



THIRTY-EIGHTH PARLIAMENT

REPORT 28

**JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION**

***LOCAL LAWS REGULATING SIGNS AND
ADVERTISING DEVICES***

Presented by Mr Joe Francis MLA (Chairman)

and

Hon Kim Chance MLC (Deputy Chairman)

April 2009

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed: 28 June 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing orders:

“3. Joint Standing Committee on Delegated Legislation

- 3.1 *A Joint Standing Committee on Delegated Legislation* is established.
- 3.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chairman must be a Member of the Committee who supports the Government.
- 3.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 3.4 A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.
- 3.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument -
 - (a) is authorized or contemplated by the empowering enactment;
 - (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
 - (c) ousts or modifies the rules of fairness;
 - (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;
 - (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or
 - (f) contains provisions that, for any reason, would be more appropriately contained in an Act.

- 3.7 In this clause -

“**adverse effect**” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;

“instrument” means -

- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
- (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;

“subsidiary legislation” has the meaning given to it by section 5 of the *Interpretation Act 1984*.”

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Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

The four-month period commences on the date of tabling.

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REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO

LOCAL LAWS REGULATING SIGNS AND ADVERTISING DEVICES

1 INTRODUCTION

- 1.1 A major issue for the Joint Standing Committee on Delegated Legislation (**the Committee**) during the previous two years has been the extent to which the power conferred on local governments by sections 3.5(1) and 3.1(1) of the *Local Government Act 1995* (to make local laws for the good government of the persons in their districts) authorises the making of local laws relating to signs and advertising devices having regard to the provisions of the *Planning and Development Act 2005* concerning the matters to be dealt with in local planning schemes. The *Local Government (Miscellaneous Provisions) Act 1960* also contains provisions concerning the regulation of “structures” and “attachments to buildings” that may impact on local government powers to regulate signage and advertising devices.
- 1.2 This issue first arose in the *Town of Victoria Park - Signs Local Law 2006* and *City of Armadale - Signs Local Laws 2007*. While the Committee was undertaking inquiries in respect of those local laws, the *Shire of Harvey - Local Law Relating to Signs and Other Advertising Devices 2007* and *City of Nedlands - Signs Local Law 2007*, which raised similar issues were gazetted.
- 1.3 In order to permit the time required for a proper inquiry, and in light of the general application of its conclusions, the Committee as previously constituted¹ resolved to proceed by way of tabling an information report to the Parliament, rather than recommending disallowance of the particular local laws relating to signs and advertising devices that were then before it.²

¹ The membership of the Committee changed following prorogation and the commencement of the Thirty-eighth Parliament in November 2008.

² By section 42 of the *Interpretation Act 1984*, a House of Parliament may pass a resolution for disallowance of a local law within 14 sitting days of the local law having been laid before it.

2 BACKGROUND TO, AND SCOPE OF, INQUIRY INTO THE TOWN OF VICTORIA PARK - SIGNS LOCAL LAW 2006 AND CITY OF ARMADALE - SIGNS LOCAL LAW 2007

- 2.1 The Committee has a long-standing concern that many provisions in local laws regulating signs and advertising devices on private property are neither necessary nor effective.
- 2.2 The former Joint Standing Committee on Delegated Legislation inquired into local governments' power to make local laws regulating signs and advertising devices in the 35th Parliament, when scrutinising the *Shire of Denmark Signs Local Law 1999*. It concluded that there was limited power for local governments to make such local laws under the relevant legislation as it then stood: the *Town Planning and Development Act 1928*, *Local Government Act 1995* and *Local Government (Miscellaneous Provisions) Act 1960*.³
- 2.3 However, in its *Report No. 42 - Shire of Denmark Signs Local Law 1999 (Report No. 42)*, the former Committee expressed the view that local laws were largely unnecessary for the regulation of signs and advertising devices. It also questioned whether local laws were an appropriate avenue to regulate signs in light of the difficulty in enforcing those laws.⁴
- 2.4 However, as the former Committee noted, its Terms of Reference did not confer power to recommend disallowance of subsidiary legislation on the basis that a more appropriate or effective method of regulation should be adopted.⁵ It, therefore, confined its recommendations to Parliament to its conclusion that the total prohibition in the *Shire of Denmark Signs Local Law 1999* on: advertising businesses in a

³ Joint Standing Committee on Delegated Legislation *Report No. 42 - Shire of Denmark Signs Local Law 1999*. Section 43(1) of the *Interpretation Act 1984* provides that subsidiary legislation shall not be inconsistent with any Act and is void to the extent of any inconsistency. With respect to local laws, section 3.7 of the *Local Government Act 1995* provides that a local law made under that Act is inoperative to the extent that it is inconsistent with that Act or "any other written law". Section 5 of the *Interpretation Act 1984* provides that "written law" includes subsidiary legislation. Local laws cannot, therefore, be inconsistent with local planning schemes. The State Solicitor's Office takes the view that "... the Model Text Scheme expressly contemplates that a local law may be inconsistent with its provisions and provides that its provisions prevail over the local law, rather than suggesting the local laws are invalid ... Provided that the local law related to and was confined in its operation to the performance of a function conferred upon the local government by the LG Act, it would be valid but inoperative to the extent of any inconsistency with [a planning scheme]" (Letter from State Solicitor's Office to Department of Local Government and Regional Planning, 9 June 2008, p6) The Committee takes the view that empowering legislation does not contemplate the making of void or inoperative provisions in local laws.

⁴ This arose from the limited circumstances in which the *Local Government Act 1995* authorises local governments to issue notices for breach of a local law in respect of private property and enter onto private property to rectify breach.

⁵ Joint Standing Committee on Delegated Legislation, *Report 42, Shire of Denmark - Signs Local Law 1999*, 20 September 1999, p8. This remains the situation under the Committee's current Terms of Reference, other than Term of Reference 3.6(f): that an instrument "contains provisions that, for any reason, would be more appropriately contained in an Act". The Committee does not consider that signs and advertising devices would necessarily be more appropriately regulated in an Act.

business zone; electoral signs on private property; and temporary signs on private property was unauthorised.⁶

2.5 Nonetheless, the former Committee recommended in its Report No. 42 that local governments not enact signs local laws.⁷

2.6 The Department of Local Government and Regional Development also discourages local governments from making local laws regulating signage on private property. Its Local Law Operating Guidelines - Number 16 September 2006, contains the following statement:

67. Some local governments are attempting to deal with signage on private land through their signs local laws, whereas the correct place for dealing with this issue is under their town planning scheme [sic]. Signs local laws should only deal with the issue of signage on local government property.

2.7 The former Minister for Local Government confirmed that Local Law Operating Guideline No.67 did not reflect legislative limitation but was:

*based on an understanding that planning legislation is the most appropriate head of power for the making of laws about signage on private land.*⁸

2.8 The former Minister for Planning and Infrastructure was of the view that, as the *Planning and Development Act 2005* permitted the inclusion of provisions on advertising in local planning schemes, a local planning scheme was:

*the appropriate instrument for such provisions.*⁹

In her view, in the event local governments incorporated (pursuant to section 256 of the *Planning and Development Act 2005*) the Model Scheme Text prescribed by regulation 27 of the *Town Planning Regulations 1967* in their local planning schemes:

*There would be no need for a local law to be created ...*¹⁰

⁶ See Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report No. 42, *Shire of Denmark - Signs Local Law 1999*, 20 September 1999 and Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report No. 43, *Shire of Northampton Signs Local Law*, 13 October 1999.

⁷ Western Australia, Legislative Council, Joint Standing Committee on Delegated Legislation, Report 42, *Shire of Denmark - Signs Local Law 1999*, 20 September 1999, p11.

⁸ Letter from the former Minister for Local Government, 27 November 2007, p1.

⁹ Ibid.

¹⁰ Letter from the former Minister for Planning and Infrastructure, 27 June 2008, p2.

2.9 The Western Australian Local Government Association advised its members to similar effect, being of the view that in light of the legislation as it was in 1999:

only billposting, portable signs and perhaps direction signs, which might otherwise need some control

should be regulated through local law.¹¹

2.10 Notwithstanding these discouragements, local governments continue to make local laws regulating signs and advertising devices - either supplementing, or in preference to, provision in a local planning scheme.

2.11 The *Town Planning and Development Act 1928* was repealed in April 2006, when the *Planning and Development Act 2005* came into operation in its relevant parts. The Committee, therefore, conducted this inquiry on the basis of different legislation to that being examined in the 1999 inquiry of the former Committee. Pursuant to its Term of Reference 3.6(a), the Committee's current inquiry was not whether the particular signs local laws before it were "*appropriate*" but whether their provisions fell within the parameters of what was authorised or contemplated by the *Local Government Act 1995*, having regard to new legislation governing planning and development matters.

Particular issues in this inquiry

2.12 In respect of the instruments the subject of this inquiry:

- the *Town of Vincent Signs Local Law 2006* raised a related question to that raised by the *Shire of Denmark Signs Local Law 1999*, that is: whether a total prohibition on advertising home businesses in a residential zone was authorised or contemplated by empowering legislation; and
- the *City of Armadale Signs Local Law 2007* raised the question of whether the *Local Government Act 1995* (or some other empowering Act) authorised or contemplated the making of a local law for the purpose, and with the effect, of enforcing a local planning scheme made under the *Planning and Development Act 2005*. This raised the further, though related, question of the extent to which the *Planning and Development Act 2005* 'covered the field' in respect of the regulation of signage and advertising devices.

¹¹ Joint Standing Committee on Delegated Legislation, Report 42, *Shire of Denmark - Signs Local Law 1999*, 20 September 1999, pp10-11. (The Western Australian Local Government Association was previously known as the Western Australian Municipal Association).

Town planning schemes/local planning schemes

- 2.13 For clarity, the Committee notes that while the *Town Planning and Development Act 1928* was repealed, section 68 of the *Planning and Development Act 2005* provides that town planning schemes made under the *Town Planning and Development Act 1928* are to continue in force as if they are local planning schemes made under the *Planning and Development Act 2005*. The nomenclature of “town planning scheme” has, however, been retained in the titles of schemes made under the 1928 Act and is used in the relevant local laws when referring to those schemes.

3 THE SIGNS LOCAL LAWS SCRUTINISED IN THIS INQUIRY

Town of Victoria Park - Signs Local Law 2007

- 3.1 This local law replaced the *Town of Victoria Park - By-Law Relating to Signs 1983*. It provides for the licensing of signs - with the exception of signs requiring development approval under its Town of Victoria Park Planning Scheme No.1 (which approved signs, by clause 14 of this local law, are deemed to have been issued a licence under the local law) - conditions for licence, cancellation of a licence, exempt signs, temporary signs, banning of bill posting, issue of notices for breach of the local law, fees, offences and penalties. The *Town of Victoria Park - Signs Local Law 2007* is **Appendix 1**.

- 3.2 The Committee was concerned with clause 40 of this local law, which provides:

A home occupation, home business or home office sign are advertising signs associated with a home occupation, home business or home office at a residential property and are not permitted in the Town of Victoria Park.

- 3.3 The Town advised that clause 40 mirrors a clause in the Town’s Town Planning Scheme No.1 and was included in the local law with a view to avoiding the need for persons researching restrictions on home business occupation to refer separately to that scheme. It was justified on the basis of amenity and protection of the character of the locality.¹²

¹² Letter from the Town of Victoria Park to the Joint Standing Committee on Delegated Legislation, dated 24 May 2007. In fact, the Town advised in that letter that clause 40 mirrored the Town’s Town Planning Scheme No.1 - Policy 3.4 Home Occupation. The Committee sought clarification of whether the original clause was in the Town Planning Scheme or a policy made under that scheme. The Town provided a copy of its Town Planning Scheme No.1 which, in section 3 stated: *(1) This Scheme comprises the following documents - ... (c) each planning policy* The Committee’s long-standing concern with adoption of policies and codes as subsidiary legislation is set out in its Report No. 4, *City of Perth Code of Conduct Local Law*, dated 26 September 2002. However, the Committee noted that local planning schemes were not disallowable instruments, with the consequence that any irregularity in a local planning scheme needed to be resolved by a court, not Parliament. The Committee did not, therefore, explore the question of whether section 3(1)(c) was a valid incorporation of the policy into *Town Planning Scheme No.1*.

- 3.4 The Committee noted that the prohibition in clause 40 of the *Town of Victoria Park - Signs Local Law 2007* differed from that considered in the *Shire of Denmark Signs Local Law 1999* in that it applied in residential, not business, zones and was limited to advertisements relating to business, whereas the Shire of Denmark local law had attempted to ban a larger range of signs.

