



Local Government
Town Planning

**Standard Development Conditions
Guideline**



Standard Development Conditions Guideline

Suggested Citation:

WA Local Government Association (2018) *Standard Development Conditions Guideline*, Perth, Western Australia.

Disclaimer:

The development conditions set out in this Guideline have been reviewed by certified legal practitioners. However, the Guideline does not replace legal advice. Local Governments preparing development conditions are encouraged to seek advice and assistance to ensure appropriate adaptation of the development conditions provided in this Guideline to their specific local circumstances.

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1. PURPOSE



This Guideline provides information that Local Governments can refer to when reviewing or developing their own standard development conditions.

The application of development conditions on new development approvals has been identified by Local Governments as a planning process which offers scope for improvement. For example, WALGA's most recent Planning Improvement Program (PIP) survey identified that 42% of Local Government members considered the topic as a high priority, while a further 52% identified the topic as a priority, making development conditions the highest rated topic amongst surveyed Local Governments.

Given this situation, WALGA has prepared this Guideline in order to:

- Provide guidance on the preparation of development conditions, including relevant tests of validity (Section 4);
- Provide a list of standard development conditions that can be considered and used by Local Governments, where appropriate and in consideration of local circumstances (Section 5); and,
- Help to improve consistency in the way that development conditions are worded, structured and applied across Local Government jurisdictions.

2. BACKGROUND

Development approvals are legal documents generated by statutory planning officers. Development approvals are subject to the assessment of development applications and approval by a Council or Local Government officers acting in accordance with delegated authority. Approval of development applications can be granted with or without conditions. However, in reality, the majority of development approvals will contain conditions. The appropriate use of planning conditions can improve the quality of a development proposal, often enabling an application to be approved which may otherwise be refused.

In the absence of a state-wide set of model or standard development conditions, generally Local Governments have drafted their own standard development conditions. This Guideline provides information that Local Governments can refer to when reviewing or developing their own standard development conditions.

Local Governments should note that the conditions provided in this Guideline should not simply be applied as a matter of course, and that thorough and careful assessment and consideration of relevant conditions for each particular circumstance should continue to be exercised.

Conditions for subdivision have not been included in this Guideline. Model subdivision conditions have been prepared by the Department of Planning, Lands, and Heritage and can be accessed through the Department's website. Furthermore, advice notes have not been reviewed or included in this Guideline, as Local Governments have not raised advice notes as

a significant issue of concern. It is intended that this Guideline will be reviewed and updated at regular intervals. Therefore, there is potential to include advice notes in future iterations.

3. GUIDELINE PREPARATION

3.1 Request for Standard Development Conditions Information

To prepare this Guideline, WALGA contacted 42 Local Government planning departments and requested copies of the standard development conditions currently being applied. Twenty Local Governments provided information. This information varied in format, content and details, i.e. from spreadsheets and documents containing a list of standard conditions, to Council endorsed standard condition manuals.

3.2 Identification of Common Planning Matters and Conditions

The standard conditions outlined in the information provided by Local Governments were then categorised based on the planning matter being addressed by each condition. This categorisation helped to identify the most commonly occurring planning matters that Local Government standard conditions seek to address, and the specific conditions being applied to address those matters. Provided below is a list of the twenty most commonly occurring planning matters identified through this step.

1. Home Occupation/Home Business: Conditions relating to the operation of home occupations/home business (e.g. hours of operation, signage, area).
2. Landscape Plan: Conditions requiring a landscape plan, often including details of what the plan should contain and to the satisfaction of who.
3. Stormwater: Conditions relating to the retention and disposal of stormwater.
4. Carpark Design: Conditions relating to the design and construction of car parks and driveways. These conditions often reference Australian Standard AS2890.1
5. Crossovers: Conditions relating to crossovers (e.g. the removal of and/or construction of new).
6. Fencing: Conditions relating to the design and location of fencing (e.g. maximum height, visual permeability, location within setback).
7. Bin Storage Areas: Conditions relating to the design and location of bin storage areas.
8. Retention of Street Trees and Vegetation: Conditions relating to the retention and protection of trees and vegetation both on construction site and on verge.
9. Colours and Materials: Conditions relating to external colours and materials, often requiring the submission of a schedule of colours and materials.
10. Payment of Cash-in-lieu: Conditions relating to cash-in-lieu for parking.
11. Aged or Dependent Person's Dwelling: Conditions relating to aged or dependent persons dwelling (which often cite notification to be registered on title as per section 70A of the Transfer of land act).

