



PARLIAMENT OF WESTERN AUSTRALIA

**REPORT OF THE
JOINT STANDING COMMITTEE
ON
DELEGATED LEGISLATION**

IN RELATION TO

SHIRE OF DENMARK SIGNS LOCAL LAW 1999

Presented by the Hon R L Wiese MLA (Chairman)

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Terms of Reference

It is the function of the Committee to consider and report on any regulation that:

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

Members as at the date of this report:

Hon Bob Wiese MLA (Chairman)
Hon Nick Griffiths MLC (Deputy Chairman), (to date of resignation, 8 September 1999)
Hon Simon O'Brien MLC
Hon Ray Halligan MLC
Hon Jim Scott MLC
Mr Bill Thomas MLA
Mr Iain MacLean MLA
Mr Norm Marlborough MLA

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**Report of the Joint Standing Committee on
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in relation to

Shire of Denmark Signs Local Law 1999

1 EXECUTIVE SUMMARY

1.1 The *Shire of Denmark Signs Local Law 1999* was disallowed by the operation of Standing Order 153(c) upon prorogation of Parliament on Friday 6 August 1999.

1.2 In the absence of the “automatic” disallowance by reason of the effluxion of time, the Committee would have recommended disallowance of the Local Law after:

1.2.1 reviewing a letter from the Shire of Denmark (“Shire”) dated 21 May 1999;

1.2.2 conducting a private hearing at Denmark on Thursday 29 July 1999 and hearing evidence from office bearers and members of the Denmark Chamber of Commerce;

1.2.3 conducting a private hearing at Denmark on Friday 30 July 1999 and hearing evidence from Councillors and Officers from the Shire of Denmark; and

1.2.4 conducting a public hearing at Denmark on Friday 30 July 1999 and hearing evidence from members of the Demark community.

1.3 The Committee identified six issues of importance after reviewing the *Shire of Denmark Signs Local Law 1999* and hearing evidence, being;

1.3.1 whether there is a need for signs (other than sandwich board signs and direction signs) and advertising to be regulated by local laws made under the *Local Government Act 1995* and whether such laws are enforceable given the views expressed and independent legal opinion contained in the Local Laws Manual produced by Local Laws WA, a service of the Western Australian Municipal Association;

1.3.2 the Local Law conflicts with the Shire’s Town Planning Scheme No. 3 and Town Planning Policy No. 27.1;

- 1.3.3 clause 17(2)(j) relating to the prohibition on election signs offend sections 7 and 24 of the Commonwealth Constitution and is therefore beyond the Shire's power;
 - 1.3.4 certain clauses of the Local Law are *ultra vires* and/or unduly trespass on established rights, freedoms and liberties;
 - 1.3.5 the appeal procedure is not clearly set out in the Local Law; and
 - 1.3.6 there is an undue restriction in the Local Law for the display of temporary signs on private property.
- 1.4 The Committee accepts that local laws made under the *Local Government Act 1995* are largely unnecessary for the regulation of signs and advertising and that existing Town Planning Schemes and the provisions of the *Local Government (Miscellaneous Provisions) Act 1960* can achieve the same purpose. In these circumstances and in view of the advice from the Western Australian Municipal Association ("WAMA") to local governments regarding the difficulties of enforcement, it would not be appropriate for the Committee to assist WAMA in the drafting of new Model Local Laws relating to the regulation of signs and advertising devices.
- 1.5 It is hoped that the views of the Committee in this report are heeded by local governments who are contemplating pursuing the regulation of signs via the use of local laws under the *Local Government Act 1995*, or by any other regulatory avenue.

**Report of the Joint Standing Committee on
Delegated Legislation**

in relation to

Shire of Denmark Signs Local Law 1999

2 INTRODUCTION

- 2.1** In the exercise of its scrutiny function the Committee reviewed the *Shire of Denmark Signs Local Law 1999* (“Local Law”) made under the *Local Government Act 1995*. A copy of the Local Law has been attached to this report and marked “Annexure A”.
- 2.2** Under the Committee’s Joint Rules, if the Committee is of the opinion that a matter relating to any regulation or local law should be brought to the notice of the House, it may report that opinion and matter to the House. It is also the function of the Committee to consider and report on any regulation that appears not to be within power.
- 2.3** The Local Law came about as a result of the Shire’s review of its existing by-laws relating to signs, “*Shire of Denmark Signs, Hoardings and Billposting Bylaws*”, gazetted on 19 April 1991 and subsequently repealed by the Local Law.
- 2.4** According to the Shire’s explanatory memorandum in support of the Local Law, the purpose of the Local Law was to introduce more modern local laws which enable the Shire to control and manage the size, appearance and structure of advertising signs, with particular attention to the impact of such signs on the environmental amenity of the district.¹
- 2.5** The Local Law first came before the Committee at its meeting on 10 May 1999. The Committee had several concerns with the Local Law and what it perceived to be a heavy handed approach to the regulation of signage in the district. A letter dated 11 May 1999 from the Chairman of the Committee expressing these concerns, requesting it to justify several of the clauses contained in the Local Law and provide copies of the three written submissions received, was sent to the Shire. A copy of the Committee’s letter is attached to this report as “Annexure B”.

¹ Shire of Denmark explanatory memorandum attached to its letter to the Committee dated 23 March 1999.

- 2.6** The Shire's response by letter dated 21 May 1999 is attached to this report as "Annexure C". The Committee considered the Shire's response and the attached submissions at its meeting on 24 May 1999 and resolved to conduct hearings at Denmark to assist it in its consideration of the Local Law. This was subsequently arranged to take place on Thursday 29 and Friday 30 July 1999 during the parliamentary winter recess.
- 2.7** To provide sufficient time to complete the inquiry and report to the House, the Committee resolved to move a "protective" motion for disallowance of the Local Law. The motion was moved on Thursday 17 June 1999. In the absence of prorogation, this would have given the Committee until 18 August 1999, being the last day for debate of the disallowance motion, to report to the House. If not debated then, the question would have been put and determined without further adjournment on the next sitting day, Thursday 19 August 1999.
- 2.8** Prior to this, Parliament was prorogued on Friday 6 August 1999. Standing Order 153(c)² deems a disallowance motion to be resolved in the affirmative upon prorogation. Due to the operation of the Standing Order, the Local Law was "automatically" disallowed by effluxion of time on Friday 6 August 1999.
- 2.9** By the operation of section 42(6) of the *Interpretation Act 1984* the *Shire of Denmark Signs, Hoardings and Billposting Bylaws* were revived on Friday 6 August 1999.
- 2.10** Notwithstanding the disallowance of the Local Law resulting in it no longer being operative, the Committee is of the view that it should report its findings to the House. This will assist the Shire of Denmark in reconsidering the issue of enacting signs local laws under the *Local Government Act 1995* and other Local Governments contemplating the introduction of signs and advertising local laws.
- 2.11** The Committee held three hearings in Denmark as follows:
- 2.11.1** private hearing with the President and members of the Denmark Chamber of Commerce on Thursday 29 July 1999;
- 2.11.2** private hearing with Councillors and Officers from the Shire of Denmark on Friday 30 July 1999; and
- 2.11.3** public hearing inviting submissions from the general public on Friday 30 July 1999.

² Standing Orders of the Legislative Council.

- 2.12** The public hearing was advertised in the *Albany Advertiser* (Thursday 22 July 1999) and the *Denmark Bulletin* (Friday 23 July 1999).
- 2.13** A total of twenty-two witnesses gave oral evidence to the Committee. In addition, the Committee received eleven written submissions regarding the Local Law. Ten of the written submissions were from business proprietors within the District. The other was from the Shire of Denmark. A list of witnesses and people who sent in submissions is attached to this report and marked "Annexure D".
- 2.14** The Local Law was gazetted on 15 March 1999 and came into operation pursuant to section 3.14 of the Act, 14 days after publication on 29 March 1999. Due to the motion for disallowance moved on 17 June 1999 and the operation of Standing Order 153(c) the Local Law was disallowed on 6 August 1999 when Parliament prorogued.

3 LEGISLATIVE BACKGROUND

- 3.1** The Local Law was created pursuant to sections 3.5 and 3.10 of the *Local Government Act 1995* which provide:

"3.5. (1) 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.

(2) A local law made under this Act does not apply outside the local government's district unless it is made to apply outside the district under section 3.6.

(3) The power conferred on a local government by subsection (1) is in addition to any power to make local laws conferred on it by any other Act.

(4) Regulations may set out --

(a) matters about which, or purposes for which, local laws are not to be made; or

(b) kinds of local laws that are not to be made, and a local government cannot make a local law about such a matter, or for such a purpose or of such a kind.

3.10. (1) A local law made under this Act may provide that contravention of a provision of the local law is an offence, and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of \$5 000.

(2) If the offence is of a continuing nature, the local law may make the person liable to a further penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

(3) The local law may provide for the imposition of a minimum penalty for the offence.

(4) The level of the penalty may be related to --

(a) the circumstances or extent of the offence;

(b) whether the offender has committed previous offences and, if so, the number of previous offences that the offender has committed.

(6) A local law made under this Act may specify the method and the means by which any fines imposed are to be paid and collected, or recovered.”

3.2 The Local Law is drafted in a manner by which all signs other than a class of exempt signs in clause 13, existing signs coming within the Savings provisions of clause 30 and signs issued with special permits under clause 22 are prohibited unless a licence is issued to the applicant by the Shire. Some types of signs and lights are completely prohibited by clause 17 of the Local Law. The Local Law requires the applicant to apply for a licence by way of the form set out in Schedule 1 and pay a licence fee “as determined by the Council from time to time.”³ An application must be accompanied by a plan drawn to scale “... showing, the position, design, method of construction colours to be used in painting and the method of illumination, if any, of the sign for which the licence is sought.”

3.3 Under clause 8, the requirement for the licensing of signs, other than exempt signs listed in clause 13, applies to signs which are “...visible from a street, reserve or other public place...” The Local Law therefore applies to signs erected or maintained on private property.

³ The licence fee determined by Council is \$150.

3.4 “Sign” is defined under clause 4 of the Local Law as follows:

“‘sign’ includes a signboard, a portable sign or a bunting sign and a clock other than a clock which is built into a wall and does not project beyond the face of the wall, or flags and bunting which carry no written message.”

The definition of sign is inclusive rather than exclusive thereby allowing for objects other than those specifically included in the Local Law definition to be signs and therefore subject to the Local Law. For example, a poster advertising a forthcoming event such as a wine tasting placed in the window of a shop could be a “sign” under the Local Law.

3.5 A signboard is a board displaying the sign of a shop, inn or other business or a board on a guidepost displaying a sign to direct travellers.⁴ In addition, clause 4 contains definitions of a direction sign, electoral sign, horizontal sign, illuminated sign, projection sign, pylon sign, hoarding and advertising device.

3.6 The Committee is satisfied that section 3.5 of the *Local Government Act 1995* gives the Shire power to create a Local Law for the purpose of regulating signs in the district, including signs on private property. Section 3.10 clearly permits penalties to be imposed. However, the Committee questions whether local laws made under the *Local Government Act 1995* can be effectively enforced and are therefore an appropriate avenue by which to regulate signs. This is particularly the case given that signs and advertising can already be controlled by the Shire under its Town Planning Scheme and by Local Laws made under the *Town Planning and Development Act 1928*. The Committee’s other concerns stem from the way in which the Local Law has been drafted.

4 THE COMMITTEE’S CONCERNS

4.1 The Committee’s primary concerns in relation to the Local Law are that:

4.1.1 it is largely unnecessary and possibly unenforceable given the views expressed and independent legal opinion contained in the Local Laws Manual produced by Local Laws WA, a service of the Western Australian Municipal Association (“WAMA”);

⁴ The New Shorter Oxford English Dictionary, Clarendon Press, Oxford, Vol 2, pp. 2858-2859.

- 4.1.2 the Local Law conflicts with the Shire's Town Planning Scheme No. 3 and Town Planning Policy No. 27.1;
- 4.1.3 clause 17(2)(j) relating to the prohibition on election signs offends sections 7 and 24 of the Commonwealth Constitution and is therefore beyond the Shire's powers.
- 4.1.4 certain clauses of the Local Law are *ultra vires* and/or unduly trespass on established rights, freedoms and liberties;
- 4.1.5 the appeal procedure is not clearly set out in the Local Law; and
- 4.1.6 there is an undue restriction in the Local Law for the display of temporary signs on private property.

WHETHER LOCAL LAWS MADE UNDER THE *LOCAL GOVERNMENT ACT 1995* ARE AN EFFECTIVE METHOD OF REGULATING SIGNS AND ADVERTISEMENTS

- 4.2 The Committee does not have jurisdiction to recommend disallowance of a local law solely on the basis that there may be a more effective method of regulation. However, the Committee has previously recommended disallowance in circumstances where a regulation has been unnecessary by not adding to existing powers derived from laws which already regulate an activity.⁵
- 4.3 In addition to enacting local laws under the *Local Government Act 1995*, local governments have existing powers to regulate signs as follows:
 - 4.3.1 section 31 of the *Town Planning and Development Act 1928* ("TP&D Act") allows the making of local laws "prohibiting or regulating the use of ...advertising 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 town planning local laws apply.";
 - 4.3.2 section 374 of the *Local Government (Miscellaneous Provisions) Act 1960* places a prohibition on building subject to the requirement for building approval and the issue of a licence. There is clear authority for the proposition that the

⁵ See the Committee's Thirty-Fifth Report - *Forest Management Amendment Regulations (No. 2) 1998*, October 1998.

erection of many signs will constitute a “building” and would be subject to the requirements of building approval⁶; and

- 4.3.3** the requirement to obtain planning approval to commence and proceed with a “development”. Most local government town planning schemes, including the Shire of Denmark’s, incorporate the definition of development as set out in section 2 of the TP&D Act which defines development as “the use or development of any land and includes the erection, construction, alteration or carrying out, as the case may be, of any building, excavation or other works on any land.” A sign may constitute a “development” and require development approval under the relevant town planning scheme.⁷

- 4.4** The Committee notes clause 5.30 of the Shire of Denmark Town Planning Scheme No. 3 (“Scheme”) relates to the control of advertisements and specifically includes advertisements as “development”. Clause 5.30.2 of the Scheme provides:

“5.30.2 Power to Control Advertisements

5.30.2.1 For the purpose of this Scheme, the erection, placement and display, and subject to the conditions of clause 5.30.6, the continuance of advertisements is development within the definition of the Act requiring, except as otherwise provided, the prior approval of the Council. Such a planning consent is required in addition to any licence issued pursuant to the Council’s Signs, Billposting and Hoardings Bylaws.”

- 4.5** The Scheme provisions include enforcement and penalty provisions by way of the issue of notices and fines for non-compliance with the requirements relating to advertisements. The remedies available to the Council and the penalty provisions are contained under section 10 of the TP&D Act. This permits the Council to remove or alter a structure which does not comply with the Scheme (and recover the costs of doing so) and provides for a penalty of up to \$50 000 and a daily penalty of \$5 000.

⁶ See *the Queen v Marks; Ex parte Australian Building and Construction Employees and Builders Labourers’ Federation* (1981) 147 CLR, per Mason J, pp. 485-486.

⁷ See *Claude Neon Ltd v City of Perth*, unreported; Sct of WA (Kennedy J); 31 July 1987.