City of Armadale Signs Local Law 2007

- 3.5 Unlike the *Town of Victoria Park - Signs Local Law 2007*, this local law provided no independent application and approval process for signs that did not require approval under its town planning scheme. Instead it attempted to provide that approval for signage granted under the City's planning schemes was deemed to be approval for a licence under the local law. However, there were drafting defects that rendered that attempt ineffective.
- 3.6 The City also attempted to: provide in this local law for exemptions from a requirement for a licence for signs under the City's planning schemes; create offences for failure to obtain a licence and breach of licensing conditions; and provide for issue of infringement notices for the offences created in this local law. The *City of Armadale Signs Local Law 2007* is **Appendix 2**.
- 3.7 The Committee noted that in the event the drafting defects in the deeming provisions of this local law were rectified, in effect this local law did no more than create various offences of non-compliance with provisions of local planning schemes made under the *Planning and Development Act 2005* or the *Armadale Redevelopment Act 2001* and provide for the consequences of committing such offences.
- 3.8 The City of Armadale confirmed this characterisation in its advice to the Committee that one of the main purposes of the local law was to provide for “*effective enforcement*” by conferring power to issue infringement notices for breach of provisions of its planning schemes relating to signs and advertising devices.¹³

4 INQUIRY

- 4.1 The Committee made wide ranging enquiries on the issues arising, corresponding with the relevant local governments and their advisers, the former Minister for Local Government, the former Minister for Planning and Development, the former Minister for Housing and Works, the Department for Local Government and Regional Planning and the Department for Planning and Infrastructure. The Committee was also provided with a copy of correspondence between the Office of the former Minister of Planning and Infrastructure and the former Minister of Local Government and, by the former Minister for Local Government, with copies of advice from the State Solicitor's Office

¹³ Explanatory Memorandum in respect of *City of Armadale Signs Local Law 2007*, 12 July 2007. This the effect of the City's advice that the penalties in the *Planning and Development Act 2005* include prosecution and direction, whereas the local law confers power to issue infringement notices.

(SSO) to the Department of Local Government and Regional Development in respect of some of the issues raised.

5 *PLANNING AND DEVELOPMENT ACT 2005*

Regulation of signs and advertising devices by local planning schemes - the Act

5.1 The *Planning and Development Act 2005* sets up a hierarchy of planning schemes: state, region and local. The latter are to be made (or adopted) by local governments (section 71).

5.2 There are several sections in the *Planning and Development Act 2005* dealing with the content of a local planning scheme. These are very broad in scope.

5.3 Section 69(1) provides that a local planning scheme “*may be*” made:

*(a) with the general objects of making suitable provision for the **improvement, development and use of land** in the local planning scheme area; and*

(b) making provision for all or any of the purposes, provisions, powers or works referred to in Schedule 7.

(Committee’s emphasis)

5.4 The most pertinent clause of Schedule 7 is clause 8, which relevantly provides the following matters may be addressed in a local planning scheme:

*Standards for the **development of** any class or kind of building, **structure**, work or **advertisement** including standards in respect of —*

(a) size;

(b) appearance;

(c) placement;

(d) location; and

(e) number

(Committee’s emphasis)

5.5 Schedule 7 also provides the following matters may be dealt with in a local planning scheme:

- Clause 6:

(1) Zoning of the scheme area for appropriate purposes;

- Clause 9:

*Approval, refusal or approval subject to conditions of any use or class or kind of **development** by a consideration of any matter to which the Act relates including the public interest;*

- Clause 11:

(4) Powers to recover expenses incurred or to be incurred in implementing, enforcing and giving effect to the scheme; and

- Clause 15 provides that a local planning scheme may, in addition to the matters specified in earlier clauses to that Schedule, deal with:

*(2) Any other matter necessary or incidental to the **sustainable development or use of land**.*

(Committee's emphasis)

5.6 Section 73(1) provides that a local planning scheme “is to” :

(c) provide for matters which may be dealt with by general provisions prescribed under section 256;

(d) otherwise supplement, exclude or vary the general provisions to the extent approved by the Minister; and

(e) deal with any special circumstances or contingencies for which adequate provision is not made by the general provisions;

5.7 Section 256(1) of the *Planning and Development Act 2005* provides that regulations may be made prescribing matters:

for carrying out the general objects of local or region planning schemes, and in particular for dealing with the matters set out in Schedule 7;¹⁴

5.8 It is the Committee's view that section 256(1) and clause 15(2) of Schedule 7 confirm that, despite the use of the word “and” between subsections 69(1)(a) and (b), Schedule 7 is to be interpreted as specifying “particular” matters within the broader context of “improvement, [sustainable] development and use of land”, not as extending beyond

¹⁴ Sections 69(1)(b), 71 and 73(1)(c) of the *Planning and Development Act 2005* also provide that local planning schemes may be made providing for the matters set out in Schedule 7 to that Act.

the general objects of the *Planning and Development Act 2005* the objects or purposes for which a local planning scheme may be made.

- 5.9 The requirement that local planning schemes be directed to the “*improvement, development and use of land*”¹⁵ reflects section 3 of the *Planning and Development Act 2005*, where the purposes of that Act are related to “*sustainable development*” and “*use of*” land.

Signs/advertising devices as “structures”, “developments” and “use of land”

- 5.10 What constitutes a “*structure*” or an “*advertisement*” for the purposes of Schedule 7 is not defined in the *Planning and Development Act 2005*. “*Development*” is defined in section 4(1) as including “*use of land*”. It is defined as “*meaning the development or use of land*” and including:

(a) any demolition, erection, construction, alteration of or addition to any building or structure on the land including the erection, construction or alteration of structures on land.

- 5.11 The Committee is of the view that “*structures*” and “*advertisements*” as used in clause 8 of Schedule 7 of the *Planning and Development Act 2005* are (by reason of the general objects of that Act, section 69(1)(a) and the governing term “*development*” in clause 8) limited to those structures and advertisements that constitute development or use of land.

- 5.12 Although the definition of “*development*” in the *Planning and Development Act 2005* includes “*use of land*”,¹⁶ the Committee considered whether local planning schemes could regulate a wider variety of signs and advertising devices as “*use of land*”, as an object of the *Planning and Development Act 2005* relating to “*planning*” as distinct from “*development*”.¹⁷

- 5.13 Neither “*planning*” nor “*use of land*” are defined in the *Planning and Development Act 2005*. The Committee noted that “*use of land*” implies something more than mere location. In *Lynch v Brisbane City Council*, the High Court held that positioning of stalls (which were described as “*structures*”) in a thoroughfare constituted location on, rather than “*use of*”, land.¹⁸

¹⁵ Section 69(1).

¹⁶ Given this definition, the way in which the two terms are used in it various sections of the *Planning and Development Act 2005* is not always clear to the Committee.

¹⁷ Section 3(1)(b) of the *Planning and Development Act 2005* provides that an object of that Act is to: “*provide for an efficient and effective land use planning system in the State.*”

¹⁸ (1961) 104 CLR 353. In that case, Dixon CJ said: “*It seems difficult to support this very full provision controlling the use of stalls as an ordinance with respect to the "use and occupation of land". As a matter of logic anything a man does, unless he is at sea or in the air, must involve him in an activity in which he relies on the support of the soil so that he "uses" land in a very wide sense. But the ordinance is not "in*

- 5.14 The Committee put its question to the relevant departments. The former Minister of Planning and Infrastructure said:

The basis on which provisions prohibiting advertising of home businesses are authorised in LPS comes from the above provisions [sections 69, 4(1)(a) and clause 8 of Schedule 7 of the Planning and Development Act 2005] which provide for local governments to prepare their LPS with the general objects of making suitable provision for development.¹⁹

- 5.15 In *Claude Neon Limited v City of Perth and the Metropolitan Region Planning Authority*, Pidgeon J concluded that the two terms “development” and “use of land” in equivalent provisions in the *Town Planning and Development Act 1928* were not to be applied disjunctively, observing that if they were:

development could comprise almost any activity down to a professional man displaying his name on a small sign on the wall of his office or it could be comprised in the change of tenancy of part of a building from a person of one profession to another. I do not consider that this is a proper result ... there is an element of degree to be considered before an activity reached the stage of its being a development.²⁰

- 5.16 The meaning of the term “use of land” in the context of “development” is also discussed in *Claude Neon Limited v City of Perth*,²¹ where Kennedy J says, having found that the particular proposed sign he was considering constituted a development:

If a sign were to be erected upon premises advertising the name of a business being carried on at those premises ... such use of land would not be a separate use from the primary use of the land [that is, carrying on the business] ... If, however, as is proposed here, the advertising is commercial in nature, advertising, for example, business other than such as are carried on at the premises, the position seems to me to be otherwise. It would then constitute an independent use.

pith and substance” directed at the use made of land but at the control and supervision of “stalls”. Further, the description “subdivision of land and use and occupation of land ;buildings and occupation of buildings;” in a collection of subjects of local governing power, seems rather to point to the purpose to which land is applied rather than to the control of the activities of the inhabitants of Brisbane simply because the activities must have a locus.” (p362)

¹⁹ Letter from the former Minister of Planning and Infrastructure, 20 December 2007, p2. SSO.

²⁰ [1983] WAR 147 at 149.

²¹ 31 July 1997, unreported judgement of the Supreme Court of Western Australia.

- 5.17 SSO also deals with “*use of land*” as an aspect of development, referring to the *University of Western Australia* case and endorsing Pidgeon J’s comment in the *Claude Neon Limited v City of Perth* case that:

*whether something that falls within either of these ideas constitutes development is at all times a matter of degree.*²²

- 5.18 After considering the meaning of the word “*development*” in the *Planning and Development Act 2005*, SSO stated:

The definition could certainly extend to the erection of a sign, on the basis inter alia that a sign is a structure ...

*It is not difficult to envisage uses of signs that which could not have been intended to be encompassed within the meaning of development ...*²³

Committee’s conclusion

- 5.19 Not all signs and advertising devices constitute developments as that word is used in the *Planning and Development Act 2005*. The terms of the *Planning and Development Act 2005* suggest that local planning schemes are intended to regulate structures and buildings (and additions or alterations to structures or buildings) that constitute developments of land, not simply those located on land,²⁴ and the word “*advertisement*” in clause 8 of Schedule 7 of that Act is to be interpreted in that context.
- 5.20 While “*use of land*” is not disjunctive to the concept of “*development*” in the *Planning and Development Act 2005*, that Act authorises regulation of conditions of use of land by way of provision in a local planning scheme and some commercial signs and advertising devices that do not constitute developments in the ordinary sense of that word may amount to a use of land and thus fall within the concept of “*development*” as used in the *Planning and Development Act 2005*. That use may be an aspect of an existing business use or a separate use.
- 5.21 Advertising a business, including a home business, at premises from which that business is conducted is not a separate use of land from use for the purpose of the business. Clause 9 of Schedule 7 of the *Planning and Development Act 2005*

²² Letter from State Solicitor’s Office to the Department of Local Government and Regional Development, 9 June 2008, p5.

²³ Letter from State Solicitor’s Office to Department of Local Government and Regional Development, 9 June 2008, p5.

²⁴ In addition to the sections and cases cited above, see clause 6 of Schedule 8 of the *Planning and Development act 2005*, set out in paragraph 6.35 below, where the connection between “*advertisement*” and “*structure*” is express.

authorises and contemplates regulation of such signs and advertising devices by way of provision in a local planning scheme as an aspect of business use of land.

General provisions - Model Scheme Text

5.22 As has been noted, section 256 of the *Planning and Development Act 2005* empowers the Minister to prescribe general provisions for local planning schemes and section 73(1) provides that a local planning scheme “*is to*”:

- provide for the matters in the general regulations;
- supplement, vary or exclude the general provisions to the extent permitted by the Minister; and
- deal with any special circumstances or contingencies not provided for in the general provisions.

5.23 Section 256(2) of the *Planning and Development Act 2005* provides:

Where a planning scheme is made in respect of an area, any general provision as amended from time to time that is —

(a) appropriate to the area; and

(b) in force when the scheme comes into force,

has effect as part of the scheme, except so far as the scheme provides for the variation or exclusion of that provision.

5.24 The *Planning and Development Act 2005*, therefore, contemplates fairly close adherence to any prescribed general provisions. Section 73(1)(b) suggested to the Committee that the Act required any provision supplementing the Model Scheme Text in respect of a planning or development issue to be in a local planning scheme and approved by the Minister.