12. Design & Provision of Parking Spaces and EFT Facilities
13. Period of Approval
14. Finish of Boundary Wall: Conditions relating to finish and colour.
15. Development in Accordance with Approved Plans
16. Heritage: Conditions relating to retention and compatible finish.
17. Illuminated Lights
18. Dust Management Plan
19. Waste Management Plan
20. Construction Management Plan

3.3 Draft Standard Conditions

A draft set of standard conditions was then prepared for each of these planning matters, by referring to the standard conditions provided by Local Governments and the most commonly applied content and form used in these conditions. Conditions relating to emerging planning matters were also included, such as bushfire hazard management. This draft set of conditions was circulated to all Local Governments for review prior to seeking review by certified legal practitioners. Three Local Governments provided additional input, which helped to refine the draft set of conditions and identify issues requiring legal clarification.

3.4 Legal Review

The draft set of development conditions was then reviewed by certified legal practitioners who have experience in dealing with planning related matters.

In particular, the legal review aimed to:

- Review the draft standard development conditions to ensure they are legally sound;
- Identify conditions that require amendment / correction to ensure the conditions comply with the current law (principally by searches and comparisons with decided cases of the SAT and the Courts); and,
- Answer questions regarding particular draft conditions and content provided within the Guideline.

Section 5 provides the final set of standard development conditions. Local Governments using this Guideline should note that this Guideline does not replace legal advice. Local Governments preparing development conditions are encouraged to seek advice and assistance to ensure appropriate adaptation of the development conditions provided in this Guideline to their specific local circumstances.

The legal advice provided by certified practitioners during this step is available to members upon request through planning@walga.asn.au.

4. PREPARING CONDITIONS

This section provides guidance regarding the preparation of development conditions, including relevant tests of validity.

4.1 Validity of Conditions

The State Administrative Tribunal (SAT) and other appeal bodies in Australia have generally adopted the approach taken in *Newbury DC v Secretary of State for the Environment (1981) AC578* when considering the validity of conditions. This decision holds that in order to be valid, a condition must:

- » Be imposed for a planning purpose;
- » Fairly and reasonably relate to the development considered; and,
- » Be reasonable, i.e. the condition is not so unreasonable that no reasonable planning authority could have imposed it.

Additionally, conditions should also:

- » Be enforceable;
- » Be precisely and consistently worded with no ambiguity or uncertainty;
- » Represent the end of the relevant approval process; and,
- » Not duplicate other legislation or obligations.

Planning Purpose

The first requirement is that a condition must have a planning purpose. This rule has two aspects. The first considers if the condition bears a relationship to planning theory and/or policy. The second aspect is to determine if the condition is necessary to fulfil the proper planning purpose in the particular circumstances of the case.¹

In considering whether a particular condition is necessary, the question should be asked: if a particular condition were not imposed, would the proposed development need to be refused? In other words, compliance with the requirements of a condition should not amount to a substantially different proposal.² If the proposed development would not need to be refused, the necessity and justification for the condition must be provided to ensure it has proper planning purpose to the proposal. The argument that a condition would do no harm is not justification for its imposition. The condition's purpose must be justified and there must be a definite need for the condition.³

A condition which duplicates controls under separate legislation would not normally be necessary and may not fulfil a planning purpose. However where other controls are unavailable, a condition may be needed to address the land use effects of the proposed development. For example, a condition would not normally be appropriate to control the level of emissions from a proposed development where these are subject to control under the *Environmental Protection Act 1986 (WA)*. However the condition may be necessary to address the effect of the emissions on land use which are not controlled by the *Environmental*

¹ Western Australian Planning Commission, *Model Subdivision Conditions Schedule May 2016*