- 4.6** In relation to enforcement of town planning scheme provisions regarding signs and advertising devices, the Committee also notes the legal advice provided to the Western Australian Municipal Association (“WAMA”) which indicates that the TP&D Act would authorise the inclusion in a town planning scheme of a provision allowing infringement notices for modified penalties to be issued. According to this advice, the inclusion of modified penalties would not be inconsistent with enforcement proceedings under section 10 of the TP&D Act.
- 4.7** The legal opinion by Minter Ellison to WAMA dated 30 August 1999 is attached to this report and marked “Annexure E.”
- 4.8** The Minister for Planning must approve such an amendment to a town planning scheme. In discussions between the Ministry of Planning and WAMA, the Ministry has expressed some doubt as to whether support would be given to a scheme amendment which would incorporate the issue of infringement notices and modified penalties for contravention of scheme provisions relating to signs and advertising devices. The Committee considers that this attitude on the part of the Ministry is regrettable.
- 4.9** Doubt has been expressed by WAMA in its Local Laws Manual as to whether local governments have the power to enforce contraventions of signs and advertising local laws made under the *Local Government Act 1995*. In this Local Law, the enforcement procedure in clause 31 includes the issue of a notice to remove a sign and purported authority for an “authorised officer” to enter premises (the definition of which includes private land) and remove a sign, advertisement or advertising device to an appointed place.
- 4.10** In relation to its existing Model By-Laws, WAMA has advised local governments that:

“The Local Government Act local laws relating to *Signs, Hoardings and Bill Posting and Advertising Devices* are considered to unnecessarily duplicate provisions of the *Local Government (Miscellaneous Provisions) Act 1960* and town planning schemes, also, in that a head of power does not exist in Schedule 3.1 of the *Local Government Act 1995* enabling a local government to order the removal of unsuitable signs from private land, prevailing legal opinion appears to be that Councils cannot make such an order in local laws. In other words, local laws under the *Local Government Act* virtually have no teeth, and the Department of Local Government has expressed no interest in remedying this, because it believes the *Town Planning Act* is the better mechanism for the control of signs in terms of amenity. As safety aspects are in the main controlled by the *Local Government (Miscellaneous Provisions) Act* and *Building Code of*

Australia, this leaves only billposting, portable signs and perhaps direction signs, which might otherwise need some control, and Local Laws WA intends to address this under a ‘model’ such as ‘streets and footpaths’.⁸

- 4.11** The relevant section from the Local Laws Manual which includes a legal opinion from Minter Ellison dated 3 November 1997 is attached to this report and marked “Annexure F”.
- 4.12** The Committee accepts that to a large degree local laws made under the *Local Government Act 1995* for the regulation of signs and advertising are unnecessary given existing methods of regulation and enforcement under town planning schemes and the TP&D Act. Indeed, local laws made under the *Local Government Act 1995* may be frustrated as attempts at enforcement by local governments involving the issue of notices and the entry upon private land to remove signs and advertising may be *ultra vires*.
- 4.13** The Committee therefore recommends that local governments follow the advice of their representative body, WAMA, and not enact signs and advertising local laws under the *Local Government Act 1995*.

CONFLICT BETWEEN LOCAL LAW AND TOWN PLANNING SCHEME AND TOWN PLANNING POLICY

- 4.14** Clause 5 of the Local Law provides:

“Application

This local law shall apply to all land within the district of the Shire.”

- 4.15** Clause 5.30 of the Town Planning Scheme relates to the control of advertisements. Clause 5.30.5 of the Scheme provides:

“Exemptions from the Requirement to Obtain Consent

Subject to the conditions of the *Main Roads (Control of Signs) Regulations 1983* and notwithstanding the provisions of clause 5.30.2.1 the Council’s prior consent is not required in respect of those advertisements listed in Appendix 10 which for the purpose of this part are referred to as ‘exempted’ advertisements.”

⁸ Local Laws Manual, produced by Local Laws WA, a service of WAMA, Section 4, p. 1.

- 4.16** Appendix 10(a) and 10(b) of the Scheme are attached and marked “Annexure G” to this report. The size of the exempted signs permitted under the Scheme differ from the size permitted as exempt signs under clause 13(1)(a) of the Local Law. For example, sale signs for property transactions under the Scheme can be from 2m² to 10m² depending upon the property transaction whereas under the Local Law sale signs are only exempt from the requirement of the Local Law if they do not exceed 0.7m². This would result in a sale sign being exempt from the requirement of planning consent under the Scheme but subject to the requirements of licensing under the Local Law.
- 4.17** The Shire has also introduced a Town Planning Scheme Policy relating to specific signs which has been operative concurrently with the Local Law. Town Planning Scheme Policy 27.1 (“Scheme Policy”) purports to set down requirements for rural direction signs, rural business signs and real estate directional, development and “For Sale” signs. The Scheme Policy in relation to real estate directional, development and “For Sale” signs is to apply to “All of the Shire.” A copy of the Scheme Policy is attached as “Annexure H”
- 4.18** The difficulties for the ordinary citizen in determining the law when he is faced with the Local Law, the Town Planning Scheme and Town Planning Scheme Policy was mentioned by Mr John Maxwell, President of the Denmark Chamber of Commerce in his evidence to the Committee as follows:

“Mr MAXWELL: ... When moving to a rural area, businesses are restricted by the number of directional signs that they can put up. As a consequence, tourists complain or get lost. Under the current scheme three sets of regulations are in place with which signs must comply. There is an exemption sign regulation that is part of the town planning scheme policy 27.1. There is the *Signs Local Law 1998* under which are the regulations that we are primarily discussing and one has been recently passed under the local council regulations that relates to awnings and blinds in the central business area. It is known as appendix 9 to 10 of the town planning scheme.

If somebody is applying for a sign he must familiarise himself with these three sets of regulation. That can be daunting to a lay person. When they get past that stage they must follow a procedure. Again more confusion can reign. If their sign falls within town planning scheme 27.1; that is, it is exempt but it complies with the local laws, approval can be granted by the officers of the shire. If the sign falls outside the requirements of TPS 27.1 or the local laws, or falls under the appendix it must go before the full council.

I was informed by one of the officers of the council that if it particularly falls outside the local laws, it is automatically knocked back. Under those circumstances a person who is trying to get his signage organised comes up against a series of councillors who may be indifferent to or do not fully understand the concerns of the business. The ability of a person to then set up his business is somewhat handicapped.”⁹

4.19 The Committee notes that there are also inconsistencies between the requirements of the Scheme Policy and the requirements of the Local Law. For example, the dimensions of a “Rural Business Direction Sign” differs slightly from the dimensions required of a “Direction Sign” under the Local Law. Under the Scheme Policy “For Sale” signs are required to be a maximum of 0.6m² whereas under the Local Law an exempt “sale sign” is one not exceeding 0.7m². In these circumstances, a “For Sale” sign permitted under the Local Law and exempt from its requirements would be in contravention of the Scheme Policy but curiously would not contravene the Scheme requirements as an exempted advertisement in Appendix 10 of the Scheme.

4.20 The explanation for the inconsistencies noted above was provided in the evidence given by the Shire that the Local Law was not intended to apply to rural areas (despite its clear wording to the contrary in clause 5) but only to signs in the urban areas of the district. This exchange between members of the Committee and Mr Pascoe Durtanovich, Chief Executive Officer of the Shire of Denmark, at the Committee’s hearing with the Shire on 30 July 1999 explains the Shire’s position:

“Mr DURTANOVICH: I said at the beginning that the local laws the committee has highlighted as a problem relate to urban areas. Perhaps the local laws do not clearly state that they apply only to the urban area.

Mr MARLBOROUGH: The report does not indicate that either. It shows pictures in a rural setting to which Peter Duncan is indicating clause 17(1)(f) applies. I am now told that it does not.

The CHAIRMAN: Clause 5 provides that this local law shall apply to all land within the district of the shire. It is categorical. What Mr Durtanovich is saying is not correct.

⁹ Corrected transcript of evidence taken at Denmark, Thursday 29 July 1999, p. 2.

Mr DURTANOVICH: I pointed out that it was not correct. It has been said that the local laws do not specifically state that they apply only to the urban area. I acknowledged that was a problem in the drafting that must be addressed.

The CHAIRMAN: I wanted to ensure that we all understood. Clearly, from the committee's point of view, members can consider only what is before them. Clause 5 spells out very clearly that the laws apply to the entire shire.”¹⁰

- 4.21** The Committee would have recommended disallowance of the Local Law on this ground alone due to the operation of section 3.7 of the Act which provides:

“Inconsistency with written laws

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

- 4.22** In addition, clause 5.30.9 of the Scheme provides:

“5.30.9 Scheme to Prevail

Where the provisions of this Part are found to be at variance with the provisions of the Council’s Signs, Billposting and Hoardings Bylaws, the provisions of the Scheme shall prevail.”

- 4.23** As a result of the above provisions, the Committee is of the view that the Scheme takes precedence over Local Laws made under the *Local Government Act 1995*.

PROHIBITION ON ELECTORAL SIGNS

- 4.24** Clause 17(2)(j) provides that a person shall not erect, maintain or display any electoral sign. The Local Law places an absolute prohibition on electoral signs. The prohibition on electoral signs was the subject of this Committee’s Twenty-First Report.¹¹ Notwithstanding the prohibition on this or any other sign or advertisement, electoral signs can be displayed under clause 22 of the Local Law which allows for “... the display of advertisements of meetings, charitable functions, art or cultural activities or other

¹⁰ Corrected transcript of evidence taken at Denmark, Friday 30 July 1999, p. 16.

¹¹ Control of Electoral Signs, August 1997.

events of public interest...” The right to erect, maintain or display electoral signs is therefore completely at the discretion of the Shire.

- 4.25** Under clause 4 of the Local Law electoral sign “means a sign containing an electoral advertisement relating to an election or a prospective or forthcoming election of the Parliament of the Commonwealth or the State, a municipal election and to a referendum.”
- 4.26** The Committee is of the view that the prohibition on electoral signs and advertisements, rather than their legitimate regulation, offends sections 7 and 24 of the Commonwealth Constitution by transgressing existing rights and liberties guaranteed by the Constitution and is therefore beyond the Shire’s power.
- 4.27** In *Australian Capital Television Pty Ltd and Others -v- Commonwealth of Australia (No. 2)* and the *State of New South Wales -v- Commonwealth of Australia and Another (No.2)* (1992) 108 ALR 577 (“the Australian Capital Television case”), a majority of the High Court held that there is an implied guarantee of freedom of communication on political and governmental matters arising from the Commonwealth Constitution. This freedom is to be implied from the system of representative government outlined in sections 7 and 24 of the Constitution.
- 4.28** The Australian Capital Television case concerned a Commonwealth law which attempted to prohibit the broadcasting by radio or television of certain categories of material during election periods for Commonwealth, State, Territory and Local Government elections. There were sweeping prohibitions on the broadcasting of news and current affairs items and talk back radio programs, and the broadcasting during an election period of relevant material in relation to a Commonwealth Parliamentary election or referendum or an election to a Legislature or Local Government Authority of a Territory or a State.
- 4.29** Although the majority of the High Court had divergent views as to the ambit of the implied freedom of communication, the court agreed that communication on matters of government and politics is an indispensable part of the system of representative government as established at Federation. The Constitutional system directs that members of the House of Representatives and of the Senate shall be “directly chosen by the people” of the Commonwealth and States respectively. Communications concerning political or government matters between the electors and the elected representatives, between the electors and candidates for election, and between the electors themselves, were central to the system of representative government. Accordingly, sections 7, 24 and

related sections necessarily protect that freedom of communication which enables the people to exercise a free and informed choice as electors.¹²

4.30 The decision has implications for the power of local or state governments to prohibit as opposed to validly regulate electoral signs and advertising when these are clearly “communications” between the candidates and the electorate.¹³

4.31 The freedom of communication which the Constitution protects is not absolute. It is limited to what is necessary for the effective operation of that system of representative and responsible government provided for by the Constitution.¹⁴

4.32 The freedom will not invalidate a law enacted to satisfy some other legitimate end if the law satisfies two conditions, namely:

4.32.1 the object of the law is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government or the procedure for submitting proposed constitutional amendment to the people; and

4.32.2 the law is reasonably appropriate and adapted to achieving that legitimate object or end.

4.33 The test for determining whether a law infringes the constitutional implication of freedom of communication requires two questions to be answered, namely:

4.33.1 does the law effectively burden freedom of communication about government or political matters either in terms of operation or effect; and

4.33.2 if the law effectively burdens that freedom, is the law reasonably appropriate and adapted to serve a legitimate end, the fulfilment of which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government and the procedure prescribed by section 128 of the

¹² *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106, p. 187.

¹³ See Section 109 of the Commonwealth Constitution in relation to inconsistency of State and Commonwealth laws.

¹⁴ See *Nationwide News v Wills* (1992) 177 CLR 1, pp. 51, 76-77, 94-95; *Australian Capital Television v The Commonwealth* (1992) 177 CLR 106, pp. 142-144, 159, 169, 217-218.

Constitution for submitting a proposed amendment of the Constitution to the decision of the people.

- 4.34** If the first question is answered “yes” and the second “no”, the law is invalid.¹⁵
- 4.35** On the basis of the above test, clause 17(2)(j) of the Local Law breaches the implied freedom of communication provided for in the Commonwealth Constitution and is clearly beyond the power of the Shire as it seeks to prohibit rather than legitimately regulate electoral signs.

CLAUSES OF THE LOCAL LAW WHICH ARE *ULTRA VIRES* AND/OR UNDULY TRESPASS ON ESTABLISHED RIGHTS, FREEDOMS AND LIBERTIES

- 4.36** The issue of signs and advertising laws within a community can be a source of controversy. At its Denmark hearings, the Committee heard divergent views as to the extent to which signs and advertising within the community should be regulated by the local government. The opinions expressed tended to be divided between the business community which on the whole considered the Local Law to be too restrictive and the Shire which was concerned with protecting visual amenity as well as satisfying the needs of business.
- 4.37** The evidence to the Committee of the local baker, Mr Symes encapsulates the concern of business:

“Mr SYMES: I am one of the larger employers in town - we employ 10 people full time. Their job security worries me. From my point of view, signage is a major issue. We run one of the older traditional style bakeries, and there are not many in the south west. It is important for us to be able to convey our message to the tourists. Unlike many businesses in town, we are open seven days a week. It can get very quiet on Sunday afternoons if we cannot attract people driving by. We do that by using a small sandwich board sign, which is universal around the country to indicate that a business is open out of normal hours. If there is no sign out, the business looks closed like all the other shops in the street. We are trying very hard to attract tourists heading to Walpole.

This situation concerns me very much from the point of view of employing 10 people and family members. It is extremely expensive to employ qualified

¹⁵ *Cunliffe v the Commonwealth* (1994) 182 CLR 272, pp. 300, 324, 337, 339, 387-388.

people on Saturdays, Sundays, public holidays and long weekends and not to be able to use a small sign to attract customers jeopardises their employment.”¹⁶

- 4.38** The Shire’s views can be summarised by the evidence given by the Shire President Cr. Colleen Donnelly and the Shire’s manager of Planning and Development, Mr Peter Duncan. The Shire president put it this way:

“Cr. DONNELLY: ... In summary, to give background on our community, as we grapple with the balance between the economic benefits of tourism and the impact on the lifestyle of the residents, many issues must be considered in relation to signage. The town or the suburb in which we live becomes a place of pride. Conversely when we visit a place we must find our way around. We must balance these two needs and we are well advanced towards this objective. I am sure we will continue to improve on this issue. However, I understand from what you are saying that we may need to examine various aspects of it. It will always be with consultation with the community.

You indicated that other shires may see our situation as a benchmark. I understand after three years why no-one wants to pick up the issue. Consideration must be given to the values of each community. That which we in Denmark might want is perhaps not what Jerramungup or East Victoria Park may want. I am very keen that our values here are understood. That is the basis on which we have been working. I have attempted to demonstrate to you how important that is.

My bottom line is that I intend to protect the natural beauty of Denmark before we ruin the very reason we either live or visit here. That is important to understand in reviewing such a document.”¹⁷

- 4.39** Mr Duncan gave the following evidence to the Committee whilst taking it through the Shire’s written submission:

“Mr DUNCAN: The photograph on the first page of the submission is of Albany Highway. People face a challenge to find a certain sign. It is very confusing with many signs. It is extremely difficult to identify businesses. That is one of the first things they see when they reach the built-up area of Albany.