5.25 The *Town Planning Regulations 1967* prescribe general provisions, known as the ‘Model Scheme Text’,²⁵ which have effect as if made under section 256.²⁶ Regulation 11 provides that local planning schemes that envisage zoning or classification of land are to be prepared in accordance with the Model Scheme Text. The Model Scheme Text provides the following general provisions in respect of signs and advertisements:

- clause 8.1 - approval is required for all developments;

²⁵ Regulation 27 and Appendix B of the *Town Planning Regulations 1967*.

²⁶ Section 25(1) of the *Planning and Development (Consequential and Transitional Provisions) Act 2005*.

- clause 9.1.2 - an application for the erection, placement or display of an “advertisement” is to be accompanied by the additional information set out in the form prescribed in Schedule 7 to the Model Scheme Text;
- clause 11.2 - power for a local government to require removal or modification of an advertisement that is in conflict with the amenity of the area; repair of an advertisement that has deteriorated; and removal of an advertisement that is no longer serving a purpose; and
- definitions of “home occupation” and “industry-cottage” which include “does not display a sign exceeding 0.2 square metres” as a defining feature.

5.26 There is a note to clause 8 of the Model Scheme Text which states that: “Development includes the erection, placement and display of any advertisement”. This note is not, however, part of the regulations and has no legislative effect.²⁷

5.27 Schedule 1 of the Model Scheme Text contains the following definition:

“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. The term includes any airborne device anchored to any land or building and any vehicle or trailer or other similar object placed or located so as to serve the purpose of advertising;

5.28 The former Minister for Planning and Infrastructure pointed to the breadth of this definition in when expressing the view that there was no need for local governments to make local laws regulating signage and advertising devices, stating:

*This definition encompasses most forms of advertising, including those that require structures.*²⁸

5.29 The Committee, however, observes that a definition in subsidiary legislation cannot (in the absence of what is known as a ‘Henry VIII clause’ in empowering legislation) widen the application of the governing Act or otherwise override any limitations imposed by that Act.

5.30 The Model Scheme Text was inserted into the *Town Planning Regulations 1967* in 1999, when the governing Act was the *Town Planning and Development Act 1928*. Section 6(1) of the now repealed *Town Planning and Development Act 1928* was in

²⁷ Section 32(2) of the *Interpretation Act 1984*.

²⁸ Letter from the former Minister for Planning and Infrastructure, 27 June 2008, pp1-2.

different terms to the equivalent provisions in the *Planning and Development Act 2005*. Section 6(1) provided:

A town planning scheme may be made, in accordance with the provisions of this Act, with respect to any land with the general object of improving and developing such land to the best possible advantage, and of securing suitable provision for traffic, transportation, disposition of shops, residence, factory and other areas, proper sanitary conditions and conveniences, parks, gardens and reserves, and of making suitable provision for the use of land for building or other purposes and for all or any of the purposes provisions, powers or works contained in the First Schedule.

- 5.31 Thus the general objects of a town planning scheme under the *Town Planning and Development Act 1928* appear wider than those under the *Planning and Development Act 2005*. In any event, clause 7(e) of the First Schedule to the *Town Planning and Development Act 1928*, which was in the following terms:

Buildings generally, and in particular —

*(e) the prohibition or regulation of the placing or subject to section 11 or a reasonable time limit, the continuance of **advertisements, advertising hoardings, illuminated signs and other advertising devices and erections, or other disfigurements;***

(Committee's emphasis)

was wider in its terms than clause 8 of Schedule 7 of the *Planning and Development Act 2005*. (See paragraph 5.4 above)

- 5.32 The breadth of the definition of “*advertisement*” in Schedule 1 to the Model Scheme Text is understandable in light of the previous legislation. However, that definition now needs to be considered in light of the *Planning and Development Act 2005*. It appeared to the Committee that the definition of “*advertisement*” in the Model Scheme Text might be broader than that contemplated by the *Planning and Development Act 2005*. In particular, the Committee observed a greater focus on ‘advertisements’ *per se* in the previous legislation and a clearer distinction between commercial and non-commercial activities in the current legislation.
- 5.33 The Office of the former Minister for Planning and Infrastructure advised the former Minister for Local Government that the Model Scheme Text provisions:

*are required to be incorporated into new schemes or schemes undergoing review except where the Minister provides for any variation to the provisions.*²⁹

- 5.34 The Office of the former Minister for Planning and Infrastructure drew attention to the conflict between the total prohibition on signs and devices advertising home business in the Town of Victoria Park Town Planning Scheme No.1 and provisions of the Model Scheme Text (which places no restrictions on advertising a home business and permits advertising signs of up to 0.2 square metres for home occupations). It noted that the Town of Victoria Park's Town Planning Scheme No. 1 had been made prior to the introduction of the Model Scheme Text in 1999 and advised that the *Planning and Development Act 2005* anticipated incorporation of the Model Scheme Text only on next review or amendment.

Conclusion

- 5.35 The *Planning and Development Act 2005* contemplates that the matters dealt with in prescribed general provisions will be dealt with in the same manner in the local planning schemes to which those provisions apply and will only be supplemented, varied or excluded to the extent that the Minister approves. The Committee is of the view that this includes the Minister approving that a provision is not appropriate to be adopted. The *Town Planning Regulations 1967* prescribe general provisions - the Model Scheme Text - for local planning schemes that envisage zoning or classification of land.
- 5.36 The definitions of “*home occupation*” and “*industry-cottage*” in the Model Scheme Text, which both incorporate defining features of signage that are not restricted to developments as that word would be commonly understood, are consistent with the *Planning and Development Act 2005*'s incorporation of “*use of land*” into the concept of “*development*” as used in that Act and its provisions in respect of regulation of conditions of use of land in local planning schemes.
- 5.37 It is not clear to the Committee that all instances within the definition of “*advertisement*” in Schedule 1 of the Model Scheme Text fall within the ambit of “*development*” as defined in the *Planning and Development Act 2005*.

Enforcement of local planning schemes

- 5.38 Part 13 of the *Planning and Development Act 2005* contains a comprehensive regime for enforcing a local planning scheme. Section 218 provides that a person who contravenes a local planning scheme commits an offence and section 223 provides that a person committing an offence is liable to a penalty of up to \$50,000.

²⁹ Letter from Office of the Minister for Planning and Infrastructure to the Minister for Local Government, 5 October 2007, p1.

5.39 Section 258(1)(e) provides that the Minister may make regulations in relation to enforcing a local planning scheme and specifically, in respect of infringement notices, section 227(1) provides:

(1) The regulations may prescribe an offence under this Act, or under any regulations made under this Act, to be an offence for which an infringement notice may be issued under this Division.

5.40 To date, no regulations have been made giving effect to the infringement notice provisions of the *Planning and Development Act 2005*.³⁰

Local laws and the *Planning and Development Act 2005*

5.41 Section 262 of the *Planning and Development Act 2005* provides:

(1) The Governor may make uniform general local laws, or separate sets of general local laws adapted for areas of any special character, for carrying into effect all or any of the purposes mentioned in Schedule 8.

5.42 Clause 6 of Schedule 8 of the *Planning and Development Act 2005* stipulates such uniform general local laws may be made:

*prohibiting or regulating the erection and use of buildings, advertisement hoardings, or **structures for advertising purposes** which are such as to be injurious to the amenity or natural beauty of the area to which the local laws are to apply.*³¹

(Committee's emphasis)

5.43 The Committee noted that section 262(1) confers power on the Governor, not local governments, to make local laws for the specified matters and that the power to regulate advertisements is tied to their being structures or hoardings.

5.44 Additional subsections of section 262 provide:

(2) Local laws made under subsection (1) —

³⁰ The former Minister for Local Government advises that this is one of the “key reasons” local governments continue to make signs local laws under the *Local Government Act 1995*, which has an infringement process, despite the repeal of section 248 of the *Local Government Act 1960* (which permitted local laws to be made) and the *Town Planning and Development Act 1928*. (Letter from the former Minister for Local Government dated 29 April 2008)

³¹ The Committee observes that regulation of advertising by local laws made by the Governor is by this schedule limited to hoardings and structures.

(a) have the force of law in the district of any local government which the Governor may from time to time prescribe; and

(b) supersede the local laws made for the same or similar purpose by the local government of the district so prescribed.

(3) The Governor may at any time repeal any by-law made under section 248 of the Local Government Act 1960.

(4) If a by-law made under section 248 of the Local Government Act 1960, or a local law made under subsection (1), is inconsistent with any local planning scheme approved before or after the making of the by-law or local law, and having effect in the district, or in part of the district, in which the by-law or local law is in force, then to the extent of such inconsistency, and in the part of the district in which the local planning scheme has effect, the provisions of the local planning scheme prevail ...

5.45 SSO referred to section 262(2)(b) of the *Planning and Development Act 2005* and stated:

*Section 262(1)(b) is only necessary if a local government can make local laws for the same or similar purposes as at least some of the purposes set out in Schedule 8 to the PD Act ...*³²

5.46 While in isolation that subsection assumes power to make local laws on matters that overlap with matters that may be addressed in a local planning scheme, it has to be interpreted in the context of the section, and Act, as a whole.

5.47 It is, in the Committee's opinion, significant that subsection 262(4) refers only to local laws made by the Governor under section 262(1) and by-laws made under the now repealed section 248 of the *Local Government Act 1960* in setting out the hierarchy of local laws vis-à-vis planning schemes. Section 248 of the *Local Government Act 1960* conferred power on local governments to make by-laws (now known as local laws):

for the purposes of carrying into effect all or any of the purposes mentioned in the Second Schedule to the Town Planning and Development Act 1928.

³² Letter from State Solicitor's Office to Department of Local Government and Regional Development, 9 June 2008, pp2-3.

- 5.48 The Second Schedule to the *Town Planning and Development Act 1928* contained a clause in the same terms as clause 6 of Schedule 8 to the *Planning and Development Act 2005* (see paragraph 5.42 above). There was, therefore, under the *Local Government Act 1960* express power for local governments, in addition to the Governor, to make local laws regulating matters that might also be addressed in a local planning scheme.
- 5.49 However, section 248 of the *Local Government Act 1960* was repealed some 10 years prior to the *Planning and Development Act 2005* coming into effect. While local laws made under section 248 of the *Local Government Act 1960* continue in force under the *Local Government Act 1995*, at the time of proclamation of the *Planning and Development Act 2005*, there was no extant power to make local laws under the repealed section 248. There is no equivalent provision in the *Local Government Act 1995*.
- 5.50 The Committee notes that the only reference in the *Planning and Development Act 2005* to local laws made pursuant to the *Local Government Act 1995* and *Local Government (Miscellaneous Provisions) Act 1960* is in the provisions that an interim development order prevails over such laws. Interim local development orders may only be made where there is no local planning scheme.
- 5.51 Given this history, section 256(4) of the *Planning and Development Act 2005* suggested to the Committee that that Act contemplated that only continuing local laws made pursuant to the now repealed section 248 of the *Local Government Act 1960*, and local laws made by the Governor pursuant to section 256(1) of the *Planning and Development Act 2005*, might canvass the same matters as a local planning scheme. It does not suggest that local laws made by local governments under the *Local Government Act 1995*, or section 433 of the *Local Government (Miscellaneous Provisions) Act 1960*, may do so.³³

Conclusions - *Planning and Development Act 2005*

- 5.52 In formulating and enforcing a local planning scheme, a local government is exercising a function conferred by sections 71, 73(1)(b) and 218 of the *Planning and Development Act 2005*. That Act ‘covers the field’ in respect of the planning and development functions it confers on local governments and, in particular, in respect of the matters set out in Schedule 7. In particular, it contemplates that prescribed general provisions - such as the Model Scheme Text - will only be supplemented, varied or excluded in a local planning scheme and then only to the extent approved by the Minister.

- 5.53 The *Planning and Development Act 2005* authorises and contemplates enforcement of a local planning scheme by way of the provisions in that Act and the subsidiary instruments authorised by it. These do not include local laws made by local governments.
- 5.54 While the *Planning and Development Act 2005* confers power on the Governor to make uniform local laws in respect of certain matters that may also be the subject of a local planning scheme, it does not confer power on local governments to do so.
- 5.55 There is a history of local governments making by-laws (as local laws were previously titled) under the now repealed section 248 of the *Local Government Act 1960* regulating signage and advertising devices from a planning and development perspective. However, the provisions authorising that practice have been repealed.
- 5.56 Insofar as signs and advertisements fall within the definition of “*development*” in the *Planning and Development Act 2005*, that is, they comprise “*structures*” or the “*erection, construction, alteration of or addition to any building or structure*” or “*use of land*” they fall within the ambit of the matters that the *Planning and Development Act 2005* requires, authorises and contemplates local governments will regulate, from a planning and development perspective, by a local planning scheme.
- 5.57 It does not appear to the Committee that the *Planning and Development Act 2005* authorises or contemplates regulation of other signs or advertisements through local planning schemes.