² *McKimm and WAPC [2008] WASAT 128*

³ City of Bunbury, *Standard Conditions of Planning Approval Manual, August 2012, V.2.11*

Protection Act 1986 (WA) (e.g. conditions that require separation distances). On the other hand, a development condition that conflicts with other controls may be considered *ultra vires* and therefore, found to be invalid.⁴

Relevance

The second test of validity is that the condition fairly and reasonably relates to the development application. It is not sufficient that a condition is related to planning objectives, it must also be justified by the nature of the development and the effect on its surroundings. For example, if development approval is granted subject to a condition requiring a development to be managed so that the amenity of the locality is not detrimentally affected, then it would be necessary to demonstrate that the condition is justified by the nature and effect of the proposal on the local amenity.⁵

In some instances the relationship between the condition and the effect of the development is capable of being quantified. For example, a condition which requires a contribution for footpath upgrading would not be relevant without sufficient justification that the contribution would result from the need for, and impact, of the development on the footpath network as opposed to simply being required for the larger public benefit.⁶

Reasonableness

The third test of validity of a condition is that it should be reasonable, that is, a condition should not be imposed if it is so unreasonable that no reasonable body or persons could have made the decision.⁷

A condition may be unreasonable because it is unduly restrictive. A condition may in principle impose a continuing restriction on the use of land (providing there are good planning reasons for the restriction) but should not be imposed if the restriction effectively nullifies the benefit of the approval. For example, it may be reasonable to limit the hours during which an entertainment venue may be open so as not to affect the amenity of the locality. However, it would be unreasonable to limit them to such an extent as to make it impossible for the business to operate effectively. If it appears that an approval could only be given subject to conditions that effectively remove the benefit of the approval, then the proposed development should be refused.⁸

It is also unreasonable to impose a condition worded in a positive form which developers are unable to comply with themselves, or which they can only comply with following the consent or authorisation of a third party. For example, a condition which requires a developer to enter into a legal agreement with a third party or which require the applicant to obtain an authorisation from another body (such as the Environmental Protection Authority, Water Corporation etc.) would be unreasonable. However, a condition might achieve the same intent but be worded in a negative form, by prohibiting development until a specified action has been taken. For example, it might be reasonable to impose a condition requiring that a development

⁴ Western Australian Planning Commission, *Model Subdivision Conditions Schedule May 2016*

⁵ City of Bunbury, *Standard Conditions of Planning Approval Manual, August 2012, V.2.11*

⁶ City of Bunbury, *Standard Conditions of Planning Approval Manual, August 2012, V.2.11*

⁷ Western Australian Planning Commission, *Model Subdivision Conditions Schedule May 2016*

⁸ Shire of Roebourne, *Model Development Conditions, May 2016*

should not commence until a particular road is closed if there were reasons to suppose that the local government would be willing and able to take the necessary action.⁹

An unreasonable condition does not become reasonable because an applicant suggests it or agrees to its terms. The condition will normally run with the land and therefore, may still be operative long after the applicant has moved on. Conditions should always be justified on their planning merits.¹⁰

Enforceable

There are other practical matters in considering the imposition of planning conditions. The framing of conditions requires care to ensure that the condition is enforceable. For example, a condition limiting the number of patrons using a particular development at one time would pose difficulties in enforcement if it does not contain an effective mechanism for monitoring compliance. To be enforceable, conditions should be capable of being monitored and there should be clear evidence of any breaches.

Precise

In order to be enforceable, conditions must be precise. This means the condition must be complete and must be clear and free from any ambiguity leading to possible differences of interpretation. For example, a condition that requires “the submission and approval of a landscaping plan” would be incomplete as it does not clearly state when the plan is to be submitted, who is to approve the plan, and when the plan is to be completed.