¹⁶ Corrected transcript of evidence taken at Denmark, 29 July 1999, p. 8.

¹⁷ Corrected transcript of evidence taken at Denmark, Friday 30 July 1999, p. 6.

Almost every type of sign you can think of is in that photograph. Colleen Donnelly and Pascoe Durtanovich referred to visual amenity and aesthetics being important considerations. They are reflected in council's settlement strategy, which is a residential growth, rural and commercial strategy.

We are trying to create and maintain the liveable and pleasant village atmosphere, through the provision of the street scapes in the town, with the use of appropriate building design techniques, with colours of external materials and finishes and, of course, signage. They all enhance the amenity of the town and the townscape within the village character of Denmark.

As Colleen said, the Australian Bureau of Statistics recorded our growth rate in 1996 at 3.3 per cent. In 1997 it went to 3.9 per cent. We have not had an update from the ABS this year, but based on the rate of applications coming through council it is probably 4.1 to 4.3 per cent. It is rapidly sneaking up to the Margaret River growth rate of 5.9 per cent. Busselton's growth rate is 5.7 per cent and Dardanup's is 5 per cent.

One of the outcomes of high growth rates is the development that goes with it and the need for more advertising of those new developments. That is probably a result of heavy growth. With the erection of more signs, the public becomes confused as a result of information overload. The photograph of the entrance to Albany is an indication of that.”¹⁸

- 4.40** The Committee acknowledges that there are competing interests. On the one hand, business proprietors should be entitled to advertise their businesses by the use of signs and advertising devices. In a community such as Denmark, where many businesses increasingly rely upon tourism, this includes signage to alert and direct passing trade. On the other hand, the local community through its elected representatives has the right to regulate signage and advertisements so that its adverse impacts upon the visual amenity and aesthetics of the district as determined by the community are minimised.
- 4.41** Beyond its terms of reference, this Committee has no jurisdiction to determine what is the appropriate balancing of these competing interests. This is a matter to be determined by individual communities. It was brought to the Committee's attention that under the previous signs regime, Denmark has on several occasions been the state winner of the tidy towns competition and in 1998 was recognised as Australia's tidiest town.

¹⁸ Corrected transcript of evidence taken at Denmark, Friday 30 July 1999, pp. 7-8.

4.42 The primary object of the Local Law is the control of advertising signs or devices. However, the Committee is of the view that some provisions of the Local Law are too restrictive or go beyond attempting to regulate this “mischief” by applying to otherwise innocent activities. The Committee’s principal concerns are with the general drafting of the Local Law and some of the provisions of clause 17 which, in its view, unduly trespass on established rights, freedoms or liberties.

4.43 Clause 17(2)(a) states:

“A person shall not erect, maintain or display -

- (a) a flag other than flags approved by authorised State and Federal Government bodies, as approved by an authorised officer.”

The Local Law prohibits all flags other than those approved by both an authorised officer of the Shire and State and Federal Government bodies. The Committee is of the view that the clause is too restrictive and should apply only to advertising flags.

4.44 The following exchange between members of the Committee and Shire witnesses highlight the Committee’s concerns:

“Mr DUNCAN: ...Page 7 of the shire's submission refers to flags other than approved flags. That does not preclude the Western Australian flag, the Aboriginal flag or any other government-recognised flag. Effectively it is aimed at situations similar to that in the photographs on page 7. The Shire of Serpentine-Jarrahdale has a similar clause in its local laws. It applies to flags advertising Magnas, Retravision and so on.

Mr THOMAS: The shire will have another problem with the High Court. If I want to fly the flag of the Kosovar Liberation Army, I can do so.

Mr DURTANOVICH: If it is approved by the authorised officer, there is scope.

Mr DUNCAN: It applies to the advertising of products.

The CHAIRMAN: That is the point Mr Thomas is raising - whether that is constitutional.

Cr DONNELLY: Does the shire need to enlarge on that by stating that it refers to a flag other than that of a country?

The CHAIRMAN: Perhaps it should be spelt out as applying to an advertising flag.¹⁹

4.45 Clause 17(2)(c) states:

“(2) A person shall not erect, maintain or display -
(c) any flashing, intermittent or sequential lights;”

4.46 The Committee recognises the problem attempted to be remedied by the prohibition on flashing lights in relation to the visual amenity of Denmark. It accepts that the Shire has the power to prohibit such activity when it is used as an advertising device. However, the prohibition would apply not only to signs and advertisements incorporating flashing, intermittent or sequential lights but also to a domestic residence which had a Christmas tree in the window visible from a public place which has flashing Christmas lights or to lights hung on a tree in a garden. Such a prohibition is unacceptable to the Committee. The Committee notes that the issue of traffic safety in relation to lights is adequately dealt with under existing regulations.²⁰

4.47 Clause 17(2)(g) states:

“(2) A person shall not erect, maintain or display -
(g) any sign which incorporates reflective material;”

4.48 The Committee’s view is that such a restriction is unwarranted. In its evidence to the Committee, the Shire also acknowledged that the prohibition was unworkable and the clause would be deleted:

“Mr DUNCAN: ...The submission also refers to signs that incorporate reflective material. The Shire of Serpentine-Jarrahdale has a similar clause. Current signs all contain some form of reflective material. I have suggested that that be deleted when the local laws are next amended. If the shire started to enforce that, officers would simply go out at night and note that all signs have that material.

¹⁹ Corrected transcript of evidence taken at Denmark, Friday 30 July 1999, p.14.

²⁰ Confusing lights affecting traffic on roads can be removed or modified under section 87 of the *Road Traffic Act 1974*.

The CHAIRMAN: I am glad to hear that. Committee members commented last night as we searched for our accommodation that if it were not for the reflective sign, we would not have found it. The signs are small enough and the reflective material highlights them. If a business is off the main street and people are looking for it at night, it would be essential.

Mr DUNCAN: The intention was to stop people erecting mirrored signs.

Mr THOMAS: The problem with the law of physics is that if the sign is not reflective, one cannot see it.”²¹

4.49 Clause 17(2)(h) states:

“(2) A person shall not erect, maintain or display -
(h) any sign written on a parked vehicle unless;
(i) the vehicle is owned by a tradesperson/business proprietor;
(ii) the sign advertises only the tradesperson/business proprietor and the tradesperson’s/business proprietor’s services or products;”

4.50 This clause appears to conflict with or limit clause 17(1)(j) which prohibits a sign “attached to a vehicle parked in or on a street, way, footpath or public place but does not include a sign painted on that vehicle.”

4.51 The Committee is aware that existing laws regulate most of the activities prohibited by clause 17(1)(j) of the Local Law which is primarily intended to prevent business proprietors parking a vehicle or trailer on the highway approaches to Denmark with a sign attached to it directing passing trade. Such activity is already prohibited by the *Main Roads (Control of Advertisements) Regulations 1996*, made pursuant to the *Main Roads Act 1930*.²² These regulations are limited to a main road or highway as declared by proclamation under *The Main Roads Act 1930*, thereby leaving scope for the Local Law to operate on local roads and streets.

²¹ Corrected transcript of evidence taken at Denmark, Friday 30 July 1999, p. 15.

²² Regulation 5 of the *Main Roads (Control of Advertisements) Regulations 1996* requires the Commissioner’s approval for the construction or erection of a hoarding or other advertising structure or the exhibiting of an advertisement on or in the vicinity of a highway or main road.

- 4.52** The Committee questions whether the additional restriction in clause 17(2)(h) in relation to general advertising signage on buses, taxis and commercial vehicles is warranted, enforceable or within the Shire's power to regulate. The problem was specifically addressed in the Shire's evidence before the Committee as follows:

“Mr DUNCAN: The clause relating to signs on buses deals with the fact that we do not like signs advertising Coca Cola, Retravision and so on, on the side of vehicles. They are not advertising the primary use of the vehicle.

The CHAIRMAN: What happens if a tourist operator is visiting the area and he has such a sign on his vehicle?

Mr MARLBOROUGH: What is the problem? I understand what the shire is trying to stop.

Mr DUNCAN: It is a visual amenity issue. One Transperth bus in Denmark would be different; it would be passing through. The town has one taxi. The shire is concerned that as the town grows and there are more taxis, there will be half a dozen taxis sitting at a rank all with signs advertising Coca Cola, Pizza Hut and so on.

The CHAIRMAN: Hopefully they would be advertising a local business.

Mr DUNCAN: It is the visual amenity issue.

Mr MARLBOROUGH: With taxis the concern would not be whether the sign was advertising Coca Cola or whatever if it were built into the back of the boot.

Cr DONNELLY: It is aimed at prohibiting the A-frames on the back of taxis and the advertisements on buses.

The CHAIRMAN: It refers to the advertising on the boot and on the roof.

Mr MARLBOROUGH: Thankfully the parliamentary committee must look at laws applying to the whole State and not bits of it.

Mr DURTANOVICH: People complain when jets fly over.

Mr MARLBOROUGH: I have a speedway coming to Kwinana. The Government does not think people will complain, but they are.

Mr THOMAS: Is Denmark serviced by South West Coast Lines or another bus service?

Mr DUNCAN: It is serviced by Westrail.

Mr THOMAS: When that is sold - if it is sold - and the proprietors of the new bus service want to sell advertising on buses like that on Transperth buses, the shire has no authority to stop them. Will the buses be stopped at the border?

The CHAIRMAN: That is why I asked the question. That is very pertinent.

Mr DURTANOVICH: We do not need to spend much time on that. The shire needs to reconsider it from the point of view of trying to enforce it.”²³

4.53 The Committee is of the view that such a provision would in practice be almost impossible to enforce. Structures on vehicles containing advertising material such as the moulded plastic boot advertising boards on taxis are regulated under the *Road Traffic (Vehicle Standards) Regulations 1977* made under the *Road Traffic Act 1974*. These regulations govern, *inter alia*, the safety aspects of such structures.²⁴ The content of any attached advertising would be regulated under existing laws.²⁵

4.54 The Shire does not have the power to regulate signs on taxis as these are regulated by Section 29 of the *Transport (Country Taxi-car) Regulations 1982*, sub-section (1) of which provides that “...the owner of a taxi-car shall not cause or permit any sign to be displayed on it or fitted to it unless the sign is an approved sign.” The Director General of Transport is the person whose approval is required.

²³ Corrected transcript of evidence taken at Denmark, Friday 30 July 1999, pp. 16-17.

²⁴ See Regulation 106.

²⁵ For example the *Censorship Act 1996* and the *Racial Hatred Act 1995* (Cth).

- 4.55** Aside from the difficulties of enforcement, the Committee questions whether the Shire has the power to regulate advertising on parked vehicles under clause 17(2)(h) as the regulation of vehicle standards and traffic is the responsibility of the Commissioner of Police and Director General of Transport under the *Road Traffic Act 1974* and regulations made under that Act.²⁶

APPEAL PROCEDURE IS NOT CLEARLY SET OUT IN THE LOCAL LAW

- 4.56** Clause 20 provides that signs which do not comply with the requirements of the Local Law shall be removed immediately upon receipt of a written direction from an authorised officer. The clause is subject to the provisions of Division 1, Part 9 of the *Local Government Act 1995*. This sets out the appeals procedure under the Act.
- 4.57** The Committee is concerned that it is not made clear in the Local Law that Division 1, Part 9 of the Act applies not only to a decision to remove a non-conforming sign but to a decision or notice relating to the granting, renewal, variation or refusal of a licence, permit, approval, or other means of authorizing a person to do anything under the Local Law.
- 4.58** The Committee is of the view that a clause of the Local Law should deal specifically with appeals against decisions relating to the Local Law. The clause should specify that Division 1, Part 9 of the Act applies to these decisions.

UNDUE RESTRICTION IN THE LOCAL LAW FOR THE DISPLAY OF TEMPORARY SIGNS ON PRIVATE PROPERTY

- 4.59** The display of a sign on private property, even for a short period is significantly restricted under the Local Law. Other than a sign which is exempt under clause 13, an existing sign exempted under the Savings provision in clause 30 or signs which have been permitted by the Shire under clause 22 dealing with Signs in the Public Trust, all signs if visible from a street, reserve or public place are either prohibited or require a licence to be issued. The Committee notes that clause 19(2) of the Local Law excludes

²⁶ *Road Traffic Act 1974*, s. 6(1) The Commissioner of Police is responsible for the control and regulation of traffic and for the enforcement of the traffic regulation provisions of the Act. Under s. 111 of the Act the Governor can make regulations for the due administration of this Act for the licensing, equipment and use of vehicles and for the regulation of traffic, generally.

the following signs and advertisements from the prohibition on billposting in clause 19(1):

4.59.1 advertisements affixed to, or painted on, a shop window by the occupier and relating to the business carried on therein;

4.59.2 signs within a building; and

4.59.3 the words stating the name and occupation of any occupier of business premises painted on a window or wall of those premises.

4.60 In its letter to the Committee, being “Annexure C” to this report, the Shire stated that election signs (and by implication other signs attached to the inside of windows of commercial premises) were exempt from the requirements of the Local Law. At page 5 the Shire stated:

“Bill posting, flyers, posters and so forth advertising candidates are exempted from council approval so long as they are located within buildings, or on the inside of windows of commercial premises (clause 19).”

4.61 The Shire is simply not correct in this assertion. Unless they are signs which are “Exempt Signs” under clause 13 of the Local Law, are existing signs exempted under the Savings provision in clause 30 or are signs which have been permitted under clause 22 dealing with Signs in the Public Trust, all signs will be required to be licensed if visible from a street, reserve or public place.

4.62 The failure to include the activities in sub-clause 19(2) as exempt signs or alternatively to state that the clause is exempt from the requirements of licensing prescribed by clause 8 was possibly an oversight by the draftsman. However, the current drafting of the Local Law leaves no room for exemption from the requirement of licensing, other than for the exempted signs in clause 13, for Special Permits for Signs in the Public Trust in clause 22 or the Savings provision in clause 30 applying to existing signage which had previously been approved.

4.63 Clause 19 does not operate to exempt the activities in **4.59.1**, **4.59.2** and **4.59.3** above from the requirement of the Local Law but merely operates to exclude those activities from the prohibition contained in that clause on billposting, stencilling, placing or affixing an advertisement on a street or on a building, structure, fence, wall, footpath, sign post, blind or awning.

- 4.64** In the Committee's opinion, the activities listed in **4.59.1**, **4.59.2** and **4.59.3** above should be exempt from the licensing requirements of the Local Law. The Committee is also of the view that the Local Law should permit temporary signs, when of a limited size and located or erected on private property for a short period, without the requirement for licensing or a special permit from Council.
- 4.65** Under the Local Law as it is currently drafted, a sign in a shop window notifying the public of a lost pet, the local CWA cake stall, or the local fair would require a special permit issued by an officer of the Council. Although the issue of a special permit would not require the payment of a licence fee²⁷, the burden on the citizen in having to obtain the Shire's permission for undertaking such activities unduly infringes upon the citizen's existing rights and is unacceptable to the Committee.
- 4.66** The Committee is also of the view that the fee required to be paid by the licensee for the issue of a licence should be contained within the Local Law rather than be permitted to be set by Council from time to time as provided in clause 10.

5 CONCLUSION

- 5.1** In the absence of prorogation and the operation of Standing Order 153(c) resulting in the "automatic" disallowance of the Local Law, the Committee would have recommended disallowance of the Local Law on the grounds that:
- 5.1.1** the Local Law conflicts with the Shire's Town Planning Scheme No. 3 and Town Planning Policy No. 27.1;
 - 5.1.2** clause 17(2)(j) relating to the prohibition on election signs offend sections 7 and 24 of the Commonwealth Constitution and is therefore beyond the Shire's power;
 - 5.1.3** certain clauses of the Local Law are *ultra vires* and/or unduly trespass on established rights, freedoms and liberties;
 - 5.1.4** the appeal procedure is not clearly set out in the Local Law; and
 - 5.1.5** there is an undue restriction in the Local Law for the display of temporary signs on private property.