6 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1960

- 6.1 As has been noted above, when the *Local Government Act 1995* was proclaimed, a significant proportion of the *Local Government Act 1960* was repealed, with what the former Minister for Housing and Works describes as “*the remnants*” of that Act being retitled the *Local Government (Miscellaneous Provisions) Act 1960*.
- 6.2 Those remnants include section 433 of the *Local Government (Miscellaneous Provisions) Act 1960*, which provides that local laws may be made under the *Local Government Act 1995* in respect of a number of matters, relevantly including:

(21) for regulating, restricting or prohibiting the performance of building work or the erection or construction of a building or structure within a prescribed distance from a street or other public place and investing the local government with discretion to dispense

³³ The Committee notes that in advice provided to the Department of Local Government and Regional Development on 29 October 2007, SSO stated: “*There is no facility in the Planning and Development Act 2005 for local governments to make local laws in the context of local planning schemes. The Governor, however, has power under section 262 to make local laws for carrying into effect the matters specified in Schedule 8 to the Ac*” (sic)”

with compliance with any such local law and otherwise for regulating the position of any building or structure;

...

(37) for regulating, restricting or prohibiting the affixture or construction of awnings or other attachments to buildings;

...

6.3 The Committee was unable to identify any regulation prescribing the distance for the purpose of section 433(21) of the *Local Government (Miscellaneous Provisions) Act 1960*.³⁴

6.4 Neither the word “*structure*” nor the word “*building*” is defined in the *Local Government (Miscellaneous Provisions) Act 1960*. The Committee considers that some signs, advertising devices and billboards will constitute “*structures*” or “*attachments*” using the ordinary meaning of those words.

6.5 There is, therefore, an overlap in the matters that are to be dealt with in a local planning scheme made under the *Planning and Development Act 2005* and those which may be dealt with in a local law made under the *Local Government Act 1995* pursuant to section 433 of the *Local Government (Miscellaneous Provisions) Act 1960*. The former Minister for Housing and Works provided the following clarification of the matters addressed by section 433 of the *Local Government (Miscellaneous Provisions) Act 1960*:

Signs in the sense of physical structures, whether free standing (ie pylons signs) or attached to existing building [sic] (ie awning, vertical, roof signs, etc) fall within the ambit of section 433(21) and (37) because this Part of the Act deals specifically with the structural stability and fire safety of building and structures as well as building related health (eg weather and water proofing), amenity (eg lighting and ventilation or encroachments over, on or under a street in accordance with section 400) and sustainability issues (ie energy efficiency). Advertisements in the sense of painted or affixed wording, pictures, or the like do not fall into the ambit of these provisions.

6.6 The former Minister for Housing and Works also provided the following relevant advice:

³⁴ The Committee explored the question of whether the distance could be prescribed in the local law itself, but concluded that the fact that other subsections of section 433 specifically provided that matters could be prescribed in a local law made under that section precluded that interpretation being given to section 433(21).

You may be aware that the Local Government Act 1995 replaced the Local Government Act 1960 with the remnant part of that Act, which include[s]... Part XV Buildings of the Act, remaining in force as the Local Government (Miscellaneous Provisions) Act 1960 with the intention of reviewing the provisions, and in the case of building control matters, to develop a new Building Act.

The Act contains provisions that are now archaic and the powers in Section 433, for which local laws could be made under the Local Government Act 1995, are very broad and do extend beyond building control (ie setback and location of buildings and structures in Section 433(21) are primarily planning related - unless the setbacks relate to fire separation) and as such these provisions require change.³⁵

6.7 Section 3.7 of the *Local Government Act 1995* provides:

A local law made under this Act is inoperative to the extent that it is inconsistent with this Act or any other written law.

6.8 The *Planning and Development Act 2005* is a “written law”. (A local planning scheme is also a “written law” by reason of section 5 of the *Interpretation Act 1984* and section 20(2) of the *Planning and Development (Consequential and Transitional Provisions) Act 2005*.)

6.9 The question that arises is whether the *Planning and Development Act 2005* evinces an intention to ‘cover the field’ in relation to signs and advertisements that constitute structures or additions or alterations to buildings so as to:

- as a later enactment, impliedly repeal, either partially or in whole, the powers conferred by section 433 of the *Local Government (Miscellaneous Provisions) Act 1995*; or
- render any local law addressing a matter contemplated by the *Planning and Development Act 2005* as being dealt with by a local planning scheme inconsistent with that Act

or whether there are matters that if regulated by a local planning scheme, may not also be regulated by a local law.

6.10 SSO did not directly address these questions in advices provided to the Department of Local Government and Regional Development. SSO does, however, note that obtaining planning approval for the erection of a building under a local planning

³⁵ Letter from the former Minister for Housing and Works, 19 May 2008, p1.

scheme does not dispense with the requirement for a building licence under section 374 of the *Local Government (Miscellaneous Provisions) Act 1960* and states:

*In broad terms, the planning approval is concerned with whether the building should be permitted; the building licence is concerned to ensure that having been permitted, the building meets appropriate standards. While building licences are provided for in primary legislation, unlike any requirement that may be imposed by a local law, their existence illustrates the possibility that planning approval may not address every issue that is proper for regulation.*³⁶

6.11 The former Minister for Housing and Work's view was that:

The Act contains provisions that are now archaic and the powers in Section 433, for which local laws can be made under the Local Government Act 1995, are very broad and do extend beyond building control (ie setback and location of buildings and structures in Section 433(21) are primarily planning related - unless the setbacks relate to fire separation) and as such these provisions require change.

6.12 Where possible, legislation should be interpreted as being consistent. The Committee is of the view that the *Planning and Development Act 2005* 'covers the field' in respect of regulation of signs and advertisements that constitute developments, use of land, structures or additions or alterations to buildings from a development and planning perspective. It follows that section 433 of the *Local Government (Miscellaneous Provisions) Act 1960* only authorises local laws to the extent that they do not address these matters.

Conclusion

6.13 When viewed in isolation, there is an apparent overlap between the matters the *Planning and Development Act 2005* contemplates being exclusively regulated by local planning schemes and the matters the *Local Government (Miscellaneous Provisions) Act 1960* contemplates being regulated by local laws. However, when the empowering provisions in each Act are restricted to the purposes and objects of the relevant Act, the two Acts can be interpreted consistently with each other.

6.14 The power conferred by the *Local Government (Miscellaneous Provisions) Act 1960* to make local laws in respect of buildings and structures is only to be exercised for the purposes of that Act distinct from the purposes of the *Planning and Development Act 2005* - for example: structural stability, fire safety, building related health and

³⁶ Letter from State Solicitor's Office to Department of Local Government and Regional Development , 9 June 2008, p7.

sustainability issues (as described by the former Minister for Housing and Works). It is not to be exercised for planning or development purposes.

- 6.15 Local laws made under the power conferred by the *Local Government (Miscellaneous Provisions) Act 1960* must be consistent with the local planning schemes for the relevant district and must not address the same purposes.

7 *LOCAL GOVERNMENT ACT 1995*

- 7.1 Section 3.5(1) of the *Local Government Act 1995* provides that a local government may:

make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act. (Committee's emphasis)

- 7.2 Section 3.1 of the *Local Government Act 1995* sets out the functions of a local government:

(1) The general function of a local government is to provide for the good government of persons in its district.

(2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.

(3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

(Committee's emphasis)

- 7.3 The functions and, therefore, the law-making power conferred by the *Local Government Act 1995* are broad. However, section 3.1(2) limits the general function conferred by section 3.1(1). The *Planning and Development Act 2005* provides for local governments to perform planning and development functions. These functions, therefore, do not fall within the ambit of section 3.5(1), not being conferred by the *Local Government Act 1995*.

- 7.4 When read with section 3.1(2), section 3.5(1) of the *Local Government Act 1995* suggests to the Committee that local laws may only be made concerning local government functions conferred by other Acts when those other Acts confer a local law-making power. As has been observed, neither the *Planning and Development Act 2005* nor the *Local Government (Miscellaneous Provisions) Act 1960* confer power on local governments to make local laws in respect of planning and development matters.

7.5 Accordingly, there is no authorisation in the *Local Government Act 1995* for local governments to make local laws that, in effect, canvass matters intended by the *Planning and Development Act 2005* to be dealt with in local planning schemes, enforce a local planning scheme or provide exemptions from provisions of a local planning scheme.

7.6 Further, as previously noted, section 3.7 of the *Local Government Act 1995* provides:

A local law made under this Act is inoperative to the extent that it is inconsistent with this Act or any other written law.

and section 43(1) of the *Interpretation Act 1984* provides:

Subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made, or of any Act, and subsidiary legislation shall be void to the extent of any such inconsistency.

7.7 Thus the general local law-making power conferred by the *Local Government Act 1995* is limited by these provisions, which require consistency with, in this case, the *Planning and Development Act 2005*. A local law that is for a purpose intended to be within the exclusive purview of a local planning scheme - that is regulation of structures from a planning and development perspective - is not authorised or contemplated by the *Local Government Act 1995*.³⁷

7.8 However, it is not clear where the lines are to be drawn in what local laws may address while maintaining “consistency” with the purposes and provisions of the *Planning and Development Act 2005*. SSO observes:

*Characterising the purpose of a particular local law and identifying the legislative intention in relation to that purpose will not always be straightforward.*³⁸

7.9 In the case of the particular local laws before the Committee, the Committee has relied on advice provided by the relevant local governments as to the purposes of their local laws.

7.10 SSO identified regulation of signage from the perspective of amenity as a matter solely within the ambit of local planning schemes, while regulation of signage from

³⁷ SSO agreed with the Committee’s view, stating: “*In my view, a local law which is properly to be characterised as being for a purpose which was intended to be exclusively the subject of a local planning scheme made under the Planning and Development Act would be invalid as not falling within section 3.5 of the Local Government Act (on the basis that it did not relate to a function under the Local Government Act) and as being inconsistent with the Planning and Development Act and with the local planning schemes established under that Act.*” (Letter from State Solicitor’s Office to Department of Local Government and Regional Development, 29 October 2007, p2).

³⁸ Ibid p3.

the perspective of traffic safety was identified as a matter that could be regulated through a local law. However, the former Minister for Housing and Works identified amenity issues relating to signs and advertising devices that the Minister considered were regarded as properly the subject of local laws made under the *Local Government (Miscellaneous Provisions) Act 1960*. It seemed to the Committee that in determining the number and size of signs that would be permitted by a local planning scheme, traffic safety would be an inherent consideration.

7.11 The former Minister for Housing and Works' view that signs and advertising devices comprising "*painted or affixed wording, pictures, or the like*" do not fall within the ambit of the matters intended to be regulated by local planning schemes seemed a proper distinction to the Committee. However, this would need to be considered in the context of whether the sign or advertising device involved a commercial reward for use of a development so as to constitute use of land or advertised a business on the premises so as to be an aspect of use in a designated usage zone.

7.12 While SSO is of the view that:

Provided that the local law related to and was confined in its operation to the performance of a function conferred upon the local government by the LG Act, it would be valid but inoperative to the extent of any inconsistency with [a local planning scheme],³⁹

the Committee takes the view that empowering legislation does not authorise or contemplate the making of provisions inoperative from their inception in subsidiary legislation.

Subsidiary legislation under the LGA

7.13 Regulation 38 of the *Local Government (Functions and General) Regulations 1996* provides that in the event there is no model local law made by the Governor under section 3.9 of the *Local Government Act 1995* in respect of a matter, local governments may adopt model by-laws made pursuant to the repealed section 238 of the *Local Government Act 1960*. No model local law regulating signs and advertising devices has been made under section 3.9 of the current Act.

7.14 There was a model by-law made under the *Local Government Act 1960* for "*Signs, Hoardings and Billpostings*". However, it is not clear that the *Local Government Act 1995* authorises the adoption of this model by-law, which is based on the specific power contained in the repealed section 248 of the *Local Government Act 1960* to make local laws in respect of the planning and development matters specified in the Second Schedule to *Town Planning and Development Act 1928*.

³⁹ Letter from State Solicitor's Office to Department of Local Government and Regional Planning, 9 June 2008, p6.

7.15 As none of the instruments being considered by the Committee adopted the text of the *Local Government Model By-Laws (Signs, Hoardings and Billposting) No. 13*, the Committee did not reach a concluded view on this matter. Nor did it examine the *Local Government Model By-Laws (Signs, Hoardings and Billposting) No. 13* to determine whether any of its provisions were inconsistent with current legislation.