Vague expressions should also be avoided because they do not express clear requirements of an applicant, e.g. “the proposed development is not to cause annoyance to nearby residence”. Conditions subject to qualifications which do not provide specific criteria should also be avoided, e.g. “the trees as identified on the approved site plan shall be retained unless removal becomes necessary”.¹¹

Conditions that Modify the Application

Sometimes an application may contain insufficient details of an aspect of the development (e.g. car parking or landscaping) or there may be a need to modify that particular aspect to the satisfaction or approval of the Local Government. In these situations conditions may be applied which seek incidental modifications to the application plans. In this case, approval may be granted subject to a condition requiring that details (or further details) of the specified aspect of the development are submitted for approval before the development commences, provided that if it is an incidental issue that has to be approved or decided to the satisfaction of the Local Government, such approval or decision would not lead to any significant change in the nature, extent or characteristics of the development. However it is generally preferred that the outstanding information is provided prior to the issue of an approval.¹²

⁹ Western Australian Planning Commission, *Model Subdivision Conditions Schedule May 2016*

¹⁰ Western Australian Planning Commission, *Model Subdivision Conditions Schedule May 2016*

¹¹ Western Australian Planning Commission, *Model Subdivision Conditions Schedule May 2016*

¹² Western Australian Planning Commission, *Model Subdivision Conditions Schedule May 2016*

Development Approval Conditions Linked to Building Permits

There is some discussion that the *Building Act 2011* (WA) does not prevent the issue of a building permit because of a planning condition. However, it is possible for a planning authority to condition the submission of a building permit on the compliance of a condition of a development approval, where that condition directly relates to building activity. The important consideration is that the development approval condition relates to building activities which would have to be complied with.

Control over Other Land

Conditions might be applied that require works to be carried out on land other than the development site, e.g. reciprocal parking arrangements on a nearby site. Conditions cannot be imposed requiring works to be carried out on a site other than the development site unless the approval body is satisfied that the proponent has sufficient control over the alternative site to enable the arrangement to be carried out and completed.¹³

4.2 Preparing Conditions – Summary

In summary, planning conditions must be able to serve the following functions:

- Conditions must serve a planning purpose, that is, principally they must somehow regulate the development of land;
- Conditions should not address issues covered under other legislation and cannot require compliance with other legislation;
- Conditions cannot change the character of the application. For example, if the application is for a 6m² sign, a condition should not be used to reduce the size of the sign to 4m², the applicant must either change their application or the application should be refused;
- Conditions must be measurable, i.e. 'neat and tidy' is not measurable;
- Conditions must relate to the land that is the subject of the application. For instance, a condition should not say that a footpath should be upgraded, it must say that prior to the occupation of the development, satisfactory arrangements must be made for the upgrade of the footpath;
- Conditions must reasonably be within the purview of the owner of the site. That is a condition cannot require that the owner enter into an agreement with the owner of an adjoining site, as the other owner may refuse to enter into such an agreement and the condition may therefore be seen as unreasonable;
- Conditions should qualify timeframes for when actions need to happen and for satisfactory completion of the condition. Generally, these requirements should be stated at the start of the condition, e.g. "Prior to commencement of works, a drainage management plan must be approved by the *Local Government*";
- Conditions should not refer to any individual council officer, either by name or title, e.g. to the satisfaction of the Manager of Planning Services. Rather, the condition should refer to the name of the Local Government, i.e. Shire/Town/City of (insert location). Internally documented authorisations or delegations will determine who the Local Government's decision maker is; and,
- Development approvals run with the land and responsibility for fulfilling the conditions of any development approval rests with the landowner. Therefore, planning conditions must be drafted with reference to the owner of the land only, and not the proponent, applicant or developer.

¹³ Western Australian Planning Commission, *Model Subdivision Conditions Schedule May 2016*

4.3 Breach of Conditions and Prosecution Timeframes

Section 218 of the *Planning and Development Act 2005* (WA) (P&D Act) states that “a person who ... commences, continues or carries out any such development which is required to comply with a planning scheme otherwise than in accordance with any condition imposed under this Act or the scheme with respect to the development, or otherwise fails to comply with any such condition, commits an offence”. Section 228(2) of the P&D Act requires that an infringement notice for a prescribed offence (i.e. prescribed by regulation) must be given to the alleged offender within six months after the alleged offence is believed to have been committed.