²⁷ Corrected transcript of evidence taken at Denmark, Friday 30 July 1999, p. 24.

- 5.2** The Committee accepts the advice of WAMA that local laws made under the *Local Government Act 1995* are largely unnecessary for the regulation of signs and advertising and that existing Town Planning Schemes and the provisions of the *Local Government (Miscellaneous Provisions) Act 1960* can achieve the same purpose (other than possibly for sandwich board signs and direction signs).
- 5.3** In these circumstances and in view of the advice of WAMA to local governments regarding the difficulties of enforcement of signs local laws made under the *Local Government Act 1995*, the Committee is of the view that it would not be appropriate for it to assist WAMA in the drafting of new Model Local Laws relating to the regulation of signs and advertising devices.
- 5.4** It is hoped that the views of the Committee in this report and those of WAMA are heeded by local governments contemplating pursuing the regulation of signs via the use of local laws under the *Local Government Act 1995*, or by any other regulatory avenue.

Hon. Bob Wiese MLA

Chairman

22 September, 1999

ANNEXURE A

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LOCAL GOVERNMENT ACT 1995

SHIRE OF DENMARK

SIGNS LOCAL LAW 1999

15 March 1999]

GOVERNMENT GAZETTE, WA

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LOCAL GOVERNMENT ACT 1995

SHIRE OF DENMARK

SIGNS LOCAL LAW 1999

1. Title

This local law may be referred to as the *Shire of Denmark Signs Local Law 1999*.

2. Repeal

The Shire of Denmark Signs, Hoardings and Billposting Bylaws published in the *Gazette* on 19th April 1991 are repealed.

3. Commencement

By virtue of section 3.14 of the Act, this local law comes into operation on the 14th day after the day on which it is published in the *Gazette*.

4. Interpretation

In this local law, unless the contrary intention appears—

“Act” means the Local Government Act 1995;

“advertising device” means any object on which words or numbers or figures are written placed, affixed or painted for the purpose of advertising any business, function, operation or other activity and includes any vehicle or trailer or other similar stationary object placed or located so as to serve the purpose of advertising any business, function, event, product or undertaking;

“authorised person” means a person authorised by the Council for the purpose of performing any function or exercising any power conferred upon an authorised person by these local laws;

“bill posting” means the sticking of any bill or painting, stencilling or affixing any advertisement on any building, structure, fence, wall, signpost, pole, blind or awning, so as to be visible to any person in a street, public place, reserve or other land;

“Council” means the Council of the Shire of Denmark;

“direction sign” means a sign erected in a street or public place to indicate the direction to another place but does not include any such sign erected or affixed by the Council or the Commissioner of Main Roads or a road direction sign erected or affixed by a duly incorporated association or union of motorists authorised in that regard by the Minister for the time being administering the Road Traffic Act 1974.

“electoral sign” means a sign containing an electoral advertisement relating to an election or a prospective or forthcoming election of the Parliament of the Commonwealth or the State, a municipal election and to a referendum;

“fly posting” means advertising by means of posters placed on fences, walls, trees or any other structure;

“hoarding” means a detached or detachable structure other than a pylon sign, that is erected for the sole purpose of displaying a sign or signs and includes a poster panel, a wall panel and or illuminated panel;

“horizontal sign” means a sign fixed parallel to the wall of a building to which it is attached and with its largest dimensions horizontal;

“illuminated sign” means a sign that is so arranged as to be capable of being lighted either from within or without the sign by artificial light provided, or mainly, provided for that purpose and which does not emit a flashing, intermittent or sequential light;

“institutional sign” means a sign erected or placed on any land or building used for or in connection with a surgery, clinic, hospital, rest home, home for the aged, or other institution or place of a similar nature;

“offices” means a building or part of a building used for the conduct of administration, the practice of a profession, the carrying on of agencies, banks, typist and secretarial services and services of a similar nature;

“premises” means any building, structure and land;

“projection sign” means a sign that is made by the projection of light on a wall or similar structure;

“pylon sign” means a sign supported by one or more supports and not attached to a building and includes a detached sign framework supported by one or more supports to which sign infills may be added;

“residential area” means land within a residential zone referred to in a town planning scheme of the Shire;

"Shire" means the Shire of Denmark;

"shop" means any building wherein goods are kept, exposed or offered for sale by retail and includes a receiving depot, but does not include a bank, fuel depot, a market, service station, milk depot, marine store, timber yard, or land and buildings used for the sale of motor and other vehicles or for any industrial purpose;

"sign" includes a signboard, a portable sign or a bunting sign and a clock other than a clock which is built into a wall and does not project beyond the face of the wall, or flags and bunting which carry no written message;

"sign infill" means a panel which can be fitted into a pylon sign framework;

"tower sign" means a sign affixed to or placed on a chimney stack or an open structural mast or tower;

"verandah" includes cantilever verandahs but excludes balconies whether over public streets and ways or over private land;

"verandah sign" includes a sign on a verandah fascia or below a verandah;

"wall panel" means a panel used for displaying a posted or painted advertisement, which is affixed to or adjoining the wall of business premises or erected on the forecourt of such business premises.

5. Application

This local law shall apply to all land within the district of the Shire.

6. Crown Bound

This local law binds the Crown.

7. Relationship to Town Planning Scheme

Nothing in this local law derogates from a requirement under the Shire's town planning scheme for planning approval in respect of any sign or advertisement.

8. Licence Required

(1) A person shall not erect or maintain a sign, and the owner or occupier of premises shall not suffer or permit a sign to remain on those premises, so as to be visible from a street, reserve, or other public place, except pursuant to a licence issued under this local law, unless the sign is exempt under clause 13.

(2) A licence issued under this local law remains valid until an alteration is made to the sign in respect of which it is issued and in that event the licensee shall apply for a new licence.

(3) A licence shall be in the form set out in the Schedule 1.

9. Applications for Licences

(1) An application for a licence under this local law shall be made in the form of application set out in the Schedule 1.

(2) An application for a licence in respect of a sign shall be accompanied by a plan drawn to a scale of not less than 1:50 showing, the position, design, method of construction colours to be used in painting and the method of illumination, if any, of the sign for which the licence is sought.

(3) An applicant for a licence shall furnish, in writing, any further particulars required by the authorised person.

10. Licence Fees

The fees payable for the issue of a licence shall be as determined by Council from time to time.

11. Direction Signs

Where a business or amenity is decided by the Council to be of sufficient interest and importance to the travelling public then the Council will allow erection of business or amenity signs which indicate the nature of the business or amenity that may be located by following the direction indicated by the sign. Such signs shall be 200 millimetres wide, maximum length of one metre, with 160 millimetre letters, white on blue background. Individual business name tags may also be permitted and shall be 150 millimetres wide, maximum length of one metre, with 100 millimetre letters, white on blue background.

12. Revocation of Licence

Where anything purporting to be done pursuant to a licence issued under this local law is not done in conformity with this local law or where the licensee is guilty of an offence under this local law, the Council may, without derogating from any penalty to which that person may be liable, by notice in writing, revoke the licence.

13. Exempt Signs

(1) Nothing, in this local law applies to a sign erected or maintained pursuant to an Act or to a sign that is—

(a) a sale sign not exceeding 0.7 square metres in area;

(b) a direction sign erected or affixed by Council in a street or public place to indicate the direction to another place.

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- (c) used solely for the direction and control of people, animals and vehicles or to indicate the name and street number of a premises, providing the area of any such sign does not exceed 2 square metres;
 - (d) a building name sign on residential flats or home units where it is of a single line of letters not exceeding 300 millimetres in height, fixed to the facade of the building;
 - (e) newspaper and magazine posters;
 - (f) a sign erected on land zoned rural with the property name, owner's name and telephone number, subject to—
 - (i) overall height, inclusive of supporting structure, not to exceed 2 metres;
 - (ii) overall length of sign, inclusive of supporting structure, not to exceed 3 metres;
 - (iii) the area of the sign not to exceed 1.2 square metres.
 - (g) In a residential zone a plate not exceeding 600mm² in area, erected, or fixed, on the street alignment or between the alignment and the building line, to indicate the name and occupation or profession of the occupier of the premises.
- (2) Notwithstanding that a sign would otherwise comply with the provisions of this local law, and without limiting those provisions, the Council may refuse a license if the sign is in its opinion, injurious to the amenity of natural beauty of the area.

14. Fixing of Signs

Every sign shall be securely fixed to the structure by which it is supported to the satisfaction of the authorised person, and shall be maintained in a safe condition.

15. Sign Designs

(1) All signs shall be designed, constructed, finished, installed and maintained to be compatible with their surroundings including buildings, landscaping and other signs.

(2) Signs attached to buildings shall reflect the architectural features of the building in placement, style, proportions, materials and finish.

16. Obstruction by signs

A person shall not erect a sign so as to obstruct access to or from a door, fire escape or window, other than a window designed for the display of goods.

17. Prohibited or Restricted Signs

(1) A person shall not erect, maintain or display a sign—

- (a) so as to obstruct the view from a street or public place, of traffic in the same, or any other street, 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 Regulations made under that Act;
- (c) on a tower, mast, chimneystack, spire, dome or similar architectural feature or on a lift machinery room, bulk-head over stairs or other superstructure over the main roof of a building;
- (d) on a building where the stability of the building is, in the opinion of the authorised person, likely to be affected by the sign;
- (e) in a position where it unduly obstructs or obscures a person's view from a dwelling, a river, the sea or any other natural feature;
- (f) on land other than that on which is conducted a business or profession and to which the sign relates;
- (g) on a light pole, power pole or verandah post;
- (h) as a free standing sign above a roof;
- (i) on any land that is used for residential purposes unless specifically permitted in this local law;
- (j) attached to a vehicle parked in or on a street, way, footpath or public place but does not include a sign painted on that vehicle.

(2) A person shall not erect maintain or display—

- (a) a flag other than flags approved by authorised State and Federal Government bodies, as approved by the authorised officer;
- (b) any bunting;
- (c) any flashing, intermittent or sequential lights;
- (d) any sign on a roof of a building or the roof of a verandah;
- (e) any sandwich-board signs, except on private property;
- (f) any sign which rotates or tumbles;
- (g) any sign which incorporates reflective material;
- (h) any sign sign written on a parked vehicle unless;
 - (i) the vehicle is owned by a tradesperson/business proprietor;
 - (ii) the sign advertises only the tradesperson/business proprietor and the tradesperson's/ business proprietor's services or products;
- (i) any hoarding;
- (j) any electoral sign.

18. Signs to be Maintained

The holder of a licence in respect of a sign shall keep the sign clean and free from unsightly matter and in good condition and presentation.

19. Bill Posting

(1) Subject to subclause (2) a person shall not post a bill or paint, stencil, place or affix an advertisement on a street or on a building, structure, fence, wall, footpath, sign post, blind or awning.

(2) This clause does not apply to—

- (a) advertisements affixed to, or painted on, a shop window by the occupier and relating to the business carried on therein;
- (b) signs within a building;
- (c) the words stating the name and occupation of any occupier of business premises painted on a window or wall of those premises.

20. Signs

Subject to the provisions of division 1 of part 9 of the Act—

- (1) Where an approved sign fails to conform to the requirements of this local law, it shall be removed immediately upon receipt of a written direction from an authorised person.

21. Headroom

Unless otherwise provided in this local law every sign shall be so fixed as to provide a clear headway under the sign of not less than 2.4 metres.

22. Special Permits for Signs in the Public Trust

(1) Notwithstanding any other provision of this local law the Council may, by permit under the hand of an officer of Council, allow the display of advertisements of meetings, charitable functions, art or cultural activities or other events of public interest or the display of advertisements at theatres and other places of public entertainment (other than those conducted by a person for the purpose of commercial gain unless in the interest of the community or tourists).

(2) A person shall not erect or maintain a sign more than 2 weeks before the meeting, function, event or activity to which it relates and the person by whom it was erected shall cause it to be removed not later than 24 hours after the conclusion of the meeting, function, event or activity.

(3) Notwithstanding any other provision of this local law, a person shall not nail or otherwise affix a sign to a tree.

(4) Upon the expiration or revocation of a permit issued under this local law the person to whom it was issued shall forthwith remove the advertisement to which it relates and failure so to remove the advertisement is an offence.

23. Fly Posting

(1) No person shall fly post at any place or location within the district of the Shire.

(2) Where a person is alleged to have committed an offence against this local law in respect of fly posting, the person authorising the advertisement shall be deemed to be the person who committed the offence.

24. Illuminated Signs

Every illuminated sign shall—

- (a) have any boxing or casing in which it is enclosed constructed of incombustible material;
- (b) where comprising glass (other than fluorescent tubing) have the glass so protected as to prevent its falling into a public place in the event of breakage;
- (c) have its electrical installation constructed and maintained to the satisfaction of Western Power or the appropriate electrical supply authority and in accordance with the relevant Australian Standard;
- (d) be maintained to operate as an illuminated sign;
- (e) not have a light of such intensity as to cause annoyance to the public or be a traffic hazard; and
- (f) not emit a flashing, intermittent or sequential light.

25. Information Panels

The Council may provide information panels or bays of varying sizes and charge fees for the inclusion of advertisements in such panels or bays.

26. Institutional Signs

Institutional signs shall not exceed 2 square metres in area.

27. Pylon Signs

(1) A pylon sign shall—

- (a) not have any part thereof less than 2.4 metres or more than 6 metres above the level of the ground immediately below it;
- (b) not exceed 4 square metres in area;
- (c) be supported on one or more piers or columns of brick, stone, concrete, timber or steel of sufficient size and strength to support the sign under all conditions;

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- (d) not be within 2 metres of the side boundaries of the lot on which it is erected. If the lot on which the pylon sign is erected abuts an intersecting street or right-of-way, Council may authorise the erection of the sign at a lesser distance than 2 metres;
 - (e) not be erected so that it projects over any pedestrian access way or street.
- (2) Pylon signs shall be restricted to 1 per lot.
- (3) Where a pylon sign is to be erected on a lot on which a factory tenement building or small shops are erected or are to be erected, Council may require the pylon sign to be incorporated into one sign complying with the following—
- (a) initial approval is to be given to the pylon sign framework together with one or more sign infill;
 - (b) a license is not required for each additional infill;
 - (c) all infills are to be of an equal size and space is to be provided for one infill for each shop or unit on the lot.

28. Verandah Signs

(1) Signs on Verandah Fascias: A sign fixed to the outer or return fascia of a verandah—

- (a) shall not exceed 300 millimetres in depth;
- (b) shall not project beyond the outer metal frame or surround of the fascia.

(2) Signs Under Verandahs: A sign under a verandah shall—

- (a) afford a headway of not less than 2.4 metres;
- (b) not exceed 2.5 metres in length or 400 millimetres in depth or 1 square metre in area;
- (c) not weigh more than 55 kilograms;
- (d) not be within 3 metres of another sign under that verandah or within .5 of a metre of the side wall of the shop or office;
- (e) be fixed at right angles to the front wall of the building before which it is erected except on a corner of a building at a street intersection where the sign may be placed at an angle with the wall so as to be visible from both streets;
- (f) be so placed that the centre of its base longitudinally is equidistant from the outer edge of the verandah and the vertical plane of the shop front directly opposite the end of the sign.

29. Requirements—Signs

(1) A sign shall—

- (a) afford a minimum headway of not less than 2.4 metres;
- (b) not be within 300 millimetres of either end of the wall to which it is attached; and
- (c) not be placed on a corner of a building, except at a street intersection where it may be placed at an angle with the walls so as to be visible from both streets.