8 CONCLUSIONS ON LEGISLATION

8.1 Having regard to the provisions of the *Planning and Development Act 2005* and sections 3.1 and 3.7 of the *Local Government Act 1995*, neither the *Local Government (Miscellaneous Provisions) Act 1960* nor section 3.5(1) of the *Local Government Act 1995* confers power on local governments to make local laws regulating, from a planning or development perspective, signs and advertising devices that constitute “developments” (or an aspect of designated use of land) as defined in the *Planning and Development Act 2005*

8.2 In particular, in the circumstances that:

- in enforcing a local planning scheme a local government is performing a function conferred by the *Planning and Development Act 2005*; and
- the *Planning and Development Act 2005* contains/contemplates a comprehensive scheme for enforcement of local planning schemes through its provisions and regulations made pursuant to those provisions

enforcement of a local planning scheme through a local law is not authorised or contemplated by the *Local Government Act 1995*.

8.3 Any provision in a local law made with the purpose of enforcing a local planning scheme - or more generally regulating “developments” from a planning or development perspective - would be inconsistent with the *Planning and Development Act 2005* and thus inoperative by virtue of section 3.7 of the *Local Government Act 1995* and void by virtue of section 43(1) of the *Interpretation Act 1984*. The *Local Government Act 1995* does not authorise or contemplate the making of provisions in local laws that are inoperative or void.

8.4 While it is arguable that signs and advertising devices that fall within the ambit of the *Planning and Development Act 2005* could be regulated for other purposes through local laws, in view of the range of matters set out in schedule 7 to the *Planning and Development Act 2005* and the Model Scheme Text, the Committee had difficulty in identifying examples of when that might legitimately occur.

8.5 It did appear that local laws regulating signs or advertising devices constituting physical structures from a structural stability and fire safety, as well as building-related health and energy efficiency, perspective might be authorised under the *Local*

Government (Miscellaneous Provisions) Act 1960. Those local laws, however, were required to be consistent with, and not merely supplement, local planning schemes.

- 8.6 Where local governments sought to rely on approvals/licences granted under a local planning scheme to identify the signs to which the non-development or planning regulation imposed by local law applied, care needed to be taken to ensure that the enforcement provisions of the local law did not extend to enforcing obligations imposed under the local planning scheme.
- 8.7 Temporary non-commercial signs and advertising devices that do not constitute structures, or an aspect of particular use of land, such as small signs advertising a garage sale at a private residence or loss of a pet or property, do not fall within the ambit of the *Planning and Development Act 2005*. These types of signs and advertisements may properly be the subject of a local law (provided the local law was directed at the good governance of the persons in the district).

9 RESPONSE FROM MINISTERS AND DEPARTMENTS

- 9.1 Some responses to the Committee's inquiries have been referred to above.
- 9.2 The Department of Planning and Infrastructure advised the Committee that it is in the process of preparing regulations giving effect to the infringement notice provisions in the *Planning and Development Act 2005*. This would fill the legislative gap encouraging local governments to seek to enforce their local planning schemes through local laws. The Committee notes that it received similar advice in December 2006.
- 9.3 The former Minister for Local Government advised that there was, at that time, no plan to introduce legislation giving effect to the policy (noted in paragraph 2.7 above) that local laws should not regulate signage on private property. The former Minister advised that the primary reason for local governments making signs local laws - identified as lack of power to issue infringement notices enforcing local planning schemes - would shortly be addressed.
- 9.4 The former Minister for Housing and Works also advised that a new Building Bill was being drafted to replace the relevant provisions of the *Local Government (Miscellaneous Provisions) Act 1960* and that that Bill would more clearly delineate building and planning matters.
- 9.5 The Committee enquired of the former Minister for Planning and Infrastructure whether there was any proposal to amend the *Planning and Development Act 2005* to clarify whether, and the extent to which, local governments could make local laws regulating signage. The former Minister advised that clarification was not necessary:

as the operation of the Planning and Development Act 2005 requires that planning matters associated with advertising are dealt with under a local planning scheme...

Further to this, the Model Scheme Text contains several provisions that deal with advertisements. Clause 9.1 requires that an application for developmental approval be made for the erection, placement or display of an advertisement. In addition, clause 11.2 gives the local government the power to give written notice directing an advertiser to remove or repair the advertisement.

Advertisement is defined in Schedule 1 of the Model Scheme Text as:

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....

The former Minister went on to state:

*This definition encompasses most forms of advertising, including those that require structures.*⁴⁰

9.6 The former Minister's comment on the definition of advertisements is clearly correct. However, as has been noted, it was not clear to the Committee that the *Planning and Development Act 2005* contemplates such a wide definition.

9.7 The former Minister for Planning and Infrastructure also stated that:

*If the provisions of the Model Scheme Text are incorporated into a local planning scheme, then it is clear that the local government has the authority to regulate advertising. There would be no need for a local law to be created....*⁴¹

9.8 The former Minister's view that the *Planning and Development Act 2005* and the Model Scheme Text provisions in a local planning scheme are the appropriate means of local government regulation has previously been noted.

9.9 However, the former Minister also noted that:

⁴⁰ Letter from the former Minister for Planning and Infrastructure , 27 June 2008, p1.

⁴¹ Letter from former Minister for Planning and Infrastructure, 27 June 2008, p2.

Section 3.1 of the Local Government Act 1995 states that the general function of a local government is to provide for the good government of the persons in its district. It is arguable that this function is sufficiently broad to encompass the regulation of advertising in the district. So it may be possible for local laws to be made on the subject.

- 9.10 This confirmed the Committee’s view that there is a lack of clarity in the legislation governing this area.
- 9.11 In the Committee’s view, attempting to set limits on what matters relating to signs and advertising devices may be regulated through local laws by policy advice on “*appropriateness*” has not been effective.

10 COMMITTEE’S CONCLUSIONS IN RESPECT OF CITY OF ARMADALE- SIGNS LOCAL LAW 2007 AND TOWN OF VICTORIA PARK - SIGNS LOCAL LAW 2006

City of Armadale - Signs Local Law 2007

- 10.1 Enforcing a local planning scheme is a function conferred on a local government by the *Planning and Development Act 2005*. Section 3.5(1) of the *Local Government Act 1995* does not authorise the making of provisions in local laws that, in effect, do no more than enforce local planning schemes made under the *Planning and Development Act 2005*.
- 10.2 Further, the *Planning and Development Act 2005* contemplates that local planning schemes will be enforced exclusively in accordance with that Act. In particular, the *Planning and Development Act 2005* sets out a process of providing through regulation for infringement notices for breach of a local planning scheme.
- 10.3 Any provision in a local law that, in effect, enforces a local planning scheme is inconsistent with the *Planning and Development Act 2005* and not authorised by reason of section 3.7 of the *Local Government Act 1995* and section 43(1) of the *Interpretation Act 1984*.
- 10.4 It follows that the Committee concluded that those provisions of the *City of Armadale - Signs Local Law 2007* that sought to enforce its planning schemes were not authorised or contemplated by empowering legislation.

Town of Victoria Park - Signs Local Law 2006

- 10.5 Signs and advertising devices that fall within the ambit of “*development*” for the purposes of the *Planning and Development Act 2005* may be regulated by way of local laws only for purposes other than planning and development. However, the Committee had difficulty in identifying clear examples of when that might occur.

- 10.6 This local law was directed at amenity. The Committee is of the view that general amenity and safety are inherent considerations in regulation of signs and advertising devices from a planning and development perspective, which the *Planning and Development Act 2005* intends to be within the exclusive purview of local planning schemes. It notes in particular that Schedule 7 contains wide powers in respect of amenity.
- 10.7 Signs and advertising devices comprising “*painted or affixed wording, pictures, or the like*” generally do not fall within the ambit of the matters intended to be regulated by local planning schemes. Nor do temporary signs that do not constitute structures, such as small signs advertising a garage sale at a private residence or loss of a pet. These types of signs and advertisements may, in the Committee’s opinion, be the subject of a local law (provided the local law was directed at the good governance of the persons in the district).
- 10.8 However, this general situation is subject to the proviso that some of these signs and advertising devices may fall within the ambit of the *Planning and Development Act 2005* as use of land. The extracts from court judgements cited at paragraphs 5.13 to 5.17 above illustrate the circumstances in which this might occur.
- 10.9 The Committee is of the view that section 3.7 of the *Local Government Act 1995*, and the provisions of the *Planning and Development Act 2005* and the *Town Planning Regulations 1967* relating to the prescription of general scheme provisions and requirement for Ministerial approval of supplement, variation or exclusion of those provisions in a local planning scheme,⁴² have the effect that in the event there has been no prior Ministerial approval of a variation of the Model Scheme Text, local laws should not be inconsistent with the Model Scheme Text prescribed by the *Town Planning Regulations 1967*. (The Committee has, however, reservations as to whether the definition of “*advertisement*” in Schedule 1 of that Model Scheme Text is consistent with the provisions of the *Planning and Development Act 2005*.)
- 10.10 As its provisions were inconsistent with Model Scheme Text provisions regulating the conditions on which home businesses and home occupation uses were to be granted, and there had been no Ministerial approval of those variations, the Committee tended to the view that clause 40 of the *Town of Victoria Park - Signs Local Law 2006* was not authorised or contemplated due to inconsistency with other written law.
- 10.11 More clearly, clause 40 was unauthorised as it addressed a matter contemplated by the *Planning and Development Act 2005* to be solely regulated through a local planning scheme.

⁴² Section 87 of the *Planning and Development Act 2005* requires Ministerial approval for a local planning scheme. However, it was not clear that this addressed an argument that the model scheme, although not varied, does not apply because it is not appropriate.

11 RESPONSE BY LOCAL GOVERNMENTS

11.1 The Committee acknowledges the cooperation of the Town of Victoria Park, which agreed to:

- repeal clause 40 of its Signs Local Law 2007; and
- not to enforce it in the interim.

11.2 The City of Armadale provided an undertaking to amend the drafting defects identified in its *Signs Local Law 2007* but declined to repeal the clauses the Committee found to be unauthorised as doing no more than enforcing a local planning scheme. The City advised that the reason for its refusal was that to do so would:

*effectively rende[r] the Local Law unworkable.*⁴³

11.3 The City's amendment to its signs local law is the subject of a separate report.

11.4 The Committee did not require any undertakings in respect of the *Shire of Harvey - Local Law Relating to Signs and Other Advertising Devices 2007* and *City of Nedlands - Signs Local Law 2007*. However, the Committee encourages those local governments to review their local laws in light of the conclusions reached in this report.

12 RECOMMENDATIONS

12.1 The Committee noted advice from the former Minister for Planning and Infrastructure that regulations necessary to implement the infringement notice provisions of the *Planning and Development Act 2005* in respect of local planning schemes were being drafted in 2007.

Recommendation 1: The Committee recommends that the Minister for Planning gazette regulations giving practical effect to section 227 of the *Planning and Development Act 2005* as a matter of some urgency.

12.2 The Committee notes advice from the former Minister for Housing and Works that a new Building Bill is in being drafted and that that Bill will more clearly delineate building from planning matters.

Recommendation 2: The Committee recommends that any Building Bill proposed by the Minister for Housing and Works clearly delineate building from planning matters.

⁴³ Letter from City of Armadale, 1 February 2008, p1.

12.3 The Committee's unease with the efficacy of providing the definition of "advertisement" in subsidiary legislation - the Model Scheme Text - has been noted in this report. The Committee has also noted the difficulty in establishing under current legislation which matters concerning signs and advertising devices fall within the exclusive ambit of the *Planning and Development Act 2005* and which matters may be regulated under the general local law-making power conferred by section 3.5(1) of the *Local Government Act 2005*.

Recommendation 3: The Committee recommends that the matters concerning signs and advertising devices that fall within the exclusive ambit of the *Planning and Development Act 2005* and the matters that may be regulated under the general local law-making power conferred by section 3.5(1) of the *Local Government Act 2005* be clarified by legislative provision.

12.4 The Committee has noted the importance of identifying a non-planning or development purpose for a local law regulating signs and advertising devices in order for that local law to be authorised by the *Local Government Act 1995*.

Recommendation 4: The Committee recommends that in the event a local government makes a local law seeking to regulate signs and advertising devices constituting a "development" or "use of land" as those terms are used in the *Planning and Development Act 2005*, that local government, in providing to the Committee the explanatory materials required by the Minister's Circular No. 28-2005, identify the non-planning and development matters at which the local law is directed.



