 1998