Where a Local Government elects to prosecute for a breach, recent decisions made by the Supreme Court of WA indicate that the Local Government must commence proceedings within 12 months after the date on which the allegation of the contravention was made, rather than within 12 months after the date on which the alleged contravention occurred. Therefore, the time limit for prosecution commences from the date where an allegation of the alleged contravention is first made, such as by way of correspondence or by way of a direction notice issued to the person that carried out the alleged contravention.

Consequently, specifying a time for compliance in a condition should not impact the capacity of Local Governments to bring enforcement proceedings after the expiry of the timeframes specified in the relevant condition.

5. STANDARD DEVELOPMENT CONDITIONS

This section provides the list of standard development conditions which can be referred to by Local Governments when preparing their own list of standard conditions. The conditions are listed in order of the most commonly occurring planning matters that Local Government standard conditions seek to address, as discussed in Section 3.2. Within this list, the term *Local Government* should be replaced by the name of the Local Government applying the particular condition.

Furthermore, some of the conditions contain the term “and/or”. For example, the “Existing Landscape” condition states that “Prior to lodging an application for a building permit, a detailed landscaping plan for the subject site and/or the road verge(s) must be submitted to and approved by the Local Government, and must include...” This term indicates that either one or both options provided in the condition on either side of the term “and/or” may apply, depending on the particular circumstances of the development application under consideration, and that the condition wording should be adjusted as necessary to suit the application under consideration.

Home Occupation/Home Business

Deliveries

- » All pick-up and deliveries of goods or materials associated with the (Home Business / Home Occupation) activity carried out by anyone other than the applicant are:
 1. not permitted*; or
 2. only permitted during (hour) to (hour), (day) to (day)*.

[* Delete option that is not applicable.]

Employed Persons

- » The (Home Business) must not employ more than (*insert number*) persons who are not members of the occupier's household.
- » The (Home Occupation) must not employ any person who is not a member of the occupier's household.

[Guidance note: Local Governments should consider their own local planning schemes to ascertain the maximum number of employees for each type of use.]

Home Business Area

- » The (Home Business / Home Occupation) hereby permitted must not occupy an area greater than (*insert number*) square metres.

[Guidance note: Local Governments should consider their own local planning schemes to ascertain the maximum floor area to be inserted.]

Hours of Operation

- » The (Home Business / Home Occupation) hereby permitted is restricted in its hours of operation to the following:
 - (a) Monday – Friday: Between (hour) and (hour) / not at all*;
 - (b) Saturday: Between (hour) and (hour) / not at all*;
 - (c) Sunday: Between (hour) and (hour) / not at all*; and
 - (d) Public Holidays: Between (hour) and (hour) / not at all*.

[* Delete options that are not applicable.]

Required Intervals

- » Only (*insert number*) client/clients is/are permitted to access the (Home Business / Home Occupation) premises at any one time and there must be at least a (*insert number*) minute break between each client consultation. The applicant must keep a record of clientele in the form of a diary available for viewing by the *Local Government*.

[Guidance note: Local Governments who apply this condition generally require a ten to fifteen minute interval between clients.]

Signage

- » The applicant must not erect or otherwise display on the (Home Business / Home Occupation) premises any sign with an area exceeding 0.2 square metres.

A sign erected under this condition must:

- (a) only describe the type of (Home Business / Home Occupation) and provide the relevant contact details*;
- (b) be placed on a building, wall, fence or entry statement of the (Home Business / Home Occupation) premises*;
- (c) not be illuminated nor use reflective or fluorescent materials*; and

(d) comply with the (*insert details of any relevant local planning schemes, policies or local laws*)*.

[* Delete options that are not applicable.]

Affect Amenity

- » The (Home Business / Home Occupation) activity must not cause nuisance or degrade the amenity of the neighbourhood in any way, including by reason of the emission of noise, light, vibration, electrical interference, odour, fumes, smoke or other pollutant, vapour, steam, soot, ash, dust, waste water, water products, grit, oil or impact on public safety or otherwise.

Parking (Home Business)

- » All vehicles and parking associated with the (Home Business) must be confined to the (Home Business) premises.
- » The (Home Business) must not involve the presence, use or calling of a vehicle more than (*insert number*) tonnes tare weight.