Mr Joe Francis MLA

Chairman

Date: 2 April 2009

APPENDIX 1

TOWN OF VICTORIA PARK - SIGNS LOCAL LAW 2006

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TOWN OF VICTORIA PARK - SIGNS LOCAL LAW 2006

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LOCAL GOVERNMENT ACT 1995

TOWN OF VICTORIA PARK

SIGNS LOCAL LAW 2006

LOCAL GOVERNMENT ACT 1995

TOWN OF VICTORIA PARK

SIGNS LOCAL LAW 2006

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FIRST SCHEDULE

LOCAL GOVERNMENT ACT 1995

TOWN OF VICTORIA PARK

SIGNS LOCAL LAW 2006

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Victoria Park resolved to make the Town of Victoria Park Signs Local Law 2006 on the 12 December 2006.

PART 1—PRELIMINARY

Title

1. This local law may be referred to as the *Town of Victoria Park Signs Local Law 2006*.

Commencement

2. This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

Purpose

3. The purpose of this local law is to provide for the regulation, control and management of signs within the district.

Repeal

4. The Municipality of the Town of Victoria Park By-Law Relating to Signs as published in the *Government Gazette* on 25 February 1983 and amended as published in the *Government Gazette* on 19 July 1996 is repealed.

Transitional

5. A sign which—

- (a) was displayed prior to the commencement date; and
- (b) immediately prior to the commencement date was the subject of a valid licence issued under the local laws repealed by clause 4,

is deemed to be the subject of a valid licence issued under this local law on the same terms and conditions as the licence issued under the local laws repealed by clause 4, for so long as the sign is not changed, but otherwise the provisions of this local law shall apply to the sign.

Application

6. This local law applies throughout the district.

Terms used in this Local Law

7. In this local law, unless the context requires otherwise—

“**Act**” the *Local Government Act 1995*;

“**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. The term includes any airborne device anchored to any land or building and any vehicle or trailer or other object placed or located so as to serve the purpose of advertising;

“**aggregate area**” means the total, combined surface area of each instance of that type of sign on a site;

“**applicant**” means a person who applies for a licence;

“**application fee**” means the application fee referred to in subclause 10(2)(d) and which relates to the lodgement, assessment and determination of an application for a licence, but does not include the licence fee;

“**area of a sign**” means that portion contained within a polygon drawn around a text, graphics and/or image and not the entire background provided that the colour of the background of the sign does not substantially differ from the colour of the surface to which the sign is attached;

“**authorized person**” means a person authorized by the Town under section 9.10 of the Act to perform any of the functions of an authorized person under this local law;

“**bill**” means—

- (a) any written, printed or illustrated message on paper or a similar material;
- (b) commonly produced in volume for either or both of the purposes of distribution to persons or for posting or attaching to any structure or thing; and
- (c) where the message advertises or promotes an event, person or thing,

which is not an exempted advertisement;

“**Council**” means the Council of the Town;

“**commencement**” date means the day on which this local law comes into operation;

“**display**” in relation to a sign, includes the erection, placement, use and maintenance of the sign;

“**display**” in relation to a bill, includes the posting, attachment, erection, placement, use and maintenance of the bill;

“**district**” means the district of the Town;

“**exempt advertisement**” mean an advertisement exempted from the requirement to obtain planning approval on the basis of compliance with the standard criteria in Part 4 of this local law;

“**land**” includes buildings, parts of buildings and other structures and land covered with water;

“**licence**” means a licence issued under this local law;

“**licensee**” means the person to whom a licence is issued, transferred or deemed to be transferred and includes the holder of a licence deemed to be issued under this local law;

“**licensed sign**” means a sign which is the subject of a valid licence;

“**local government property**” means any thing—

- (a) which belongs to the Town;
- (b) of which the Town is the management body under the *Land Administration Act 1997*;
- (c) which is an otherwise unvested facility within section 3.53 of the Act;

and includes a thoroughfare;

“**person**” does not include the Town;

“**policy**” includes a planning policy made under the Scheme;

“**Scheme**” means the Town of Victoria Park Town Planning Scheme No. 1;

“**Scheme Area**” means the Scheme area referred to in clause 4 of the Scheme;

“**sign**” has the same meaning as advertisement;

“**thoroughfare**” has the meaning given to it in section 1.4 of the Act;

“**Town**” means Town of Victoria Park;

“**vehicle**” includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden, driven or led, but excludes—
- (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath; and
- (d) a pram, stroller or similar device.

PART 2—SIGNS TO BE LICENSED AND EXCLUSIONS

Signs to be licensed

8. A person shall not display a sign on any land unless—

- (a) the sign is the subject of a valid licence; and
- (b) the sign is displayed in accordance with the licence and any terms and conditions set out in, or applying in respect of the licence.

Exclusions

9. (1) Clause 8 does not apply to—

- (a) a temporary sign in compliance with Part 5 of this local law;

(2) Where a sign is the subject of a current development approval granted under the Scheme, then the grantee of the development approval is not required to make an application for a licence under clause 10, but clause 14 shall apply.

PART 3—APPLICATION FOR LICENCE AND ISSUE OF LICENCE

Application for licence

10. (1) Where a person is required under this local law to obtain or hold a licence to display a sign, that person shall apply for the licence in accordance with subclause (2).

- (2) An application for a licence under this local law shall—
- be in the form of the First Schedule;
 - be signed by the applicant and by the owner or occupier of the land where the sign is to be displayed;
 - provide the information required by the form or by any other clause of this local law; and
 - be forwarded to the Town together with the application fee.
- (3) The Town may refuse to consider or determine an application for a licence which is not in accordance with subclause (2), or any other clause relating to the requirements to be complied with when making an application for a licence.

Determination of application

11. (1) The Town may, in respect of an application for a licence—
- refuse to approve the application; or
 - approve the application on such terms and conditions as it sees fit.
- (2) In determining any application for a licence, the Town may have regard to—
- any policy of the Town which applies to signs;
 - the impact of the sign on the quality of the streetscape where it is to be displayed and more generally of the district;
 - whether the size of the sign appropriately relates to the architectural style, design and size of a building on which the sign is to be displayed, and in measuring the size of a sign a polygon shall be taken immediately around the text, graphics or image of the sign and not the entire background, except where the finish or colour of the background differs substantially from the background against which the sign is to be displayed;
 - whether the colour scheme and materials of the sign are compatible with the architectural style and design of a building on which the sign is to be displayed;
 - whether the colour scheme and materials of the sign are compatible with the overall architectural style and design of the area or precinct in which the sign is to be displayed;
 - how many signs are on the land where the sign will be displayed;
 - whether the construction of the sign is sound;
 - whether any insurance should be obtained in relation to the display of the sign; and
 - the matters set out in subclause (3).
- (3) The Town may refuse to approve an application for a licence, where—
- the application has not been made in accordance with clause 10 or any other clause of this local law, relating to the requirements to be complied with when making an application for a licence;
 - the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the licence is sought;
 - the sign may obstruct the sight lines of a person driving or riding a vehicle or a pedestrian;
 - the sign may unreasonably distract persons driving or riding vehicles;
 - the sign may detract from the quality of the streetscape or area where it is to be displayed;
 - the size of the sign does not appropriately relate to the architectural style, design and size of a building on which the sign is to be displayed;
 - the colour scheme and materials of the sign are not compatible with the architectural style and design of a building on which the sign is to be displayed;
 - the colour scheme and materials of the sign are not compatible with the overall architectural style and design of the area or precinct in which the sign is to be displayed;
 - the construction of the sign is not sound;
 - the sign will be additional to other signs on the land where it will be displayed;
 - in the opinion of the Town, the proposed content of the sign may be considered offensive; or
 - the sign advertises goods or services which are not displayed or offered for sale or otherwise available to the public upon or from the land where the sign is erected;
 - there are other grounds on which the Town considers the application should be refused.
- (4) If the Town refuses to approve an application for a licence, it is to give written reasons for that refusal to the applicant.

Licence issue

12. (1) Where the Town approves an application for a licence, then the Town shall issue to the applicant a licence in the form determined by the Town.
- (2) A licence may include plans or other documents other than the form of licence.
- (3) A licence shall not be valid until such time as any public liability insurance policy, if required as a condition of the licence, has been put into effect and a certificate of currency covering the period of the licence has been lodged with the Town.

Variation of sign licence

13. The Town may vary the terms or conditions of a licence on application by a licensee, and the licensee shall comply with the terms and conditions as varied on and from the date of the Town giving written notice of the variation to the licensee.

Deemed sign licence

14. (1) Where a sign is the subject of a development approval granted under the Scheme, then—

- (a) a licence to display the sign is deemed to have been issued under this local law to each of the grantee of the development approval and the current owner of the land where the sign is displayed—
 - (i) on the same conditions as those attaching to the development approval;
 - (ii) subject to a condition that the licence will be valid while the development approval remains valid; and
 - (iii) on the date of the notice of the grant of development approval; and
 - (b) the grantee of the development approval and the current owner of the land where the sign is displayed are each deemed to be a licensee.
- (2) A reference in this local law to—
- (a) a licence shall include a reference to a deemed licence under subclause (1); and
 - (b) a licensee shall include a reference to a deemed licence under subclause (1).

Term and validity of licence

15. A licence remains valid until—

- (a) a public liability insurance policy, where required as a condition of the licence, lapses, is cancelled or is no longer in operation; or
 - (b) the licence is cancelled by the Town,
- and the licensee, the owner or occupier of the land where the sign is displayed or any person displaying the sign, must immediately cease to display the sign and remove the sign from display.

Responsibilities of licensee

16. A licensee shall comply with the terms and conditions of the licence.

Cancellation of licence

17. (1) The Town may cancel a licence if—

- (a) the licensee does not comply with a term or condition of the licence;
- (b) the licensee does not comply with a provision of this local law;
- (c) variations are made to the sign or to its content which have the effect that the sign is not that approved by the licence;
- (d) the licensee is convicted of an offence against this local law;
- (e) in the case of a licence deemed to be issued under clause 14(1), the licensee is convicted of an offence against the Scheme or the *Planning and Development Act 2005* in relation to the sign; or
- (f) a licensed sign is so altered that it is determined by the Town to be detrimental to the interests of the public, any adjacent property owner or occupier.

Rights of objection and appeal

18. When the Town makes a decision as to whether it will—

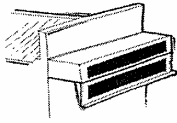
- (a) grant a person a licence under this local law; or
- (b) vary or cancel a licence that a person has under this local law,

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the *Local Government (Functions and General) Regulations 1996* apply to that decision.

PART 4—EXEMPT SIGNS**Standards for exempt advertising signs**

19. Advertising signs that—

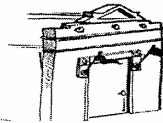
- (a) meet the standards set out in this part;
 - (b) comprise no more than five individual advertising signs per tenancy; and
 - (c) where illuminated, are illuminated in a manner that does not flash or pulsate,
- are exempt from the requirement to obtain planning approval, but will require a sign licence.

Awning sign

20. (1) An awning sign is an advertising sign fixed to the outer or return fascia of an awning or verandah associated with a commercial building, and includes signs on blinds, sunshades and similar structures.

(2) An awning sign is an exempted sign where—

- (a) there is only one such sign per street frontage of the subject tenancy;
- (b) it has an area of 0.4m^2 per 1m of street frontage of the subject tenancy (up to a maximum area of 10m^2) and
- (c) it is contained within the width of the building.

Flag Sign

21. (1) A flag sign is an advertising sign that is printed onto a flag (typically flown from a pole) and associated with a commercial property.

(2) Flag signs are exempt advertisements where—

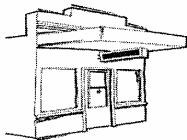
- (a) the aggregate area of surfaces that provide advertising is 0.2m^2 per 1m of street frontage of the subject tenancy (up to a maximum aggregate area of 2m^2);
- (b) they have a minimum ground clearance of 2.4m;
- (c) their maximum height is less than 3m above ground level; and
- (d) they project less than 0.6m from the facade of the building.

Public Authority Sign

22. A public authority sign is an advertising sign provided by a public authority to provide directions or information and is an exempt sign.

Sign Required by Law

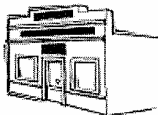
23. A sign required by law is an advertising sign required under any Act or Statute and is an exempt sign.

Under Verandah Sign

24. (1) An under verandah sign is an advertising sign placed perpendicular to the façade of a commercial building and located under a verandah or awning.