(2) A sign or signs shall not exceed, in total area, 25% of the area of the external elevation of the premises on which the sign or signs are displayed and shall only be permitted on the ground floor storey of a building.

30. Savings

(1) Subject to subclause (1), no provision of this local law other than clause 18, shall prevent the continued erection and maintenance of a sign for which, immediately prior to this local law coming into operation, all licences and approvals required to authorise the erection of the sign, were duly obtained and current.

(2) This clause shall cease to apply to a sign which is removed, dismantled, altered, added to or amended after this local law comes into operation.

31. Offences

(1) Any person who erects a sign which does not comply with or erects a sign in a manner contrary to a provision of this local law commits an offence.

(2) Where under this local law a person is required to obtain a licence to erect or maintain a sign, every person who maintains a sign without a licence or in respect of which the licence has expired or been cancelled commits an offence.

(3) No owner or occupier of any land or premises shall permit a sign to remain on the land or premises unless such sign complies with this local law.

(4) Without derogating from the other provisions of this local law the Council may serve notice on the owner or occupier of any premises on which a sign is erected, affixed or maintained, contrary to this local law, to remove the sign within such time as may be specified in the notice. A person neglecting, or failing to comply with the terms of a notice served on the person pursuant to this local law commits an offence.

(5) An authorised person may remove to a place appointed by the Council any sign, advertisement or advertising device, placed on or erected on any street, way, or place vested in, or under the care or control of the Council unless so placed or erected pursuant to this local law. The Council may without being liable in damages or otherwise dispose of any of the things mentioned above and reinstate the street, way or place at the expense of the person responsible for the deposit thereon or the injury thereto and recover the amount of the expense from that person in a Court of competent jurisdiction.

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GOVERNMENT GAZETTE, WA

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32. Penalties

Any person who is convicted of an offence against this local law is liable to—

- (a) a penalty not exceeding \$500;
- (b) and a further penalty of \$50 a day for every day the offence continues after conviction for the same.

Schedule 1**Form 1****SHIRE OF DENMARK SIGNS LOCAL LAW 1998****APPLICATION FOR LICENCE**

Full Name of Applicant: Owner:.....
Occupier:.....

Address: Phone:

Type of Sign

Premises on which Sign is to be erected:

Exact position of sign:

Dimensions of sign:
(Plans to be Submitted)

Materials and Construction of sign:

Inscription or Device on sign:

The applicant named above hereby applies for the issue of a licence in respect of the above mentioned sign:

Dated this day of 19
Applicant.....

*Owner/Occupier

* Owner to either sign application or provide written authority for occupier to apply.

Form 2**SHIRE OF DENMARK SIGNS LOCAL LAW 1998**

of

is hereby licensed to erect and maintain a sign on the premises specified hereunder subject to the provisions of the Shire of Denmark Signs Local Law 1998.

Type of Sign

Premises on which erected:

Exact position of sign:

Dimensions of sign:

Conditions of Licence:

License No:

Dated this day of 19

Chief Executive Officer

The licence remains valid until any alteration is made to the sign, in which case the licensee must apply for a new licence.

The Common Seal of the Shire of Denmark was hereto affixed by authority of a resolution of the Council in the presence of—

Dated: 25th January 1999.

HENDRIK J. VERSLUIS, President.
PASCOE DURTANOVICH, Chief Executive Officer.



ANNEXURE B



11 May 1999

Mr Pascoe Durtanovich
Chief Executive Officer
Shire of Denmark
Strickland Street
Denmark WA 6333

By facsimile: (08) 9848 1985

Dear Mr Durtanovich

Shire of Denmark Signs Local Law 1999

I refer to your letter to the Joint Standing Committee on Delegated Legislation ('Committee') dated 23 March 1999 which enclosed copies of the above Local Law and the explanatory memorandum.

The Committee reviewed the *Shire of Denmark Signs Local Law 1999* ('Local Law') at its meeting yesterday. The Committee has a number of concerns regarding the Local Law and resolved to write a letter to the Shire to seek further information.

The Committee is concerned by what it perceives to be a heavy handed approach by the Shire in regard to the signs that have been prohibited. In particular, the Committee would like the Shire to justify the prohibition of the types of signs listed in clauses 17(1)(f), 17(1)(i), 17(1)(j), 17(2)(a), 17(2)(b), 17(2)(g), 17(2)(h) and 17(2)(j).

The Committee would also like further information in support of the requirements for sign designs as set out in clause 15 of the Local Law.

There does not appear to be an exemption for displaying temporary signs on private property within the district. Why isn't this type of sign exempted from complying with the Local Law's requirements?

Finally, part 6 of the Shire's explanatory memorandum refers to three submissions that were received and considered by the Council at its meeting on 24 November 1999. The Committee would like to review these submissions and would appreciate it if the Shire forwarded copies of them to the Committee.

Due to the time constraints facing the Committee regarding consideration of the Local Law, the Committee requests that the Shire provides its response no later than the close of business on **Friday 21 May 1999**.

Parliament House PERTH WA 6000 TELEPHONE +61 8 9222 7222 FACSIMILE +61 8 9222 7809
E-MAIL(GENERAL OFFICE): council@parliament.wa.gov.au

Shire of Denmark

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If you have any questions in respect of the above, please do not hesitate to contact Nigel Pratt, the Committee's Advisory / Research Officer on (08) 9222 7406.

Yours sincerely



Hon Bob Wiese MLA

Chairman

Joint Standing Committee on Delegated Legislation

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ANNEXURE C

21-May-99 14:30 SHIRE OF DENMARK

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Strickland Street, Denmark, Western Australia 6333

Tel (08) 9848 1106 Fax (08) 9848 1985

Our Ref:

PD:CV

Enquiries: Pascoe Durtanovich

21st May 1999

Hon. Bob Wiese MLA
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH WA 6000

Dear Mr Wiese

RE: SHIRE OF DENMARK – SIGNS LOCAL LAW 1999

I refer to your letter to Council dated the 11th May 1999 which requested clarification of a number points raised with regard to the above Local Laws.

The Laws have gone through two periods of public advertisement with the opportunity for public comment. They have been tested against the National Competition Policy by an independent consultant (see attachment), and were initially formulated by a sub-committee at the request of the community, represented by both members of the elected Council and members of the local business community (Chamber of Commerce).

Council officers have researched your concerns and I am happy to provide you with the following information. A copy of the three submissions received during the final period of advertisement for the Local Laws has also been attached for your perusal.

CLAUSE 17 – PROHIBITED OR RESTRICTED SIGNS – COUNCIL'S JUSTIFICATION

17(1)(f) On land other than that on which is conducted a business or profession and to which the sign relates.

As mentioned above, Council has gone through an extensive period of public consultation during the formulation of these Local Laws, which has taken almost 3 years to complete. One of the earliest steps taken was at the request of the community, establishment of a sub-committee whose job was to look into alterations to the then existing Sign By-laws. In a summary of that sub-committee's work, presented to Council on the 26th November 1996, it was stated that:

"The sub-committee strongly opposed any existing or proposed signs on land that is not associated with or the sign does not relate to the activity at that premises, and recommends that this provision be included in By-law 14 (Prohibited & Restricted Signs)."

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ALL COMMUNICATIONS TO:
Chief Executive Officer, PO Box 183, Denmark WA 6333

21-May-99 14:30 SHIRE OF DENMARK

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Council agreed with the sub-committee's recommendation on the basis that it would cease the seemingly endless proliferation of signs that are appearing on properties bordering major traffic routes within the Shire, without Council or Main Roads approval. These signs are seen by locals and tourists alike as the biggest offenders in the destruction of the natural beauty and amenity that exists within our Rural sector. Should Council allow erection of these signs, the tree lined entrances to the various Shire townsites would become cluttered with advertising to the benefit of the individual business, but detriment to the visual amenity of the locality.

Denmark is not alone in this stance. The adjoining Shire of Manjimup also prohibits advertising of businesses on land that does not directly relate to the business being advertised. Manjimup's tougher stance on policing this by-law has resulted in a number of unauthorised signs being erected prior to the Nornalup townsite (within our Shire boundary) advertising Wulpole businesses some 10km away. This is not seen as an acceptable situation by Council or the community at large.

17(1)(i) On any land that is used for residential purposes unless specifically permitted in this local law.

This clause was aimed at preventing the proliferation of unnecessary signs within our residential areas.

It should be noted that Clause 13(1)(d) of the Local Laws exempts:

"A building name sign on residential flats or home units where it is of a single line of letters not exceeding 300mm in height, fixed to the facade of the building."

While Clause 13(1)(g) exempts:

"In a residential zone a plate not exceeding 600mm² in area, erected, fixed, on the street alignment or between the alignment and the building line, to indicate the name and occupation or profession of the occupier of the premises."

Where businesses such as Home Occupations and Bed and Breakfasts are approved by Council in a residential area, Council's Town Planning Scheme No. 3 also permits the erection of a sign not exceeding 0.2m² in size advertising the approved business.

17(1)(j) Attached to a vehicle parked in or on a street, way, footpath or public place but does not include a sign painted on that vehicle.

This clause is aimed at preventing the erection of free-standing signs on vehicles parked in public areas. It is not the intention of Council to prevent business operators or tradepersons advertising their business by painting on to the side of their own vehicles, but rather the deliberate parking of vehicles or trailers with an advertising device mounted on top of the vehicle in prominent locations solely for the purpose of advertisement.

17(2)(a) A flag other than flags approved by authorised State and Federal Government bodies, as approved by the authorised officer.

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This clause does not preclude the erection of Western Australian, Australian, Aboriginal or any other government recognised flags. What it does prohibit is the use of advertising on flags, which in April 1997 was deemed by Council to be contrary to the existing character and amenity of Denmark townsite and Shire.

17(2)(b) Any bunting.

Bunting was also considered to be contrary to the amenity provisions of Council. In considering its list of prohibited and restricted signs, Council looked carefully at existing development with particular emphasis on the Denmark Townsite. No bunting appears within the Denmark Townsite hence Council considered to allow this form of advertisement, it could potentially be contributing toward significant alteration to the amenity of the existing built form.

It should be noted for example that the City of Fremantle has had a policy since the mid 1970's which prohibits bunting.

17(2)(g) Any sign which incorporates reflective material.

The aim behind this clause was to encourage subtle signage that would not detract from the architectural features of a building, the visual amenity of the area and also to avoid inconvenience to the public whilst viewing the sign on a sunny day. It was also included to prevent conflict by the signs reflective quality from a traffic safety perspective, and to prevent the sign being mistakenly identified as a traffic sign erected by either Council or Main Roads WA.

17(2)(h) Any sign written on a parked vehicle unless

- (i) The vehicle is owned by a tradesperson/business proprietor;**
- (ii) The sign advertises only the tradesperson/business proprietor and the tradesperson's/business proprietor's services or products.**

This clause is aimed at preventing the advertisement of products, businesses or activities on vehicles that are not owned, or do not relate to the product, business or activity being advertised. An example from Perth would be the erection of advertisements on the rear of taxis and buses that do not advertise operation of the taxi or bus service, but rather a product such as Coca-Cola or a business such as Retravision and so forth.

It was considered important by Council that Denmark does not follow the metropolitan area's acceptance of this form of advertisement. A view while hard to police, reflected by the general community as visual amenity is an extremely important consideration.

17(2)(j) Any electoral sign.

Prior to and during times of elections for all three tiers of government, the erection of numerous signs advertising elections can seriously affect the visual amenity of a locality. It would be unfair for Council to permit the erection of this form of advertisement, whilst setting strict laws restricting the erection of signs on properties not related to the business being advertised.

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The adjoining City of Albany By-laws require a special permit to be granted by Council for the erection of signs to do with elections. However, from speaking with the officers involved in providing these permits, it appears that applications are rarely received and unless a complaint is registered, the regulation is rarely enforced. This is not a situation that the Denmark Council wishes to duplicate.

Bill posting, flyers, posters and so forth advertising candidates are exempted from Council approval so long as they are located within buildings, or on the inside of windows of commercial premises (Clause 19). This provides a more than adequate form of advertisement that reaches the local community who are the primary audience for this form of advertisement. To allow the erection of free-standing signs or hoardings on private or public property viewable to passing traffic is unnecessary.

Advertising when elections are to occur is suitably addressed by the Electoral Provisions, through alternative forms of advertisement.

CLAUSE 15 – SIGN DESIGNS – INFORMATION IN SUPPORT OF THE REQUIREMENT

The primary aim of formulating the new Signs Local Law was to reflect the objectives of the previous By-laws in order to satisfy the regulatory requirements of Council whilst meeting the commercial needs of business proprietors. In attempting to satisfy this aim the issues of public safety, aesthetics, general appearance, colour, unacceptable components, design, location, size and number, were all considered.

Clause 15 was added to ensure that all prospective sign applicants have regard for the above aim prior to lodging an application. In particular Council deemed it appropriate that each application address the issues of visual amenity with regard to built form, continued structural integrity of the building to which the sign will be attached, and most importantly, public safety. To approve signs which do not comply with any of the above would set a dangerous precedent for similar applications.

LACK OF EXEMPTION FOR TEMPORARY SIGNS ON PRIVATE PROPERTIES – COUNCIL'S JUSTIFICATION

The benefit of the new Local Laws is that they provide a legal framework by which Council can ensure that signage is used appropriately and not in conflict with the existing built and natural amenity of the Shire.

Increasingly businesses and landowners within the Shire have come to rely on tourism as their primary source of income. Having spoken to tourists and locals alike, although there is concern with regard to suitable advertisement of tourist facilities off major traffic routes, one of the major drawcards of the Denmark area is the hidden nature of development and its minimalistic yet effective use of signage. Council is endeavouring to improve signage to tourist facilities, and in consultation with Main Roads Great Southern and the Denmark Tourist Bureau, has been investigating different ways to address this issue.

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Temporary signs on private property have been deliberately omitted from the Signs Local Laws on amenity grounds. This is not to say Council does not permit this form of signage, on the contrary it is extremely rare that Council has served notice or removed any signage of this form, except where the signs have proven to be dangerous from a traffic safety perspective, or Council leniency has been abused.

Common sense policing of these laws has been Council's intention from the start. However, for fear of seeing this form of signage abused to the detriment of the natural amenity of Council's rural sector, Council can not be seen to promote this form of signage by including it within the exempt category of it's Local Law.

I should add that visual amenity and aesthetics are extremely important considerations in terms of Council's strategic planning initiatives such as the Settlement Strategy, the Rural Settlement Strategy and the Commercial Strategy.

In conclusion I ask that you take into consideration that the laws have been formulated by the local community, reflective of their particular views on the issue which in 1998 culminated in Denmark being nationally recognised as "Australia's Tidiest Town".

I trust the information provided satisfies your concerns, however if you require clarification as to any of the above, feel free to contact either Planning Officer David Reynolds or myself, at the above office.

Yours faithfully


P. Durtanovich
CHIEF EXECUTIVE OFFICER

ANNEXURE D

LIST OF WITNESSES

(ORAL EVIDENCE)

1 Private Hearing with Denmark Chamber of Commerce, Thursday 29 July 1999.

Mr Alan Daems and Mrs Marion Daems
Proprietors, M & A's of Denmark

Mr John Maxwell
President, Denmark Chamber of Commerce

Mr Rodney Symes
Vice President, Denmark Chamber of Commerce

Mr Philip Giles
Proprietor, Tacita Boarding Kennels, Denmark

Mr Terry Moore
Secretary, Denmark Chamber of Commerce

2 Private Hearing with Councillors and Officers from the Shire of Denmark, Friday 30 July 1999.

Cr. Colleen Donnelly
Shire President, Shire of Denmark

Mr Pascoe Durtanovich
CEO, Shire of Denmark

Mr Peter Duncan
Manager, Planning and Development, Shire of Denmark

Mr David Reynolds
Planning Officer, Shire of Denmark

Cr. Alex Symes
Councillor, Shire of Denmark

Cr. Geoffrey Evans
Councillor, Shire of Denmark

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3 Public Hearing, Friday 30 July 1999.