Parking (Home Occupation)

- » All vehicles and parking associated with the (Home Occupation) must be confined to the (Home Occupation) premises.
- » The (Home Occupation) must:
 - (a) not involve the presence, use or calling of a vehicle more than (*insert number*) tonnes tare weight; and
 - (b) not include provision for the fuelling, repair or maintenance of motor vehicles.

Landscape Plan

Existing Landscape

- » Prior to lodging an application for a building permit, a detailed landscaping plan for the subject site and/or the road verge(s) must be submitted to and approved by the *Local Government*, and must include the following:
 - (a) the location, number, size and species type of existing ground covers, shrubs and trees*;
 - (b) any existing landscape areas to be retained*;
 - (c) those areas to be updated, reticulated or irrigated*; and
 - (d) verge treatments*.
- » Prior to occupation of the development, the existing landscaping must be upgraded, reticulated or irrigated in accordance with the approved landscaping plan and maintained thereafter to the satisfaction of the *Local Government*.

[* Delete options that are not applicable.]

New Landscaping / Landscape Plan

- » Prior to lodging an application for a building permit, a detailed landscaping and reticulation plan for the subject site and/or the road verge(s) must be submitted to, and approved to, the satisfaction of the *Local Government*, and must include the following:
 - (a) The location, number and type of proposed trees and shrubs including planter and/or tree pit sizes and planting density*;
 - (b) Any lawns to be established*;
 - (c) Any existing vegetation and/or landscaped areas to be retained*;
 - (d) Any verge treatments*;
 - (e) Evidence that the proposed landscaping will not, at maturity, negatively impact the development or adjoining properties*.

- » The approved landscaping and reticulation plan must be fully implemented within the first available planting season after the initial occupation of the development, and maintained thereafter, to the satisfaction of the *Local Government*. Any species which fail to establish within the first two planting seasons following implementation must be replaced in consultation with and to the satisfaction of the *Local Government*.

[* Delete options that are not applicable.]

[Guidance note: Local Governments should consider their own local laws to ensure consistency with any local laws which address verge improvements.]

Stormwater

- » All stormwater must be contained and disposed of on-site at all times, to the satisfaction of the *Local Government*.

- » Prior to lodging an application for a building permit, stormwater disposal plans, details and calculations must be submitted for approval by the *Local Government* and thereafter implemented, constructed and maintained to the satisfaction of the *Local Government*.

Carpark Design

- » Prior to the commencement of works, the applicant is to submit, and have approved to the satisfaction of the *Local Government*, a detailed parking plan design which complies with the Australian Standard AS/NZS 2890 and AS/NZS 1428, including (*insert number*) parking bay/s (comprising (*insert number*) visitor bays, (*insert number*) loading bays, (*insert number*) disabled bays, (*insert number*) motorcycle / scooter bays), aisle widths, circulation areas, driveway/s and points of ingress and egress.

- » Prior to occupation or use of the development the approved parking plan must be implemented, constructed and thereafter maintained to the satisfaction of the *Local Government*, for the life of the development.

Crossovers

Existing Crossovers

- » Prior to occupation or use of the development, the redundant crossover/s to Lot (*insert number*), as shown on the approved plans, must be removed and the verge and kerb reinstated to the specification and satisfaction of the *Local Government*.

Serviced by a Crossover

- » Prior to the occupation of the development, a vehicle crossover is to be constructed to the specification and satisfaction of the *Local Government*. The vehicle crossover must be constructed with a maximum width of (*insert number*) metres and located a minimum of (*insert number*) metres away from the outside of the trunk of any street tree [include in (*insert number*) metres from light pole etc. if applicable].

Fencing

- » Prior to the commencement of works, detailed plans of the proposed fencing which demonstrate compliance with (*insert details of Local Planning Policy*) are to be submitted to and approved by the *Local Government*.
- » Any fences / walls in the front setback of the property must comply with the provisions of the Residential Design Codes, which require front walls and fences to be visually permeable:
 - 1.2 metres above natural ground level within the primary street setback area; and
 - 0.75 metres above natural ground level within 1.5 metres of the intersection of a driveway and a public street or where two streets intersect.