(2) An under verandah sign is an exempt advertisement where—

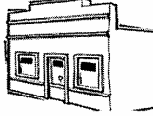
- (a) there is only one such sign per street frontage of the subject tenancy;
- (b) the aggregate area of all surfaces that provide advertising is 0.2m^2 per 1m of street frontage of the subject tenancy (up to a maximum area of 2m^2) and in cases where only one surface is provided with advertising the area is 0.1m^2 per 1m of street frontage of the subject tenancy (up to a maximum area of 1m^2); and
- (c) it has a minimum ground clearance of 2.7m.

Wall Sign

25. (1) A wall sign is an advertising sign attached or painted directly onto an external wall of a commercial building.

(2) A wall sign is exempt where it is an aggregate area of 0.4m² per 1m of street frontage of the subject tenancy (up to a maximum aggregate area of 10m²).

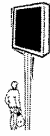
Window Sign



26. (1) A window sign is a sign attached to a window of a commercial building, or which is located in the interior of a commercial building and up to 0.6m behind a window.

- (2) One or more window signs are exempt advertisements where—
- (a) they cover no more than 50% of the window to which they are associated; and
 - (b) they have an aggregate area of 0.4m² per 1m of street frontage of the subject tenancy (up to a maximum aggregate area of 10m²).

Pylon Sign



27. (1) A pylon sign is a stand-alone advertising sign supported by one or more piers and not attached to a building.

- (2) A pylon sign is an exempt advertisement where—
- (a) it is constructed so that no part of the sign is less than 2,700mm or more than 6,000mm above the level of the ground immediately under the sign;
 - (b) it does not exceed 2,550mm measured in any direction across the face of the sign or have a greater superficial area than 4m²;
 - (c) it does not project more than 900mm over any street, way, footpath or other public place;
 - (d) it is supported on one or more piers or columns of brick, stone, concrete or steel of sufficient size and strength to support the sign under all conditions;
 - (e) not have any part projecting over any street, way, footpath or other public place at a height of less than 2,700mm;
 - (f) it will not be within 1,800mm of the side boundaries of the lot on which it is erected; and
 - (g) no part will be less than 6m from any part of another sign erected on the same lot of land.

PART 5—TEMPORARY SIGNS

Standards for temporary advertising signs

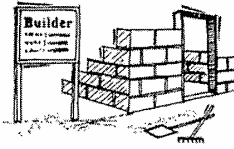
28. Advertising signs that meet the standards set out in this part are exempt from the requirements to obtain development approval and do not require a sign licence.

Property Sale or Lease Sign



29. (1) A property sale or lease sign is an advertising sign that is placed on or in front of a commercial or residential building or site, with the intention of advertising the sale or lease of that building or site.

- (2) A property sale or lease sign is an exempt advertisement where—
- (a) there is only one such sign per street frontage of the subject property;
 - (b) it has an area of 0.1m² per 1m of street frontage of the subject property (up to a maximum aggregate area of 2m²);
 - (c) it is mounted flush against the façade of the building or erected parallel to the street frontage;
 - (d) Its maximum height is less than 3m above ground level; and
- it is removed upon completion of the sale or lease agreement of the property to which it relates.

Construction Site Sign

30. (1) A construction site sign is an advertising sign that is erected at a building site and informs the public about the development and the various companies involved in the development.

(2) A construction site sign is an exempt advertisement where—

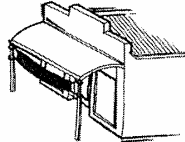
- (a) there is only one such sign per street frontage of the subject property;
- (b) it has a maximum area of 1m^2 where the subject site is less than $5,000\text{m}^2$ in area;
- (c) it has a maximum area of 2m^2 on a site greater than $5,000\text{m}^2$ in area; and
- (d) it is in place only during the course of construction at the subject site, and removed upon completion.

Entertainment Sign

31. (1) An entertainment sign is an advertising sign that is displayed at an entertainment venue to publicise a particular movie or performance.

(2) Entertainment signs are exempt advertisements where—

- (a) they have an aggregate area of 0.2m^2 per 1m of street frontage of the subject tenancy (up to a maximum aggregate area of 10m^2); and
- (b) they are removed upon completion of the event to which they relate.

Banner Sign

32. (1) A banner sign is a temporary advertising sign that is printed onto plastic sheeting, or similar material, and hung by ropes between posts, or hung from a verandah.

(2) A banner sign is an exempt advertisement where—

- (a) there is only one such sign per street frontage of the subject tenancy;
- (b) it has a maximum size of 4m^2 ;
- (c) it has a minimum ground clearance of 2.1m; and
- (d) it is erected for a maximum period of 7 days unless otherwise granted approval in writing.

PART 6—SIGNS THAT REQUIRE PLANNING APPROVAL**Signs that do not meet the standards**

33. (1) Signs that do not meet the standards set out in Parts 4 and 5 require planning approval.

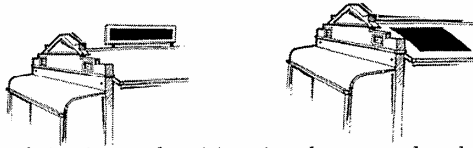
(2) The advertising signs in clauses 35, 36 and 37 require planning approval—

- (a) the Town will generally not approve the provision of any of the advertising signs in clauses 35, 36 and 37 to a commercial premise because they do not provide a positive contribution to the amenity and built form of the locality; and
- (b) in addition, the Town will not approve the provision of any of the advertising signs in clauses 35, 36 and 37 to a property used for residential purposes under any circumstances.

Signs on Places of Cultural Heritage Significance

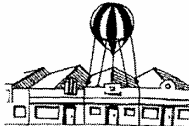
34. Any signs on land, buildings, objects, structures and places included on the Register of Places of Cultural Heritage Significance contained in Schedule 6 of the *Town of Victoria Park Town Planning Scheme No. 1* require planning approval.

Roof signs



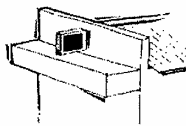
35. A roof sign is an advertising sign that protrudes above the normal roofline of a building or is painted on or mounted flush to the roof of a building.

Balloon/Blimp Sign



36. A balloon or blimp sign is an advertising sign printed on a balloon or similar device and flown above the advertised premises.

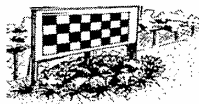
Signs Above Verandahs



37. A sign above a verandah or in excess of 3.4 metres above footpath level on a building without a verandah/awning is an advertising sign fixed or painted on the wall or perpendicular to the wall of a building and usually located above an awning or verandah. In some cases a building may not be provided with an awning or verandah.

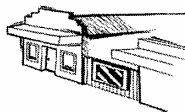
PART 7—NON-PERMITTED SIGNS

Hoarding Signs



38. A hoarding sign is a large freestanding advertising sign and is not permitted in the Town of Victoria Park.

Panel Sign



39. A panel sign is an advertising sign that is attached to a panel and mounted onto an existing vertical structure such as a side fence and is not permitted in the Town of Victoria Park.

Home occupation, home business or home office sign

40. A home occupation, home business or home office sign are advertising signs associated with a home occupation, home business or home office at a residential property and are not permitted in the Town of Victoria Park.

PART 8—NO BILL POSTING

No bill posting

- 41. (1) A person shall not display a bill on any land or on any thing on any land.
- (2) Where a person has contravened subclause (1), then in addition to that person, each of the following persons shall be deemed to have committed an offence against subclause (1)—
 - (a) the owner or occupier of the land where the bill is displayed, except where that was not erected with the knowledge or consent of the owner or occupier as the case may be; and

- (b) where the bill advertises or promotes an event, person or thing—
 - (i) the promoter (who will include any person named on the bill as the promoter or as a person authorizing the bill);
 - (ii) the person, if any, promoted by the bill; and
 - (iii) the owner or occupier of the land where the event, person or thing as advertised or promoted by the bill is to be held or appear, as the case may be.

PART 9—NOTICES

Notice to repair, modify or remove sign

42. (1) Where a sign is not maintained in a good condition or is or becomes dilapidated, or in the Town's opinion the content of the sign is offensive, the Town may issue a notice to the—

- (a) owner or occupier of the land where the sign is displayed;
- (b) the grantee of any development approval issued for the sign; or
- (c) the licensee of the sign,

requiring that person to, as the Town considers appropriate—

- (d) repair or maintain the sign in the manner specified in the notice, or if not so specified, so that it is put into a good condition or so it is not dilapidated;
- (e) modify the content of the sign as specified in the notice; or
- (f) remove the sign from display,

within such time as may be specified in the notice or if no time is specified within 14 days of the Town giving the notice.

(2) Without limiting any other provision of this local law, this clause applies to the signs referred to in clause 9.

Notice to rectify breach

43. Where a person breaches a term or condition of a licence or a provision of this local law, the Town may give a notice to the person specifying the breach and requiring it to be rectified, and the person shall comply with the notice within the period indicated in the notice, or if no period is indicated, within 14 days of the Town giving the notice to the person.

PART 10—MISCELLANEOUS

Fees

44. All fees referred to in this local law shall be imposed and determined by the Town under and in accordance with sections 6.16 to 6.19 of the Act.

Public liability insurance

45. (1) Where, as a condition of a licence, the licensee is required to provide a public liability insurance policy, indemnifying the Town against all actions, suits, claims, damages, losses and expenses made against or incurred by the Town arising from any activity, action or thing performed or erected under the licence, the licensee shall—

- (a) take out a public liability insurance policy in the name of the licensee and the Town, for a minimum value of \$10,000,000 or such other amount as the Town considers appropriate to the risk involved;
- (b) keep that insurance policy current for the duration of the licence;
- (c) include a clause in the policy which prevents the policy from being cancelled without the written consent of the Town;
- (d) include a clause in the policy which requires both the licensee and the insurance company to advise the Town if the policy lapses, is cancelled or is no longer in operation; and
- (e) on the request of an authorized person, provide for inspection of the policy and a certificate of currency for the required insurance policy.

(2) A licensee who refuses or cannot provide a current certificate of insurance within 2 working days of a request under subclause (1)(e) commits an offence.

PART 11—OFFENCES AND PENALTIES

Offences

46. (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) A person who fails to comply with a notice given under this local law commits an offence.

(3) A person who commits an offence under this local law shall be liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

First Schedule
Town of Victoria Park
SIGNS LOCAL LAW 2006
APPLICATION FOR A SIGN LICENCE

PROPERTY DETAILS:

Lot No.	House/Street No.	Location No.	Diagram or Plan No.
Certificate of Title			Lot Area (m2)
Street Name			Suburb
Nearest Street Intersection			Assessment No. (property rate no)

OWNER DETAILS:

Name			
Address			Post Code
Phone (work)	(home)		Fax
Contact Person			
Signature			Date
Signature			Date

OCCUPIER DETAILS:

Name			
Address			Post Code
Phone (work)	(home)		Fax
Contact Person			
Signature			Date
Signature			Date

The signature of the landowner or occupier is required for all applications. This application will not proceed without that signature.

APPLICANT DETAILS:

Name			
Address			Post Code
Phone (work)	(home)		Fax
Contact Person			
Signature			Date

The decision letter will be sent to the applicant.

22 January 2007

GOVERNMENT GAZETTE, WA

177

SIGN:

Type of Sign _____

Location _____

Position at location Materials Illumination—

Internal/External _____

Wording/Illustration _____

(Plan Design attached) _____

OFFICE USE ONLY

Acceptance Initials	Officer's _____	Date Received	_____
Council Reference No	_____		
Application Fee	paid / unpaid *	Checking Inspector	_____
Permit/Licence No	_____	Approval Date	_____

* delete as appropriate

Dated this 20th day of December 2006.

The Common Seal of the Town of Victoria Park was affixed by authority of a resolution of the Council made on 12 December 2006 in the presence of—

J. A. M. (MICK) LEE, OAM JP, Mayor.
J. M. BONKER, Chief Executive Officer.

APPENDIX 2

CITY OF ARMADALE - SIGNS LOCAL LAW 2007

APPENDIX 2

CITY OF ARMADALE - SIGNS LOCAL LAW 2007

LOCAL GOVERNMENT ACT 1995

CITY OF ARMADALE

SIGNS LOCAL LAW 2007

Under the powers conferred by the Local Government Act 1995 as amended from time to time and under all other powers enabling it, the Council of the City of Armadale resolved on 21st May 2007 to make the City of Armadale Signs Local Law 2007.

PART 1 - PRELIMINARY

1. Title

This local law may be referred to as the City of Armadale Signs Local Law 2007.

2. Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

3. Repeal

The Municipality of the Shire of Armadale-Kelmscott By-laws Relating to Signs, Hoardings and Billposting published in the *Government Gazette* on 9 September 1965 is repealed.

4. Application of the local law

This local law applies to all the land throughout the district.

