

SCHEME PROVISIONS FOR WSUD

Task 10 of the Coastal Catchments Initiative, Water Sensitive Urban Design (WSUD) project is to

Prepare, promote and trial draft model planning provisions and/or policy for WSUD in the Swan-Canning (including Ellenbrook) and Vasse-Geographe catchments. Model planning provisions and/or policy to be based on similar developed for the Peel-Harvey, and are to include environmental performance standards for WSUD that will assist to attain WQIP water quality objectives.

The following paper outlines some options for draft model planning provisions for WSUD. The local policy for WSUD is outlined in a separate document.

The Model Scheme Text

The Model Scheme Text (MST) was gazetted in 1999. It is a set of general provisions for district zoning schemes (local planning schemes) for Local Governments. The MST provisions are required to be incorporated into schemes except where the Minister provides for any variations to the provisions.

The MST contains the following parts.

- Part 1 - Preliminary
- Part 2 - Local Planning Policy Framework
- Part 3 - Reserves
- Part 4 - Zones and the Use of Land
- Part 5 - General Development Requirements
- Part 6 - Special Control Areas
- Part 7 - Heritage Protection
- Part 8 - Development of Land
- Part 9 - Applications for Planning Approval
- Part 10 - Procedure for Dealing with Applications
- Part 11 - Enforcement and Administration
- Part 12 - Schedules

The MST provides guidance about the sorts of provisions which can be included in a local planning scheme. Some provisions are to be included in schemes unaltered, while others are to be customised by the local government to suit their individual needs. For example, Clause 1.6 is outlined in the MST as flows.

1.6. The aims of the Scheme

The aims of the Scheme are —

(Insert a statement setting out the general aims of the Scheme.)

Accordingly, the MST provides advice about the structure of a local government scheme. The majority of the content is proposed by the Local Government. All Schemes must be approved by the Western Australian Planning Commission.



This paper outlines recommendations for provisions for WSUD which can be inserted into schemes by Local Governments, consistent with the MST.

It should be noted that the DPI is currently undertaking a review of the MST. The review will consider, amongst other things, the pros and cons of incorporating greater policy within the scheme. Recommendations for changes to the MST, if generated from this project, will be fed into the DPI review as appropriate.

In addition, the Federal Government is undertaking a review of planning systems across Australia with a view to developing a consistent approach to planning control across the country. This will impact the future use of the MST.

Provisions for WSUD

Possible areas of the MST for inclusion of provisions for WSUD are:

- Part 2 – Local Planning Policy Framework
- Part 4 – Zones and the Use of Land
- Part 5 – General Development Requirements
- Part 6 – Special control areas
- Part 6.1 – Model text provisions for structure plans

Recommendations for each are outlined below.

Part 2 – Local Planning Policy Framework

The Local Planning Policy Framework contains provisions for the making, amendment and revocation of Local Planning Policies (LPP) (clauses 2.2-2.5). LPPs are made under the scheme but do not form part of the scheme. The local government is not bound by the policies but must have regard to them in making decisions under the scheme. LPPs may deal with particular issues which apply throughout a scheme area or policies which apply to particular areas of the scheme.

The Planning Schemes Manual (WAPC, 2000) notes that “It would also be acceptable for policies to be written directly into the scheme to form part of the scheme text. This approach, however, has disadvantages because of the difficulties of drafting the conceptual aspects of policies in a legal context alongside scheme provisions relating to control and restriction. Policies written into the scheme would also require a formal scheme amendment for any changes or revocation of the policy. Moreover, it is unnecessary to put policy provisions in a scheme as it adds little in terms of the legal weight to be given to the policy. If policies are to be written into the scheme text, however, these could follow in Part 2 or be included in Part 4 (Zones) or Part 5 (General Development Requirements). The scheme will also need to distinguish between policies forming part of the scheme and those made under the scheme. There is no prescribed format for policies written into the scheme.”

On this basis it is not recommended that the model WSUD LPP be incorporated into the scheme.

Part 4 – Zones and the Use of Land

This part sets out the zones which apply in the scheme and the particular uses which are permitted in the different zones. The MST does not require standardised zones; however, makes recommendations for zones which may be included in schemes.

Clause 4.2 outlines the Objectives of each zone in the Scheme. As there is no prescribed format for the objectives of each zone, it may be appropriate to include an objective relating to WSUD in residential, industrial and commercial-type zones. This may also include rural residential, tourism and mixed-use zones. Suggested wording (in addition to other objectives of the zone) is:

To achieve development consistent with water-sensitive urban design principles including implementation of current best management practices and best planning practices for the sustainable management and use of water resources.

In addition, it may be appropriate to include an objective to be consistent with any Local Planning Policy and thus the model WSUD Local Planning Policy when adopted by Council. Suggested wording is:

To ensure that subdivision and development comply with the Local Planning Strategy and the principles of any Local Planning Policy adopted by Council.

Part 5 – General Development Requirements

The following text is taken from the Planning Schemes Manual (WAPC, 2000).