Mr Bartholomew Lebbing
Proprietor, Bartholomew's Meadery

Mr Angus MacKenzie
Tourist operator and farmer

Mr Les Thomas
Guest house proprietor

Mrs Elizabeth Thomas
Guest house proprietor

Mr Chris Rose
Restaurant proprietor

Mr Gordon Tait
Fruiterer

Mr Robert Versluis
Former Shire President

Mr Colin Matthews
Proprietor, Denmark Liquor Store

Mr Michael Ponsford
Proprietor, Misty Creek Winery and Restaurant

Mr Donald Atkinson
Proprietor, DJ's Fruit and Vegetable Market

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LIST OF WITNESSES

(WRITTEN EVIDENCE)

Shire of Denmark

Mr Chris Rose
Restuarant Proprietor

Ms Pamela Meldrum-Turnbull
Proprietor, Matilda's Meadow Wines

Mrs Debbie Maddams
Proprietor, Pentland Alpaca Stud and Tourist Farm

K. Farrant
Proprietor,McSweeney's Gourmet

Mr Noel and Mrs Andrea Ibbotson
Proprietors, Palm Court Cafe`

Mr Philip Giles
Proprietor, Tacita Boarding Kennels

Mr Alan Daems and Mrs Marion Daems
Proprietors, M&A's of Denmark

Carter's Real Estate

Mr Ron John Cocking
Proprietor, Mariner's Rest Wines

Mr Donald Atkinson
Proprietor DJ's Fruit and Vege Market

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ANNEXURE E



30 August 1999

LEVEL 51 CENTRAL PARK 152-158 ST GEORGE'S TERRACE PERTH
GPO BOX A39 PERTH WA 6037 AUSTRALIA
DX 124 PERTH www.minters.com.au
TELEPHONE +61 8 9429 7444 FACSIMILE +61 8 9429 7666

Ted Chown
Coordinator Local Laws WA Service
Western Australian Municipal Association
Local Government House
15 Altona Street
WEST PERTH WA 6005

Dear Mr Chown

Control of Advertising Devices - Infringement Notices

I refer to our recent telephone conversation during which you raised the question as to whether infringement notices could be issued under a town planning scheme for breach of provisions relating to the control of advertising devices.

As you know, Subdivision 2 of Division 2, part 9 of the *Local Government Act 1995* expressly authorises a local government to give an infringement notice for a breach of a local law allowing the alleged offender an option to pay the modified penalty for the offence (which is not to exceed 10% of the maximum fine that could be imposed for that offence by a Court).

Under the *Town Planning and Development Act*, section 10 provides that a person who fails to comply with the provision of a scheme, or who carries out any development other than in accordance with any approval issued by the responsible authority, is guilty of an offence, the maximum penalty for which is \$50,000. There are no provisions in the *Town Planning and Development Act* expressly authorising a local government to issue an infringement notice for such an offence. However, under section 6(1) of the *Town Planning and Development Act*, a local government has broad powers to make a town planning scheme. This section provides that a scheme may be made for 'the general object of improving and developing...land to the best possible advantage and of securing suitable provision for the use of land for building or other purposes'. Schemes may also be made for any of the purposes mentioned in the first schedule of the Act. Although none of the items in the first schedule deal specifically with enforcement issues, item 28 of the Schedule allows provisions in schemes dealing with 'any matter necessary or incidental to town planning or housing.'

In my view, the *Town Planning Development Act* would authorise the inclusion in a scheme of a provision allowing infringement notices to be issued provided that such a provision is not directly or impliedly inconsistent with the Act. A provision similar to that contained in Part 9, Division, 2 Sub-division 2 of the *Local Government Act* would not be inconsistent with any provision of the *Town Planning and Development Act*. The ability to issue an infringement notice for a modified penalty would not defeat the purpose of, or be irreconcilable with the provisions of section 10, and

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MINTER ELLISON GROUP AND ASSOCIATED OFFICES
SYDNEY MELBOURNE BRISBANE CANBERRA ADELAIDE PERTH GOLD COAST
LONDON HONG KONG AUCKLAND WELLINGTON CHRISTCHURCH JAKARTA SINGAPORE

Western Australian Municipal Association
30 August 1999

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an alleged offender would still have the option of not paying the modified penalty and having the matter dealt with in Court.

In the circumstances, I am of the view that a local government which chose to control advertising devices under its scheme rather than under local laws would also have the option of including in its scheme provisions authorising the giving of infringement notices for modified penalties.

I should add however that I am unaware of any local government ever having included such provisions in its scheme and accordingly, the matter is probably untested at this point in time. It may be worthwhile obtaining the views of the Ministry for Planning given that it is the Planning Minister who ultimately must approve any scheme amendments.

Please contact me if you wish to discuss any of the above.

Yours sincerely



Graham Castledine

Contact: Graham Castledine (08) 9429 7427 graham.castledine@minters.com.au
Partner responsible: Graham Castledine (08) 9429 7427
Our reference: AGC: 546986

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ANNEXURE F

LEGISLATIVE REVIEW

ADVERTISING DEVICES / SIGNS HOARDINGS AND BILL POSTING

Local Laws WA and the Local Government Act Services Committee have examined the content of local laws adopted under the Local Government Act, and have reached the conclusion that the control of 'signs' would in future be better exercised by local government under the Town Planning Act.

The enclosed opinion from Minter Ellison discusses the three control mechanisms available to local governments at the present time, of which Local Government Act local laws is the weakest.

The Local Government Act local laws relating to Signs Hoardings and Bill Posting and Advertising Devices are considered to unnecessarily duplicate provisions of the Local Government (Miscellaneous Provisions) Act 1960 and town planning schemes, also, in that a head of power does not exist in Schedule 3.1 of the Local Government Act 1995 enabling a local government to order the removal of unsuitable signs from private land, prevailing legal opinion appears to be that Councils cannot make such an order in local laws. In other words, local laws under the Local Government Act virtually have no teeth, and the Department of Local Government has expressed no interest in remedying this, because it believes the Town Planning Act is the better mechanism for control of signs in terms of amenity. As safety aspects are in the main controlled by the Local Government (Miscellaneous Provisions) Act and Building Code of Australia, this leaves only billposting, portable signs and perhaps direction signs, which might otherwise need some control, and Local Laws WA intends to address this under a 'model' such as 'streets and footpaths'.

WAMA has already signalled to the Ministry of Planning its intention to submit:-

- (a) changes to the Model Scheme Text (model clauses for use by local governments in Western Australia in the preparation of schemes for the zoning or classification of land), presently open for public comment, to include the necessary head of power to encompass the controls previously existing in local laws; and
- (b) a draft of a model planning policy which could be adopted by local governments.

When these controls are effectively in place, and adopted by your local government, WAMA suggests your local laws relating to Signs Hoardings and Billposting/Advertising Devices, be revoked.

As town planning schemes are reviewed on a 5 yearly basis, depending on the year of your last review, it may be some years before you adopt the new scheme text and subordinate policies. Your local laws, together with other existing heads of power, may suffice until such time, albeit with some enforcement deficiencies.



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3 November 1997

Western Australian Municipal Association
Local Government House
PO Box 1544
WEST PERTH WA 6872

Attention: Mr Chown

Dear Mr Chown

Local Laws Relating to Advertising Devices

We refer to your letter dated 15 October 1997 and to your request for advice on the suitability of the enclosed draft local laws.

There is power under section 31 and Schedule 2 of the *Town Planning and Development Act* (the 'TP & D Act') to make local laws 'prohibiting or regulating the erection and use of...advertising 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 town planning local laws are to apply'. However, for the reasons set out below, we are of the view that the proposed local laws unnecessarily duplicate the controls which already exist on the use of advertising devices.

Local Government (Miscellaneous Provisions) Act 1960 - Building Approval

Section 374 of the *Local Government (Miscellaneous Provisions) Act 1960* (the 'Act') provides:

- '(1) No person shall -
- (a) lay out for building, or commence or proceed with a building, on land in a district; or
- (b) in respect of the structure of a building already erected on land in a district, amend, alter, extend, or enlarge, or commence or proceed with the amendment, alteration, extension, or enlargement of the structure of the building,

until he has caused to be submitted to the local government, and the local government has approved by the issue to the person of a building licence in the prescribed form and on payment on the prescribed fee....'

A MEMBER OF THE MINTER ELLISON LEGAL GROUP

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PERTH OFFICE

3 November 1997

The question arises as to whether, and if so when, the provisions of section 374 of the Act apply to a person seeking to construct or erect a sign.

Clearly, the affixing of a sign onto a building results in an 'amendment, alteration, extension or enlargement of the structure of the building'. In such cases a building licence must be obtained.

You have been advised that a sign is a 'building' under the provisions of the Act and therefore a building licence must be obtained by anyone seeking to erect a sign. While there is clear authority to the effect that a sign *may* constitute a 'building' (*Lavy v London City Council* [1895] 2 QB 577; *Super Sites Ltd v Keen* [1938] 2 All ER 471) this is not a rule of general application and depends on the circumstances of each case.

The term 'building' is not defined in any of the applicable legislation. Prior to its amendment in 1995, the Act defined 'building' to mean:

"a structure erected or placed on land, unless in the circumstances of a particular case, a court required to decide the case declares otherwise..."

That section was repealed by the *Local Government Act 1995*. As there is no definition of 'building' in the Act, the *Local Government Act 1995* or the provisions of the *Building Code of Australia* (incorporated by operation of the *Building Regulations 1989*), resort must be had to case law to determine the meaning of 'building'.

In *The Queen v Marks; Ex parte Australian Building Construction Employees and Builders Labourers' Federation* (1981) 147 CLR 471 at 485-486 Mason J said:

"The meaning of the word 'building' depends very much on the context in which it is found. In some circumstances it means building providing accommodation for people; in other cases it will include a structure accommodating something whether it be animals, materials, plant or machinery; at other times it signifies a mere structure or edifice: eg a bridge, a tank or a tower. My inclination is to think that the word 'building' is generally used in the widest of the three senses mentioned above, but the meaning which should be attributed to the word.. as always depends on the particular context."

Green CJ applied this reasoning in the Tasmanian Supreme Court decision *Wynyard-Waratah Council v Fairbrother*, unreported; Sct of Tas (Green CJ); LCA14; 22 December 1994. His Honour stated that in determining whether something is a 'building' regard should be had to:

- ◆ the mobility of the structure;
- ◆ the extent to which the structure is attached to real property or forms part of the site;
- ◆ whether the structure is connected to the drainage or electrical systems; and
- ◆ whether there is anything in the observable physical facts of the structure which disclose an intention that the structure is to be treated as a building.

When considering the operation of the now repealed section 6 of the Act, Franklyn J in *Allpike v Lang* (1991) 82 LGERA 373 said at 386:

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"Whether a thing is a structure in any particular case is a mixed question of law and fact having regard to the statute in the context of which its meaning must be ascertained."

The Macquarie Dictionary defines 'building' to mean 'something built or constructed...an arrangement of parts.'

Applying the broad approach of Mason J in *The Queen v Marks* (supra), clearly there will be many situations in which a sign is a building for the purposes of section 374 of the Act. In those cases the person seeking to erect the sign will be required to obtain a licence. This approach is strengthened by reference to the purpose of section 374 which is to ensure that structures are erected safely.

Town Planning Schemes and Planning Approval

All town planning schemes require that planning approval be obtained from the relevant local government to commence or proceed with a 'development'. In these cases many schemes incorporate the definition of 'development' as set out in section 2 of the TP & D Act.

Section 2 of the TP & D Act provides that 'development' means:

'the use or development of any land and includes the erection, construction, alteration or carrying out, as the case may be, of any building, excavation or other works on any land.'

This definition was considered by Burt CJ in *University of Western Australia v City of Subiaco* (1980) 52 LGRA 360 at 363:

"In my opinion the definition of 'development' in the *Town Planning and Development Act* makes use of and it encompasses two ideas. The first is the 'use' of land which 'comprises activities which are done in ...or on the land but do not interfere with the actual physical characteristics of the land' and the second being 'activities which result in some physical alteration to the land which has some degree of permanence to the land itself'"

This approach was indorsed by Pidgeon J in *Claude Neon Pty Ltd v City of South Perth* [1983] WAR 147.

It is now well established that a sign may constitute a 'development' and therefore require development approval under the relevant town planning scheme: *Claude Neon Ltd v City of Perth*, unreported; SCt of WA (Kennedy J); 31 July 1987; *Australian Posters Pty Ltd v Shire of Swan*, unreported; (TPAT); No 14 of 1994; 15 November 1994. It is, however, a question of fact and degree: *Claude Neon* [1983] (supra) at 149.

Model Scheme Text

If adopted, the Model Scheme Text, released by the West Australian Planning Commission in October 1997, will apply to all local governments. It is currently proposed that the Model Scheme Text be compulsory for local governments when adopting new schemes in the future. The provisions dealing with signs are found in Part 8.

By clause 8.1 approval must be obtained before any development is commenced or carried out. 'Development' is defined in clause 8.2. The first limb of clause 8.2 incorporates the meaning of 'development' as set out in the TP & D Act and also includes:

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- (iv) the erection, placement and display of any advertisements and the use of land or buildings for that purpose...

By the second limb of clause 8.2 development approval will not be required for:

'an existing advertisement that was lawfully erected, placed or displayed prior to the approval of this Scheme or may be erected, placed or displayed pursuant to a licence or other approval granted by the council prior to the approval of this Scheme; and

any of the exempted classes of advertisements listed in Schedule 4 except in respect of a place included on the Heritage List or in a Heritage area.'

A copy of Schedule 4 from the Model Scheme Text is enclosed for your convenience. We also enclose a copy of Schedule 6 setting out details to be supplied in respect of proposed advertisements.

'Advertisement' is not defined in the Model Scheme Text but 'advertising device' is defined to mean:

'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'.

The time for lodging submissions on the Model Scheme Text closes early next month, so there is still time for amendments to be made. However, it is likely that the final product will deal with approval requirements for signs in a relatively comprehensive manner.

Purpose of building and planning approval

Planning approval deals with issues of amenity and character in a particular area. Community need is also a relevant consideration: *DBTM Pty Ltd v City of Melbourne* (1984-86) 18 APA 296. Other factors include the zoning of the relevant land, the orderly and proper planning of the of the locality and the aesthetic qualities of the proposed development: *Claude Neon Pty Ltd v City of South Perth* (TPAT); No 9 of 1982; 16 August 1982; *Claude Neon v City of Perth* (TPAT); No 44 of 1984; 24 June 1985.

The predominant purpose of building approval is to ensure that a structure is safe: *J Bruce & Partners v Mosman Municipal Council* (1986-87) 26 APA 440.

Proposed Local Laws

We have reviewed the draft local laws that you have prepared. The issues underlying these draft laws appear to be the need for signs to be constructed safely and the impact of signs on the amenity of a given area. As discussed above, in the case of most signs, these issues are already addressed by the Act and relevant town planning schemes. Subject to what we have to say about sandwich board signs and direction signs, our view is that the proposed local laws unnecessarily duplicate the provisions of the Act and town planning schemes. The type of sign which is not affected by planning or building legislation is unlikely to warrant regulation under local laws.

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With respect to sandwich board signs and direction signs, matters of safety and amenity can properly be addressed in local laws concerning streets and footpaths.

If you have any questions regarding the above please telephone Graham Castledine or Eibhlin McCloskey on 9429 7580.