Bin Storage and Utilities

Bin Storage

- » All areas of outdoor storage must be screened from public view. Design plans for the location, materials and construction of proposed screening are to be included on the development plans to the satisfaction of the *Local Government* prior lodging an application for a building permit.

Utilities

- » All piped, ducted and wired services, air conditioners, hot water systems, water storage tanks, service meters and bin storage areas must be located to minimise any visual and noise impact on the occupants of nearby properties and screened from view from the street. Design plans for the location, materials and construction for screening of any proposed external building plant must be submitted to and approved by the *Local Government*, prior to lodging an application for a building permit.

Schedule of Materials

- » A schedule of the colour and texture of the building materials, demonstrating that the proposed development complements the surrounding area, must be submitted to and

approved by the *Local Government*, prior to lodging an application for a building permit. The development must be finished, and thereafter maintained, in accordance with the schedule provided to and approved by the *Local Government*, prior to occupation of the development.

Retention of Street Trees and Vegetation

- » Existing trees located within the verge are a *Local Government* asset and as such must be retained except where otherwise approved for removal by the *Local Government*.
- » Existing trees identified on the approved site plan must be retained and protected in accordance with AS 4970-2009 and to the satisfaction of the *Local Government*.

Cash-in-Lieu

- » Prior to lodging an application for a building permit and in accordance with (*insert the relevant local planning scheme, local planning policy, etc*), the applicant must arrange with the *Local Government* to make a cash contribution in lieu of the provision of (*insert number*) car parking bays, as a proportion of the total number of (*insert number*) car parking bays required.

[Guidance note: Local Governments should consider their own local planning schemes/ policies, the context of the permitted use on the land and whether the imposition of a cash in lieu condition would be reasonable in all the circumstances.]

Aged or Dependant Person's Dwelling

- » Any Aged or Dependent Persons' Dwelling must be designed and used only for the permanent accommodation of a person who: (i) is aged 55 years or more; or (ii) has a recognised form of disability requiring special or supported accommodation; and may also accommodate the spouse or carer of that person and in any case no more than one other person.

[Guidance note: Local Governments should consider their own local planning schemes/ policies, or similar concerning the development of aged or dependent persons' dwellings.]

Notification on Title

- » Prior to lodging an application for a Building Permit, the owner must execute and provide to the *Local Government* a notification pursuant to Section 70A of the *Transfer of Land Act 1893* (as amended) to be registered on the Certificate of Title advising prospective purchasers that the use of the land is subject to the aged persons or dependent persons restriction set out in Condition (AG-1) to the satisfaction of the *Local Government*.
- » Prior to the sale of residential units, a section 70A notification, pursuant to the *Transfer of Land Act 1893* (as amended) must be placed on the Strata Title of each residential apartment alerting prospective purchasers that the land is located within an inner-city mixed use precinct and may be affected by high levels of activity, light, noise, traffic and late hours of operation within public and private areas.

[Guidance note: A Local Government contemplating the imposition of a development condition requiring a section 70A notification advising of amenity impacts should be satisfied that the notification will serve a proper planning purpose and otherwise be reasonable or appropriate in the circumstances of the case.]

Design and Provision of Parking Spaces and End of Trip (EOT) Facilities

- » Prior to occupation of the development, a total of *(insert number)* bicycle facilities must be provided in accordance with Australian Standard AS 2890.3 and to the satisfaction of the *Local Government*. The facilities must thereafter be retained for the life of the development to the satisfaction of the *Local Government*.

Approval Valid for XX Months

- » If the development, the subject of this approval, is not substantially commenced within a period of *(insert number)* months from the date of the approval, the approval will lapse and be of no further effect. For the purposes of this condition, the term “substantially commenced” has the meaning given to it in the *Planning and Development (Local Planning Schemes) Regulations 2015* as amended from time to time.