This part sets out the general requirements which apply to land use and development within the scheme area and the specific requirements which apply to particular uses and forms of development, such as site requirements, access, parking, building design, setbacks and landscaping for residential, industrial, rural and other uses.

Development requirements applying to particular zones may alternatively be incorporated with the zoning provisions in Part 4. Particular development requirements applying to special control areas should be included in Part 6.

Instead of including development requirements directly in the scheme text, detailed building and parking standards, setback and landscaping requirements etc. may, be contained in LPPs made under Part 2 of the scheme. This has the advantage of simplifying the scheme text and avoiding the need for statutory amendments for minor changes to standards or requirements.

Development requirements may be expressed in performance or prescriptive terms. Performance criteria specifies the outcomes and objectives to be achieved. Prescriptive criteria prescribe the standards and requirements necessary to obtain approval.

The performance approach is designed to provide a basis for assessing development proposals in a flexible way emphasising the objectives and purpose of the controls rather than specific standards. This can prevent over-regulation, encourage innovation in design and the use of land, and introduce greater

accountability by establishing a clearer nexus between the scheme provisions and desired outcomes. Prescriptive controls do not possess these features but have the advantage of providing certainty as the scope to exercise discretion is limited. Prescriptive controls can often provide a valuable complement to a performance-based approach.

It is therefore possible to develop some WSUD requirements which can be applied generally across a zone(s).

For example, in the residential, commercial or industrial zone (and others consistent with the broader use category) the provision may be as follows.

GENERAL DEVELOPMENT REQUIREMENTS

Development should have due regard to relevant local planning policies. In addition, the following standards shall apply:

- 1. Stormwater and groundwater quantity – For the critical 1 year ARI event, the post development discharge volume and peak flow rates shall be maintained relative to pre-development conditions in all parts of the catchment. In addition, manage the catchment runoff for up to the 1 in 100 year ARI event within the development area to predevelopment peak flows unless otherwise indicated in an approved water management strategy or as negotiated with the relevant drainage service provider.*
- 2. Stormwater and groundwater quality – Maintain surface and ground water quality at pre-development levels and, if possible, improve the quality of water leaving the development area to maintain and restore ecological systems in the (sub)catchment in which the development is located*

It should be noted that making these criteria statutory requirements removes the opportunity to modify the requirements in response to special circumstances, such as to achieve Ecological Water Requirements or Environmental Water Provisions or to be consistent with a modified drainage scheme.

Accordingly a provision may be added as follows.

The general development standards may be modified at the discretion of Council on advice of the Department of Water in order to achieve an improved outcome for the (sub)catchment.

Other general development requirements may provide clarity around how proposals will be considered. For example, the following requirements may be included in Part 5, relating generally to all zones.

Any proposal which may have the potential to impact on the State's water resources may be referred to the Department of Water for comment.

The extraction of surface water is not permitted without the approval of the Shire/City/Town and the Department of Water.

Drainage system design and management is to be undertaken in accordance with best management practices and in order to mitigate any degradation of land or water resources including from litter, erosion or nutrients.



A further requirement may relate to the management of construction sites and be worded as follows.

In addition to any requirements which may be imposed as conditions of development, construction sites are to be managed so as to minimise soil erosion or the degradation of any water resource due to the action of wind or water and protect as far as practicable, the natural resource values of the site and of the adjacent area.

Note: Where a construction site is, in the opinion of the Shire/City/Town, being managed in such a way as to cause undue erosion of soil or the pollution of any water resource, the Shire/City/Town may, in accordance with the provisions of clause 11.4, require the owner to take steps to prevent any further erosion or pollution and remediate the site. Such action may include stabilisation of soil or re-instatement of vegetation cover and repair of any damage to the land or water resources.

As water conservation and reuse measures not able to be guaranteed via the planning system, it is not appropriate to include a design objective for these elements. Areas where a non-potable water source is available may be addressed via special control areas.

Part 6 – Special control areas

Part 6 contains the standard provisions for special control areas. Special control areas are intended to deal with issues which overlap zone and reserve boundaries where the requirements of the special control area apply in addition to the requirements of the zone or reserve.

Special control areas:

- identify planning issues requiring special consideration;
- control buildings and works within the special control area in response to the planning issues;
- set out guidelines on the special considerations to be taken into account in considering development within the special control area;
- identify relevant specialist agencies to be consulted prior to determining applications within the special control area.

Further guidance on the use of Special Control Areas is provided in Planning Bulletin No 66.

A special control area may be applied where there are significant and specialised water resource management issues and where specific provisions (requirements) can be generated to address the issues.

A special control area may be appropriate to manage elements of the total water cycle such as water source protection areas, flood prone areas, wetland management areas, provision of a non-potable water source or to ensure that appropriate investigations are completed prior to detailed planning in an area with fragmented landownership or limited strategic planning. These provisions should be drafted by each Local Government to ensure they meet the specific objectives of the special control area; however some examples are contained in Appendix 1.