Yours faithfully



MINTER ELLISON

enclosure

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SCHEDULE 4 EXEMPTED ADVERTISEMENTS

LAND USE AND/OR DEVELOPMENT	EXEMPTED SIGN ¹	MAXIMUM SIZE
Dwellings	One professional name-plate as appropriate.	0.2m ²
Home Occupation	One advertisement describing the nature of the home occupation.	0.2m ²
Places of Worship, Meeting Halls and Places of Public Assembly.	One advertisement detailing the function and/or the activities of the institution concerned.	0.2m ²
Cinemas, Theatres and Drive-In Theatres	Two signs (illuminated or non-illuminated) detailing the entertainment being presented from time to time at the venue upon which the signs are displayed.	Each advertisement sign not to exceed 5m ² .
Shops, Showrooms and other uses appropriate to a Shopping Area.	All advertisements affixed to the building below the top of the awning or, in the absence of an awning, below a line measured at 5 metres from the ground floor level of the building subject to compliance with the requirements of the Signs Hoarding and Bill Posting Bylaws.	N/A
Industrial and Warehouse Premises	A maximum of 4 advertisements applied to or affixed to the walls of the building but not including signs which project above the eaves or the ridge of the roof of the building, and excluding signs projecting from a building whether or not those signs are connected to a pole, wall or other building. A maximum of two free-standing advertisement signs not exceeding 5m in height above ground level.	Total area of any such advertisements, shall not exceed 15m. Maximum permissible total area shall not exceed 10m ² and individual advertisement signs shall not exceed 6m ² .
Showroom, race courses, major racing tracks, sports stadia, major sporting grounds and complexes.	All signs provided that, in each case, the advertisement is not visible from outside the complex or facility concerned either from other private land or from public places and streets.	N/A
Public Places and Reserves	a) Advertisement signs (illuminated and non-illuminated) relating to the functions of government a public authority or council of a local government excluding those of a promotional nature constructed or exhibited by, or on behalf of any such body, and	N/A
	b) Advertisement signs (illuminated and non-illuminated) required for the management or control of traffic on any public road, car park, cycleway, railway or waterway where such advertisement has been constructed or exhibited by or at the direction of a Government department, public authority or the council of a local government, and	N/A
	c) Advertisement signs (illuminated and non-illuminated) required to be exhibited by or pursuant to any statute or regulation or the like made pursuant to powers contained within a Statute provided that any such advertisement is constructed and/or exhibited strictly in accordance with the requirements specified therein.	N/A

Includes the change of posters on poster signs and applies to non-illuminated signs unless otherwise stated.

SCHEDULE 4**MODEL SCHEME TEXT**

SCHEDULE 4 EXEMPTED ADVERTISEMENTS

Railway Property and Reserves	Advertisement signs exhibited on such land provided that each such advertisement is directed only at persons at or upon a railway station.	No sign shall exceed 2m ² in area.
Advertisements within buildings	All advertisements placed or displayed within buildings which cannot ordinarily be seen by a person outside of those buildings.	N/A
All classes of buildings other than single family dwellings.	One advertisement sign containing the name, number and address of the building, the purpose for which the building is used or the name and address of the managing agent thereof.	0.2m ²

SCHEDULE 4 MODEL SCHEME TEXT

SCHEDULE 4 EXEMPTED ADVERTISEMENTS

TEMPORARY SIGNS	EXEMPTED SIGN ² TYPE AND NUMBER (All non-illuminated unless otherwise stated)	MAXIMUM AREA
Building Construction Sites (advertisement signs displayed only for the duration of the construction as follows:		
a) Dwellings.	One Advertisement per street frontage containing details of the project and the contractors undertaking the construction work.	2m ²
b) Multiple Dwellings, Shops, Commercial and Industrial projects.	One sign as for (i) above	5m ²
c) Large Development or redevelopment projects involving shopping centres, office or other buildings exceeding 3 storeys in height.	One sign as for (i) above One additional sign showing the name of the project builder.	10m ² 5m ²
Sales of Goods or Livestock	One sign per lot displayed for a period not exceeding 3 months advertising the sale of goods or livestock upon any land or within any building upon which the sign is exhibited provided that the land is not normally used for that purpose.	2m ²
Property Transactions. Advertisement signs displayed for the duration of the period over which property transactions are offered and negotiated as follows:		
a) Dwellings	One sign per street frontage for each property relating to the sale, leading or impending auction of the property at or upon which the sign is or the signs are displayed.	Each sign shall not exceed an area of 2m ² .
b) Multiple Dwellings, Shops, Commercial and Industrial Properties.	One sign as for (a) above	Each sign shall not exceed an area of 5m ² .
c) Large properties comprised of shopping centres, buildings in excess of four storeys and rural properties in excess of 5ha.	One sign as for (a) above	Each sign shall not exceed an area of 10m ² .

Includes the change of posters on poster signs and applies to non-illuminated signs unless otherwise stated.

SCHEDULE 4**MODEL SCHEME TEXT**

SCHEDULE 4 EXEMPTED ADVERTISEMENTS

Display Homes			
Advertisement displayed for the period over which homes are on display for public inspection.	signs	i)	One sign for each dwelling on display 2m ² .
		ii)	In addition to (i) above one sign for each group of dwellings displayed by a single project builder giving details of the project building company and details of the range of dwellings on display. 5m ²

SCHEDULE 6 ADDITIONAL INFORMATION FOR ADVERTISEMENTS

NOTE: TO BE COMPLETED IN ADDITION TO FORM 1 - APPLICATION FOR PLANNING APPROVAL

1. Name of Advertiser (if different from owner):
.....
 2. Address in full:
.....
.....
 3. Description of property upon which advertisement is to be displayed including full details of its proposed position within that property:
.....
.....
 4. Details of Proposed Sign:
 - (a) Type of structure on which advertisement is to be erected (ie freestanding, wall mounted, other):
.....
 - (b) Height: Width: Depth:
 - (c) Colours to be used:
 - (d) Height above ground level - (to top of advertisement):
- (to underside):
 - (e) Materials to be used:
Illuminated: Yes / No. If yes, state whether steady, moving, flashing, alternating, digital, animated or
scintillating and state intensity of light source:
.....
 5. Period of time for which advertisement is required:
 6. Details of signs (if any) to be removed if this application is approved:
.....
.....
.....
- Note: This application should be supported by a photograph or photographs of the premises showing superimposed thereon the proposed position for the advertisement and those advertisements to be removed detailed in 6 above.
- Signature of Advertiser(s):
(if different from land owners)
- Date:

SCHEDULE 6**MODEL SCHEME TEXT**

ANNEXURE G

SHIRE OF DENMARK
EXTRACT FROM TOWN PLANNING SCHEME NO. 3

5.30 CONTROL OF ADVERTISEMENTS

5.30.1 Council's objectives in the control of advertising signs is:

to secure the orderly and proper planning and the amenity of the Scheme Area through the control of advertisements by the examination and determination of applications for advertising signs in the light of:

- the impact of new advertisements upon residential, rural and recreational areas;
- the potential of any proposed advertisement to enhance or detract from the visual amenity and character of an area; and
- the potential for the rationalisation, consolidation or removal of existing advertisements where amenity is already impaired by poor, excessive or derelict advertising.

5.30.2 Power to Control Advertisements

5.30.2.1 For the purpose of this Scheme, the erection, placement and display, and, subject to the provisions of Clause 5.30.6, the continuance of advertisements is development within the definition of the Act requiring, except as otherwise provided, the prior approval of the Council. Such a planning consent is required in addition to any licence pursuant to Council's Signs, Billposting and Hoardings Bylaws.

5.30.2.2 Applications for Council's consent pursuant to this Part shall be submitted in accordance with the provisions of Part 6 of the Scheme and shall be accompanied by a completed Additional Information Sheet in the form set out at Appendix 9 giving details of the advertisement(s) to be erected, placed or displayed on the land.

5.30.3 Existing Advertisements

Advertisements which:

- (i) were lawfully erected, placed or displayed prior to the approval of this Scheme; or
- (ii) may be erected, placed or displayed pursuant to a licence or other approval granted by the Council prior to the approval of this Scheme hereinafter in this Part referred to as 'existing advertisements';

may, except as otherwise provided, continue to be displayed or be erected and displayed in accordance with the licence or approval as appropriate.

5.30.4 Consideration of Applications

Without limiting the generality of the matters which may be taken into account when making a decision upon an application for consent to erect, place or display an advertisement, Council shall examine each such application in the light of the objectives of the Scheme and with particular reference to the character and amenity of the locality within which it is to be displayed.

5.30.5 Exemptions from the Requirement to Obtain Consent

Subject to the provisions of the Main Roads (Control of Signs) Regulations 1983 and notwithstanding the provisions of Clause 5.30.2.1 the Council's prior consent is not required in respect of those advertisements listed in Appendix 10 which for the purpose of this Part are referred to as 'exempted' advertisements.

5.30.6 Discontinuance

Notwithstanding the Scheme objectives and Clause 5.30.5 where in the opinion of the Council, an exempted or existing advertisement so seriously conflicts with the objectives of this Part, it may by notice in writing require the advertiser to remove, relocate, adapt, or otherwise modify the advertisement.

5.30.7 Derelict or Poorly Maintained Signs

Where, in the opinion of the Council, an advertisement has been permitted to deteriorate to a point where it conflicts with the objectives of the Scheme or it ceases to be effective for the purpose for which it was erected or displayed, Council may by notice in writing require the advertiser to:

- (i) repair, repaint or otherwise restore the advertisement to a standard specified by Council in the notice; or
- (ii) remove the advertisement.

5.30.8 Notices

5.30.8.1 The advertiser shall be interpreted as any one or any group comprised of the owner, occupier, licensee or other person having interest in or drawing benefit from the display of the advertisement concerned.

5.30.8.2 Any notice served pursuant to Clauses 5.30.6 and 5.30.7 shall be served upon the advertiser and shall specify:

- (i) the advertisement(s) the subject of the notice;
- (ii) full details of the action or alternative courses of action to be taken by the advertiser to comply with the notice;
- (iii) the period, not being less than 28 days, within which the action specified shall be completed by the advertiser.

5.30.8.3 Any person upon whom a notice is served pursuant to this Part may within a specified period of 28 days from the date of the notice appeal to the Hon Minister for Planning or the Town Planning Appeal Tribunal in accordance with Part V of the Act, and where any such appeal is lodged the effect of the notice shall be suspended until the decision to uphold, quash or vary the notice is known and shall thereafter have effect according to that decision.

5.30.9 Scheme to Prevail

Where the provisions of this Part are found to be at variance with the provisions of the Council's Signs, Billposting and Hoardings Bylaws, the provisions of the Scheme shall prevail.

5.30.10 Enforcement Penalties

Any advertiser who:

- (i) erects, places or displays or who permits to be erected, placed or displayed an advertisement otherwise than in accordance with the provisions of this Part; or
- (ii) fails to comply with any notice issued pursuant to this Part; commits an offence and is liable to the remedies available to the Council pursuant to Section 10 of the Act.

APPENDIX IX - CONTROL OF ADVERTISEMENTS

ADDITIONAL INFORMATION SHEET FOR ADVERTISEMENTS APPROVAL
(to be completed in addition to Application for Approval to Commence Development)

Name of Advertiser (if different from owner):

.....

Address in full:

.....

.....

Description of Property upon which advertisement is to be displayed including full details of its proposed position within that property:

.....

.....

.....

.....

Details of Proposed Sign:

Height: Width: Depth:

Colours to be used:

Height above ground level (to top of advertisement):

(to underside):

Materials to be used:

Illuminated: Yes/No

If yes, state whether steady, moving, flashing, alternating, digital, animated or scintillating etc:

.....

If yes, state intensity of light source:

State period of time for which advertisement is required:

Details of signs, if any to be removed if this application is approved:

.....

.....

NB. Application should be supported by a photograph or photographs of the premises showing superimposed thereon the proposed position for the advertisement and those advertisements to be removed detailed above.

Signature of Advertiser(s):
(if different from landowners)

DATE:

**APPENDIX X(a) - EXEMPTED ADVERTISEMENTS PURSUANT TO
CLAUSE 5.30.5**

LAND USE AND/OR DEVELOPMENT REQUIRING ADVERTISEMENT	EXEMPTED SIGN TYPE AND NUMBER (includes the change of posters on poster signs and applies to non-illuminated signs unless otherwise stated)	MAXIMUM AREA OF EXEMPT SIGN
Dwellings	One Professional name-plate as appropriate.	0.2m ²
Home Occupation	One advertisement describing the nature of the home occupation.	0.2m ²
Places of Worship, Meeting Halls and Places of Public Assembly	One advertisement detailing the function and/or the activities of the institution concerned.	0.2m ²
Cinemas, Theatres and Drive-in Theatres	Two signs (illuminated) detailing the entertainment being presented from time to time at the venue upon which the signs are displayed.	Each advertisement sign not to exceed 5m ²
Shops, Showrooms and other uses appropriate to a Shopping Area	All advertisements affixed to the building below the top of the awning or, in the absence of an awning, below a line measured at 5 metres from the ground floor level of the building subject to a compliance with the requirements of the Signs Hoarding and Bill Posting Bylaws.	Not applicable
Industrial and Warehouse Premises	A maximum of 4 advertisements applied to or affixed to the walls of the building but not including signs which project above the eaves or the ridge of the roof of the building whether or not those signs are connected to a pole, wall or other building. A maximum of two free-standing advertisement signs not exceeding 5m in height above ground level.	Total area of any such advertisements shall not exceed 15m ² . Maximum permissible total area shall not exceed 10m ² and individual advertisement signs shall not exceed 6m ²
Showrooms, Race Courses, Major Racing Tracks, Sports Stadia, Major Sporting Grounds and Complexes	All signs provided that, in each case, the advertisement is not visible from outside the complex or facility concerned either from other private land or from public places and streets.	Not applicable
Public Places and Reserves	(a) Advertisement signs (illuminated and non-illuminated) relating to the functions of government, a public authority or council of a municipality excluding those of a promotional nature constructed or exhibited by, or on behalf of any such body; and (b) Advertisement signs (illuminated and non-illuminated) required for the management or control of traffic on any public road, car park, cycleway, railway or waterway where such advertisement has been constructed or exhibited by or at the direction of a Government department, public authority or the council of a municipality; and (c) Advertisement signs (illuminated and non-illuminated) required to be exhibited by or pursuant to any statute or regulation or the like made pursuant to powers contained within a statute provided that any such advertisement is constructed and/or exhibited strictly in accordance with the requirements specified therein.	Not applicable Not applicable Not applicable

LAND USE AND/OR DEVELOPMENT REQUIRING ADVERTISEMENT	EXEMPTED SIGN TYPE AND NUMBER (includes the change of posters on poster signs and applies to non-illuminated signs unless otherwise stated)	MAXIMUM AREA OF EXEMPT SIGN
Railway Property and Reserves	Advertisement signs exhibited on such land provided that each such advertisement is directed only at or upon a railway station.	No sign shall exceed 2m ² in area
Advertisements within buildings	All advertisements placed or displayed within buildings which cannot ordinarily be seen by a person outside of those buildings.	Not applicable
All classes of buildings other than single family dwellings	One advertisement sign containing the name, number and address of the building, the purpose for which the building is used or the name and address of the managing agent thereof.	0.2m ²