5. Transitional

A sign which immediately prior to the commencement date was the subject of an approval issued under the local laws, repealed by Clause 3, is deemed to be the subject of an approval issued under the Scheme for so long as the sign remains unaltered.

6. Interpretation

In this local law, unless the context otherwise requires:

- “Act” means the *Local Government Act 1995*;
- “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. The term includes any airborne device anchored to any land or building and any vehicle or trailer or other similar object placed or located so as to serve the purpose of advertising;
- “approval” means an approval issued under the Scheme or the Armadale Redevelopment Scheme or a deemed approval under Clause 7;
- “approved sign” means a sign that has been granted an approval under the Scheme;
- “authorised person” means a person authorised by the City under Section 9.10 of the Act to perform any of the functions of an authorised person under this local law;
- “Bill” means:
- (a) any written, printed or illustrated message on paper or a similar material;
 - (b) commonly produced in volume for the either or both of the purposes of distribution to persons or for posting or attaching to any structure or thing; and
 - (c) where the message advertises or promotes an event, person or thing,
- which is not an exempt sign;
- “City” means the City of Armadale;
- “commencement date” means the day on which this local law comes into operation;
- “Council” means the Council of the City;

“district”	means the district of the City;
“exempt sign”	means the signs referred to in Clause 8;
“garage sale”	means the occasional sale of second hand domestic goods in domestic quantities by a person from his or her residence and which occasional sale is not part of a business, trade or profession;
“hoarding”	means a detached structure that is erected for the sole purpose of displaying a sign or signs and does not include a hoarding within the meaning of Section 377 of the <i>Local Government (Miscellaneous Provisions) Act 1960</i> ;
“land”	includes buildings, parts of buildings and other structures and land covered with water;
“local government property”	<p>means any thing-</p> <ul style="list-style-type: none"> (a) that belongs to the City; (b) of which the City is the management body under the <i>Land Administration Act 1997</i>; or (c) which is an otherwise unvested facility within Section 3.53 of the Act; <p>and includes a thoroughfare or verge;</p>
“public place”	means any place to which the public has access and includes, but is not limited to, car parks and verges;
“rural producer’s sign”	means a sign erected on land lawfully used for rural purposes which advertise goods or products, grown or lawfully manufactured on the land within the boundaries of which the sign is located;
“Scheme”	means a current town planning scheme prepared under the <i>Planning and Development Act 2005</i> or the <i>Armadale Redevelopment Act 2001</i> with jurisdiction over land within the local government district of the City of Armadale;
“sign”	means any message, direction or representation whatsoever displayed on or attached to any thing or structure, or a clock, other than a clock that is built into a wall and that does not project beyond the face of the wall, or flags and bunting whether they contain a written message or not and includes any display produced by way of video or electronic means;

“thoroughfare”	has the same meaning given to it in section 1.4 of the Act and includes the verge;
“vehicle”	includes – (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and (b) an animal being ridden, driven or led, but excludes – (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath; and (d) a pram, stroller or similar device;
“verge”	means the portion of a thoroughfare which lies between the boundary of a carriageway and the adjacent property line.

PART 2 – SIGNS TO BE APPROVED

7. Approval

A person shall not erect, maintain or display a sign on any land unless the sign is the subject of a current approval, unless the sign is an exempt sign.

8. Exemptions from Approval

The following signs are exempt signs for the purpose of clause 7:

- (a) a sign that is classified as exempt under the Scheme;
- (b) a sign within a building unless it is clearly visible from a public place outside the building;
- (c) one rural producer’s sign per street frontage which complies with the maximum dimensions 2m height x 2m length;
- (d) a sign erected by the City, or with the approval of the City, on local government property;
- (e) a sign erected and maintained on street furniture, bus shelters or seats in accordance with the terms and conditions of a contract between the City and the company or person responsible for those signs;
- (f) a maximum of 4 garage sale signs per property, each not greater than 0.25m² in area, advertising a garage sale and only being displayed on the day of the garage sale and on no more than 2 occasions for the same property in each 6 month period;

- (g) a sign erected by the City for the purpose of indicating the name and location of a polling place for an election.

PART 3 - OFFENCES

9. Signs not permitted

- (1) Unless an approval otherwise provides, a person shall not erect, maintain or display a sign, or suffer or permit a sign to be erected, maintained or displayed or to remain on any land or building:
- (a) so as to obstruct the view from a thoroughfare or public place of traffic in the thoroughfare or public place;
 - (b) so as to be likely to be confused with or mistaken for an official traffic light or sign or so as to contravene the *Road Traffic Act 1974* or the Regulations made under the *Road Traffic Act 1974*;
 - (c) so as to obstruct access to or from a door, fire escape or window, other than a window designed for the display of goods;
 - (d) as a movable or portable sign in a thoroughfare, verge or public place;
 - (e) on any light or power pole;
 - (f) on any tree, shrub or plant;
 - (g) which contains glass other than an electric light globe or tube or toughened glass;
 - (h) which contains or has attached to it any paper, cardboard, cloth or other readily combustible material, except posters securely fixed to a signboard, flags, banners or canvas awnings; or
 - (i) as a hoarding.

10. Offences

- (1) A person shall not:
- a) display a sign without an approval;
 - b) breach a condition of an approval;
 - c) display or post a Bill on any land or on any thing; or

- d) park a vehicle on a thoroughfare or other public place for the purpose of using such a vehicle and/or attachments as an advertising device.
- (2) Any person who fails to do anything required or directed to be done under this local law, or who does anything, which under this local law that person is prohibited from doing, commits an offence.
- (3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

11. Prescribed offences and modified penalties

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount appearing in the fourth column of Schedule 1 directly opposite a prescribed offence described in that Schedule is the modified penalty for that offence.

12. Infringement notices and other notices

For the purposes of this local law:

- (a) the form of the infringement notice given under section 9.16(1) of the Act is that of Form 1 in Schedule 2;
- (b) where a vehicle is involved in the commission of an offence, the form of the notice requiring an owner to identify the driver referred to in section 9.13 of the Act is that of Form 2 in Schedule 2;
- (c) where a vehicle is involved in the commission of an offence, the form of the infringement notice given under section 9.16(1) of the Act is that of Form 3 in Schedule 2; and
- (d) the form of the notice to withdraw an infringement notice referred to in section 9.20 of the Act is that of Form 4 in Schedule 2.

Schedule 1

City Of Armadale

SIGNS LOCAL LAW 2007

PRESCRIBED OFFENCES AND MODIFIED PENALTIES

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
1	9(1)(d)	Erection, maintaining or display of a Moveable or Portable sign in thoroughfare, verge or public place	100
2	10(1)(a)	Displaying a sign without approval	100
3	10(1)(b)	Failure to comply with condition of approval	100
4	10(1)(c)	Bill posting	100
5	10(1)(d)	Parking a vehicle in a thoroughfare, verge or other public place for the purpose of using such a vehicle and/or attachments as an advertisement	100
6		All other offences not specified	100

Schedule 2

**FORM 1
LOCAL GOVERNMENT ACT 1995
CITY OF ARMADALE
SIGNS LOCAL LAW 2007**

INFRINGEMENT NOTICE

Infringement Notice No.

- (1) Date:
- (2) To:
- (3) of:

It is alleged that on (4) at (5) am/pm at (6)
you committed an offence against Clause (7)
of the City of Armadale Signs Local Laws 2007 by (8)
for which the modified penalty payable is (9) \$

If you do not wish to have a complaint of the above offence heard and determined by a court you may pay the modified penalty within 28 days after this notice is given to you, by posting this form together with the amount of the modified penalty to the Chief Executive Officer of the City of Armadale at Locked Bag No. 2, Armadale WA 6992 or by delivering this form and paying the amount of the modified penalty to an Authorised Person at the offices of the City of Armadale at 7 Orchard Avenue, Armadale.

Name of Authorised Person issuing
notice.....

Title of Authorised
Person.....

Signature of Authorised
Person.....

- (1) Insert date of infringement notice
- (2) Insert name of alleged offender [or owner of (vehicle identification) if given with notice under section 9.13 of the *Local Government Act 1995*]
- (3) Insert address of alleged offender [not required if given with a notice under section 9.13 of the *Local Government Act 1995*]
- (4) Insert date of alleged offence
- (5) Insert time at which offence allegedly committed and indicate am or pm
- (6) Insert place at which offence allegedly committed
- (7) Insert number of clause of local law
- (8) Insert description of offence
- (9) Insert amount of modified penalty.

**Schedule 2
FORM 2
LOCAL GOVERNMENT ACT 1995
CITY OF ARMADALE
SIGNS LOCAL LAW 2007**

NOTICE REQUIRING OWNER TO IDENTIFY DRIVER

- (1) Date:
- (2) To:
- (3) of:

It is alleged that on (4) at (5) am/pm at (6) your vehicle(7) was involved in the commission of an offence against clause(8) of the City of Armadale Signs Local Law 2007. You are required under section 9.13 of the *Local Government Act 1995* to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed. If you do not prove otherwise, you will be deemed to have committed the offence unless-

- a. within 28 days after being given this notice-
 - (i) You inform the Chief Executive Officer, or an Authorised Person of the City of Armadale, as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; or
 - (ii) You satisfy the Chief Executive Officer that the vehicle had been stolen, or was being unlawfully used, at the time the offence is alleged to have been committed; or
- b. you were given an infringement notice for the alleged offence and the modified penalty specified in it is paid within 28 days after the notice was given to you or such further time as may be allowed.

Name of Authorised Person issuing
notice.....

Title of Authorised
Person.....

Signature of Authorised
Person.....

- (1) Insert date of notice
- (2) Insert name of owner {or "owner of (vehicle identification)" }
- (3) Insert address of owner [not required if owner not named]
- (4) Insert date of alleged offence
- (5) Insert time at which offence allegedly committed and indicate am or pm
- (6) Insert place at which offence allegedly committed
- (7) Insert vehicle registration number and description
- (8) Insert number of clause of local law

**Schedule 2
FORM 3
LOCAL GOVERNMENT ACT 1995
CITY OF ARMADALE SIGN LOCAL LAW 2007
INFRINGEMENT NOTICE**

Infringement Notice No.

- (1) Date:
- (2) To:
- (3) of:

It is alleged that on (4) at (5) am/pm at (6) your vehicle (7) was involved in the commission of an offence against Clause (8) of the City of Armadale Signs Local Laws 2007 by (9) for which the modified penalty payable is (10) \$

If you do not wish to have a complaint of the above offence heard and determined by a court you may pay the modified penalty within 28 days after this notice is given to you. Unless within 28 days after the giving of this notice to you -

- a) the modified penalty is paid; or
- b) you-
 - (i) inform the Chief Executive Officer, or an Authorised Person of the City of Armadale, as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; or
 - (ii) you satisfy the Chief Executive Officer that the vehicle had been stolen, or was being unlawfully used, at the time the offence is alleged to have been committed;

you will be deemed to have committed the above offence and court proceedings may be instituted against you.

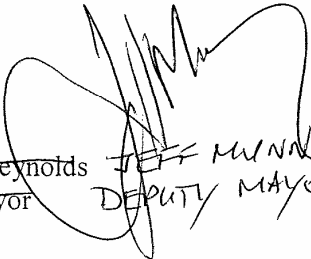
Payment may be made either by posting this form together with the amount of the modified penalty to the Chief Executive Officer of the City of Armadale at Locked Bag No. 2, Armadale WA 6992 or by delivering this form and paying the amount of the modified penalty to an Authorised Person at the offices of the City of Armadale at 7 Orchard Avenue, Armadale.

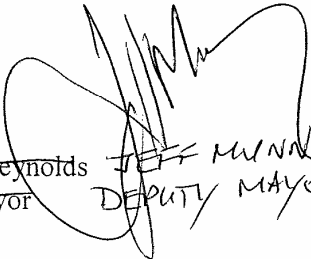
Name of Authorised Person issuing notice.....
Title of Authorised Person
Signature of Authorised Person.....

- (1) Insert date of infringement notice
- (2) Insert name of alleged offender [or “owner of (vehicle identification)”]
- (3) Insert address of owner [may be omitted]
- (4) Insert date of alleged offence
- (5) Insert time at which offence allegedly committed and indicate am or pm
- (6) Insert place at which offence allegedly committed
- (7) Insert vehicle registration number and description
- (8) Insert number of clause of local law
- (9) Insert description of offence
- (10) Insert amount of modified penalty.

Dated this 21st day of May 2007.

The Common Seal of the City of Armadale)
was affixed by authority of a resolution)
of the Council made on 21st May 2007)
in the presence of:


E Reynolds
Mayor


JEFF MUNN
DEPUTY MAYOR



RS Tame
Chief Executive Officer