Part 6 – Structure plan requirements

Clause 6.2 of the MST relates to “development areas”. This clause outlines the requirements for developing land within a development area and includes the requirement for a structure plan prior to subdivision. As this is the stage as which WSUD activities are really important, this provision is an appropriate place to incorporate more detailed requirements for WSUD.

Currently, Clause 6.2.6.1(e) requires local structure plans to depict “urban water management areas” on the plan. No specific requirements are identified for district structure plans (clause 6.2.6.1.d). Clause 6.2.6.1(f) requires “a written report to explain the mapping and to address...urban water management”. Scope exists to broaden these points and provide more specific guidance on what “urban water management” means.

The options for providing this guidance are inclusion of more detailed descriptions in the text or refer to other documents for guidance. Suggested additions are in italics.

6.2.6. Details of proposed structure plan

6.2.6.1 A proposed structure plan is to contain the following details:

(d) for district structure plans a map showing proposals for:

(iv) major open spaces and parklands *including urban water management areas;*

(f) a written report to explain the mapping and to address the following:

(viii) urban water management, *including;*

- *water conservation, reuse and efficiency including water balance;*
- *flood protection;*
- *management of water quality including frequent events;*
and
- *management of groundwater levels and quality.*

For consideration

A local government scheme provides the legal basis for development. Its primary focus is on the outcome of planning at the lot level.

The question we need to ask is what is the benefit of making the requirements statutory as this removes the opportunity to modify the requirements and respond to any special circumstances of the site.

There also would need to be an agreed way of clearly demonstrating that the criteria have been met within a planning context, generally on a plan.

As the scheme is a statutory document which requires a process of formal amendment to make and changes, this may also limit the potential to respond to innovation and improved best practice.



APPENDIX 1: EXAMPLES OF SPECIAL CONTROL AREA PROVISIONS

Water Catchments (Peel Region Scheme)

5.2.1 Purpose

- (a) To implement the Public Water Supply Catchment Policy.
- (b) To identify proclaimed surface water catchments within the Greater Bunbury Region Scheme Area.
- (c) To prevent land uses or development which would prejudice the quality of water supplies for public use.

5.2.2 Planning Requirements

The Commission in considering an application for planning approval is to have due regard to:

- (a) the impact of the proposal on the quality of any existing or future public drinking water supply source;
- (b) the extent to which the proposal achieves and adheres to best management practices for the storage of substances that could contaminate the public drinking water sources;
- (c) the adequacy of proposed measures to manage run-off and drainage;
- (d) whether there is any loss of native vegetation which will be detrimental to maintaining water supply and quality;
- (e) the advice and recommendations of the Water and Rivers Commission; or
- (f) any other matters that the Commission considers relevant.

5.2.3 Referral of Proposals

In considering an application for planning approval with respect to land wholly or partly within the special control area the Commission or the local government, as the case may be, is to consult with the Water and Rivers Commission.

Flood Prone Areas (City of Armadale).

6.2 Flood prone areas

6.2.1 Flood Prone Areas are defined on the Scheme Map in accordance with the 1 in 100 year flood levels and associated mapping produced by the Department of Environment. The purpose of this designation is to highlight the potential for flooding within this area and to provide a basis for the avoidance and/or minimisation of flood damage associated with any development in this area. Flood Prone Areas include Floodways and Flood Fringes.

6.2.2. All building development or earthworks within Flood Prone Areas, shall be subject to a requirement for planning approval, and shall be subject to the discretion of the City, notwithstanding that the use may be designated a 'P' use under the Scheme.

Note: Flood Prone Areas include a designated 'floodway' and a 'flood fringe', as defined by the Department of Environment.

6.2.3 No building or filling is to take place within a Floodway, except for public works undertaken with the approval of the City in consultation with the Department of Environment.



- 6.2.4 Unless otherwise approved by the City in accordance with the provisions of clause 5.5, all habitable buildings constructed within the Flood Fringe are to have a floor level of at least 0.5 metre above the relevant 1 in 100 year flood level as determined by the Department of Environment.
- 6.2.5 Where building is approved within the Flood Fringe, special measures are to be employed to protect the foundations from water erosion during extreme flood events.
- 6.2.6. The City may refuse any application for planning approval or impose conditions on any planning approval so as to:
- (a) constrain the location of development;
 - (b) control the form of construction, including foundations and associated works;
 - (c) determine the form, location and construction of access; and
 - (d) require the registration of a notification under section 70A of the *Transfer of Land Act 1893* on the title to the land giving notice of the potential risk associated with flood events at the applicant's cost.
- 6.2.7 In this clause: 'Floodway' refers to that part of a floodplain, which determines the flow capacity of the waterway, and where any obstruction within the area has the potential to increase the flood height upstream of the obstruction; and 'Flood Fringe' is that area beyond the extent of the 'Floodway', which is affected by flooding, where the natural ground level is below the 1 in 100 year flood level

The City of Armadale Town Planning Scheme No 4 also has a Special Control Area for, amongst other non-water related issues, the following.

- Public drinking water resource protection areas
- Wetland protection areas
- Catchment protection area – Peel Harvey Coastal Plain Catchment