APPENDIX X(b) - EXEMPTED ADVERTISEMENTS

TEMPORARY SIGNS	EXEMPTED SIGN TYPE AND NUMBER (all non-illuminated unless otherwise stated)	MAXIMUM AREA OF EXEMPT SIGN
Building Construction Sites (advertisement signs displayed only for the duration of the construction) as follows:		
(i) Dwellings	One advertisement per street frontage containing details of the project and the contractors undertaking the construction work.	2m ²
(ii) Multiple Dwellings, shops, Commercial and Industrial Projects	One sign as for (i) above.	5m ²
(iii) Large Development or redevelopment projects involving Shopping Centres, Office or other buildings exceeding 3 storeys in height	One additional sign showing the name of the project builder.	5m ²
Sales of Goods or Livestock	One sign per lot displayed for a period not exceeding 3 months advertising the sale of goods or livestock upon any land or within any building upon which the sign is exhibited provided that the land is not normally used for that purpose.	2m ²
Property Transactions Advertisement signs displayed for the duration of the period over which property transactions are offered and negotiated as follows:		
(a) Dwellings	One sign per street frontage for each property relating to the sale, leasing or impending auction of the property at or upon which the sign is or the signs are displayed.	Each sign shall not exceed an area of 2m ² .
(b) Multiple Dwellings, Shops, Commercial and Industrial Properties	One sign as for (a) above.	Each sign shall not exceed an area of 5m ² .
(c) Large properties comprised of Shopping Centres, buildings in excess of four storeys and rural properties in excess of 5ha	One sign as for (a) above.	Each sign shall not exceed an area of 10m ² .
Display Homes Advertisement signs displayed for the period over which homes are on display for public inspection.	(i) One sign for each dwelling on display. (ii) In addition to (i) above, one sign for each group of dwellings displayed by a single project builder giving details of the project building company and details of the range of dwellings on display.	2m ² 5m ²

ANNEXURE H

TOWN PLANNING SCHEME POLICY MANUAL

SHIRE OF DENMARK

TOWN PLANNING SCHEME POLICY NO. 27.1

SPECIFIC SIGNS

- **RURAL BUSINESS DIRECTION**
- **RURAL BUSINESS**
- **REAL ESTATE DIRECTIONAL**
- **REAL ESTATE DEVELOPMENT**
- **REAL ESTATE "FOR SALE"**

AIMS

1. *To not detract from the distinctive character of Denmark and guide the design, materials and siting of advertising structures and signs in the rural areas that strengthens the character of Denmark..*
2. *To provide clear direction in respect to specific sign types.*

OBJECTIVES

1. *To preserve the heritage and landscape values and qualities of the district with a diverse economy ranging from rural production to tourism.*
2. *To provide relevant information at appropriate locations to guide visitors to businesses and properties.*
3. *To coordinate the style of signage through the use of components and features to achieve a strong district identity.*
4. *To establish a standard of type-approved signs to clearly identify businesses.*
5. *To set down requirements for direction signs and commercial signs.*
6. *To reduce visual clutter, driver confusion, landscape detraction and traffic hazards caused by poor and indiscriminate signage.*
7. *To ensure consistent policy and documentation throughout the rural districts of the Shire.*

APPLICATIONS

- *All rural districts of the Shire with specific application to signs known as rural business direction signs and rural business signs.*
- *All of the Shire with reference to real estate development, real estate direction signs and real estate "for sale" signs.*

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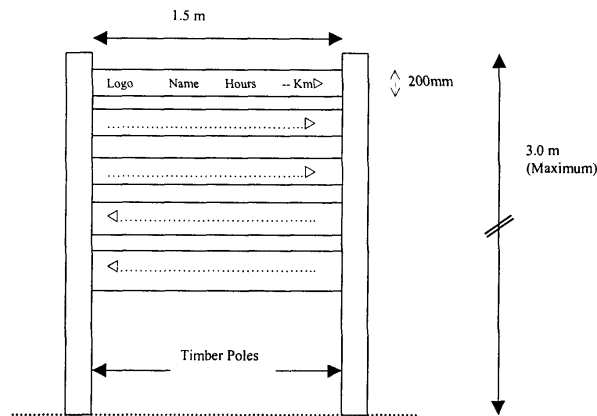
This Town Planning Scheme Policy has been prepared to support and be read in conjunction with Clause 5.30 of Town Planning Scheme No. 3 (Control of Advertisements). Town Planning Scheme No. 3 requires the submission of an application for planning consent for non exempted advertisements.

1.0 RURAL BUSINESS DIRECTION SIGNS

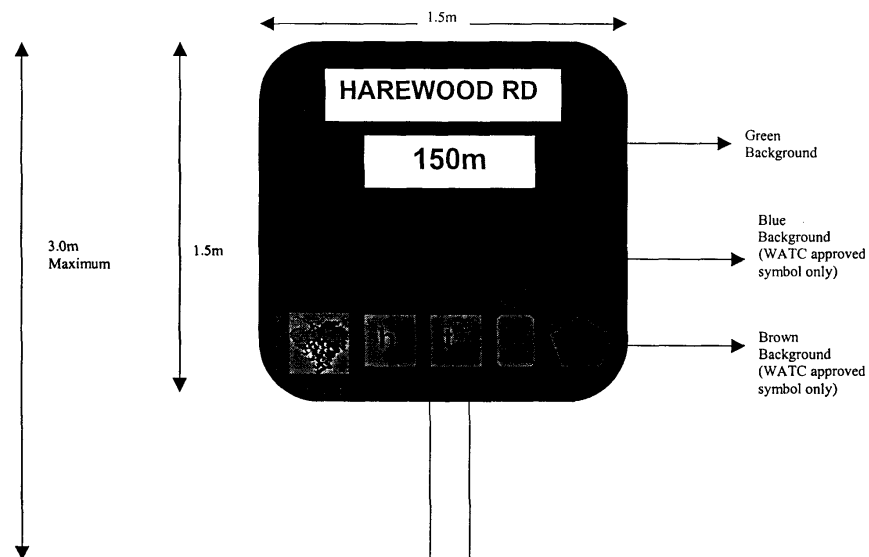
- 1.1 This form of sign means a sign erected in a street or public place to indicate the direction to another place in the rural districts of the Shire but does not include any such sign erected or affixed by the Council or the Commissioner of Main Roads or a road direction sign erected or affixed by a duly incorporated association or union of motorists authorised in that regard by the Minister for the time being administering the Road Traffic Act 1974.
- 1.2 Council will allow erection of a direction sign which indicates the nature of the business or activity that may be located by following the direction indicated by the sign. Such signs shall be a maximum of 200mm wide, length of 1.5 metres, with 160mm letters, white on blue background for a rural business or white on brown for a tourist attraction. Individual business name tags/logos may also be permitted and shall be incorporated within the sign. Such signs shall not be located more than 3.0m above the ground.
- 1.3 All such direction signs on streets must conform with Main Roads WA standards.
- 1.4 With the exception of the delegated area, Main Roads WA approval is required prior to the erection of signs on South Coast Highway and the Denmark/Mt Barker Road.
- 1.5 Where more than one such direction sign is required for a particular street junction, then they shall be incorporated into a one only stack sign structure which will be funded by the various businesses and erected to meet the following standards:
 - each individual sign shall incorporate the business name/tag/logo/hours of opening and the direction to proceed. All letters and numbers shall be white on a blue or brown background (as at 1.2). The business logo may be in the business colours.
 - each individual sign shall be a maximum width of 200mm and length of 1.5 metres.
 - to be located to the satisfaction of the Manager, Engineering Services to ensure traffic safety.
 - the overall structure shall be in the following form:

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STACK SIGN



- 1.6 Where the stack sign is proposed and the Manager, Engineering Services feels it appropriate from a traffic safety perspective, a warning direction sign shall be located in advance of the street junction. Such a warning sign shall again be a composite form as follows:



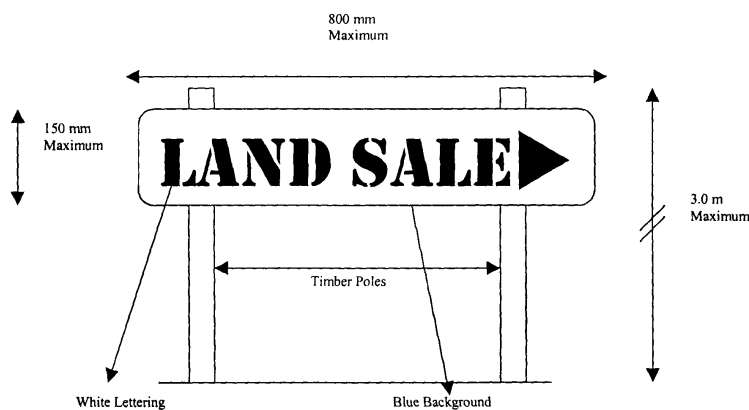
The cost of such signs shall be borne by the various businesses involved. Subsequent additions of symbols to the sign for new businesses will be at the cost of the new business for the necessary overlay.

2.0 RURAL BUSINESS SIGNS ON THE ACTUAL PROPERTY

- 2.1 A rural business sign means a sign erected on the property where the actual business is being carried out.
- 2.2 A rural business sign shall –
- (a) not indicate or display any matter otherwise than for the purpose of advertising the sale of produce grown or made available on the land on which the sign is erected;
 - (b) be erected within the boundaries of the land on which the produce offered for sale was grown or made or alternatively on the adjoining road verge if in the opinion of the Manager, Engineering Services, existing vegetation would otherwise obscure the sign;
 - (c) not exceed 1.5 square metres in area;
 - (d) not be of a height of more than 3 metres from the natural ground level;
 - (e) be secured on a frame mounted to timber poles or similar, anchored securely to the ground;
 - (f) be professionally and neatly prepared; and
 - (g) be kept clean and free from unsightly matter and in good condition and presentation.
- 2.3 Only one such sign will be permitted per lot.
- 2.4 Where such a sign is to be erected on a lot where more than one activity is carried out, Council will require advertising to be incorporated into one sign complying with the following –
- (a) initial approval is to be given to the sign framework together with one or more sign infill;
 - (b) an application is to be submitted and approval given for each subsequent infill;
 - (c) all infills are to be of an equal size; and
 - (d) not to exceed 1.5 square metres in area and 3 metres in height from the natural ground level.
- 2.5 Colours should not conflict with traffic management signs (consult Main Roads WA).

3.0 REAL ESTATE DIRECTIONAL SIGNS

- 3.1 Real estate directional signs are those which direct persons towards a particular property that is being offered for sale. In most instances they are not located on the property but are located in a prominent position on a major arterial road with some form of indication of how to get to the property or how far away it is located. For the purposes of this policy, major arterial roads include: South Coast Highway, Denmark – Mt Barker Road, Scotsdale Road, McLeod Road, Mt Shadforth Road, Valley of the Giants Road, Peaceful Bay Road, Ocean Beach Road.
- 3.2 Council does not favour the use of these signs in an uncontrolled manner as it considers they are not in the public good in terms of the character and amenity of the district of Denmark. Council will only approve their use in an agreed and standardised format.
- 3.3 Such directional signs will be allowed if the property for sale is in a rural area and is positioned off a major arterial road. Such signs are to be removed one day after settlement date of the property transaction or as soon as practicable up to a maximum period of 14 days.
- 3.4 Such directional signs will not be allowed in urban areas unless such signs refer to a subdivision of three (3) or more lots.
- 3.5 Council's approved form of directional sign is shown below and those signs not adhering to this format will be refused:



- NOTE:**
1. The words on these standard signs may consist of "LAND SALE", "AUCTION SALE" or "FARM SALE".
 2. The sign must be securely fixed to the timber poles.

4.0 REAL ESTATE DEVELOPMENT SIGNS

- 4.1 Real estate development signs are those erected on new residential, industrial, commercial, special residential, special rural or landscape protection estates, developments or subdivisions. They are generally large and contain information such as the name of the estate, a plan of the subdivision, details of facilities/number of lots/prices and the selling real estate agency contact details.
- 4.2 Each subdivision/development shall be permitted one such development sign except that when there are two prominent frontages, when a second such sign shall be permitted.
- 4.3 Development signs are to be a maximum of 8 square metres in area and shall be securely mounted on timber or steel poles. The sign must be located within the land area being offered for sale.
- 4.4 Development signs are to be removed after a period of twelve (12) months or such other extended time as agreed by Council. In any case, development signs are to be removed 14 days (or as close as practicable thereto) after settlement of 80% of the lots.
- 4.5 Should a sold block come back on the market with another agent, during the marketing of a subdivision or development, then that agent may erect their standard "For Sale" sign.

5.0 REAL ESTATE "FOR SALE" SIGNS

- 5.1 "For Sale" signs are those erected on various kinds of individual properties being offered for sale and include the selling real estate agency contact details and the words "For Sale". They are to be a maximum size of 900mm x 666mm (0.6m²) and erected on steel posts.
- 5.2 "For Sale" signs in the urban areas shall be limited to two such signs per property. The two signs can be located in a V shape for ease of identification and for safety reasons. Such signs do not have to be placed parallel to lot boundaries.
- 5.3 In the case of an open listing, a single "For Sale" sign shall be erected with the agent's names and contact numbers in a neat row from top to bottom. Such signs can be erected at any angle and can be painted on both sides. The "For Sale" part of the sign is to be 800mm x 250mm with a white background and red lettering. The agent's name plates are to be 800mm x 150mm and can incorporate the agents logo, colour scheme and phone number. When the property is sold, the "sold" sticker is to go on the selling agent's name plate. Real estate agencies will provide the generic signs with the agent getting the first open listing for a property being responsible for erecting and removing the sign and able to place their name plate first.

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- 5.4 In the case of a joint exclusive between two agents, then both agents can erect one normal "For Sale" sign (as at 5.1) each. Those signs are to be placed next to each other in a neat manner. If more than two agencies are involved then the open listing format at 5.3 above shall be used.
- 5.5 The "For Sale" signs are to be removed one (1) day after settlement of the property transaction or as soon as practicable up to a maximum period of 14 days.

6.0 PROHIBITED SIGNS

- 6.1 The following are considered inappropriate and hence prohibited by this policy –
- A flag other than the Australian National Flag, WA State Flag, a flag advertising a national telecommunications carrier or its products and a flag for a specific function/celebration, as approved by Council;
 - Any bunting;
 - Any flashing, intermittent or sequential lights;
 - Any sign on a roof of a building or the roof of a verandah;
 - Any sandwich-board signs, except on private property;
 - Any sign which rotates or tumbles;
 - Any sign which incorporates reflective material;
 - Any sign written on a parked vehicle unless;
 - (i) the vehicle is owned by a tradesperson/business proprietor;
 - (ii) the sign advertises only the tradesperson/business proprietor and the tradesperson's/business proprietor's services or products;
 - Any hoarding;
 - Any electoral sign;
 - Signs advertising facilities or services not on the actual property;
 - Neon signs;
 - Backlit signs;
 - Property auction signs not on the property being offered for sale; and
 - Any sign which in the opinion of Council is contrary to the objectives of this policy.

7.0 UNAUTHORISED SIGNS

- 7.1 The signs addressed by this policy and the above prohibited signs which do not have Council approval shall be removed within 28 days of the owner of the sign (the advertiser) being advised to do so by Council.

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- 7.2 Following the expiry of the 28 days notice at 7.1, action will be instigated to have the sign removed in accordance with the powers of Town Planning Scheme No. 3 and Section 10 of the Town Planning and Development Act.

8.0 PLANNING CONSENT

- 8.1 The types of signs detailed at 1.0 to 4.0 inclusive will ~~not~~ require an application for Planning Consent to be lodged as they are not exempted advertisements under clause 5.30 of Town Planning Scheme No. 3. Where considered warranted, the application shall be accompanied by a completed Appendix 9 – Control of Advertisements additional information sheet as contained in Town Planning Scheme No. 3 and attached to this policy.
- 8.2 Where a sign detailed at 1.0 to 4.0 inclusive conforms with the requirements listed in this policy then a Notice of Approval of Planning Consent will be issued. Where such a sign is proposed to depart from the requirements listed, then the application will be considered in the context of the aims and objectives of this policy before a decision is made.
- 8.3 The types of signs detailed at 5.0 will not require an application for planning consent to be lodged where they comply with the requirements listed, as they are “exempted advertisements” under clause 5.30 of Town Planning Scheme No. 3.

9.0 FEES

- 9.1 Council shall charge a fee in respect to applications for planning consent for signs addressed at 8.0 above.

This Policy No. 27.1 supersedes TPS Policy No. 27.

Adopted on 27th July, 1999 in accordance with clause 8.2 of Town Planning Scheme No. 3