Limited Approval

- » This development approval is valid for a period of two years. On or prior to the end of this period, the structure is to be permanently removed from the lot / USE is to cease and the land reinstated to its former / original condition.¹⁴
- » The approval for the use/development hereby permitted allows the use/development to be operated/occupied by *(insert name of operator / occupier)*. If operator / occupier ceases to operate/occupy the use/development on the subject site, the approval for the use/development shall expire.

Finish of Boundary Walls

- » Prior to the use and occupation of the development, and unless otherwise approved in writing by the *Local Government*, the external surface finish of the boundary wall(s) must be finished to the same standard as the rest of the development to the satisfaction of the *Local Government* provided access is granted by the adjoining landowner.

Development in Accordance with Approved Plans

- » Development may be carried out only in accordance with the details of the application as approved herein and any approved plan.

Heritage

- » The facades of the building must be restored to reflect the heritage significance of the place as outlined within Council’s Municipal Heritage Inventory. Prior to lodging an application for a building permit, colour elevation plans detailing proposed restoration

¹⁴ Local Governments may choose to include the following Advice Note: In the event that additional time is necessary, a further development approval is required.

measures on all sides of the building matched to the original façade based upon documentary, photographic and physical evidence (paint scrapes) are to be submitted to and approved by the *Local Government*. Restoration must be carried out in accordance with the approved elevation plans.

Illuminated Signs

- » The advertisements must not be illuminated, moving, pulsating, flashing, incorporate animation or movement into their design or structure, to the satisfaction of the *Local Government*.
- » All advertisements erected or otherwise displayed at the development site must:
 - (a) not be illuminated or contain any moving, pulsating or flashing lighting*;
 - (b) not incorporate animation or movement into their design or structure*;
 - (c) comply with the *Local Government's* local laws concerning signage*;
 - (d) otherwise be erected to the satisfaction of the *Local Government*.

[* Delete options that are not applicable, taking into account any relevant local laws concerning signage and the location of the proposed advertisement.]

Dust Management Plan

- » Prior to lodging an application for a building permit, the applicant must submit, have approved, and thereafter implement, a management plan detailing how risks of wind and/or water borne erosion and sedimentation will be minimised during the works, to the satisfaction of the *Local Government*.

Construction Management Plan

- » Prior to lodging an application for a building permit, the applicant must submit and have approved by the *Local Government*, and thereafter implement to the satisfaction of the *Local Government*, a construction management plan addressing the following matters:
 - (a) How materials and equipment will be delivered and removed from the site;
 - (b) How materials and equipment will be stored on the site;
 - (c) Parking arrangements for contractors;
 - (d) Construction waste disposal strategy and location of waste disposal bins;
 - (e) Details of cranes, large trucks or similar equipment which may block public thoroughfares during construction;
 - (f) How risks of wind and/or water borne erosion and sedimentation will be minimised during and after the works; and
 - (g) Other matters likely to impact on the surrounding properties.

Waste Management Plan

- » A Waste Management Plan must be submitted to and approved by the *Local Government* prior to lodging an application for a building permit. The plan must include the following details to the satisfaction and specification of the *Local Government*.
 - (a) the location of bin storage areas and bin collection areas;
 - (b) the number, volume and type of bins, and the type of waste to be placed in the bins;

- (c) details on the future ongoing management of the bins and the bin storage areas, including cleaning, rotation and moving bins to and from the bin collection areas; and
 - (d) frequency of bin collections.
- » The Waste Management Plan must be implemented at all times to the satisfaction of the *Local Government*.
 - » Prior to the commencement of any site works, a Construction Waste Management Plan prepared by a suitably qualified person in consultation with the *Local Government*, must be submitted to the *Local Government*. The Plan must address, but not be limited to, the following matters:
 - (a) Recycling of demolition materials including concrete;
 - (b) Removal of hazardous materials and disposal at an approved waste disposal facility in accordance with the requirements of the relevant legislation, codes, standards and guidelines, prior to the commencement of any building works;
 - (c) Details demonstrating compliance with the relevant legislative requirements, associated with the removal of hazardous waste, particularly the method of containment and control of emission of fibres to the air, are to be submitted to the satisfaction of the *Local Government* prior to the removal of any hazardous materials; and
 - (d) *(insert other specified material, if applicable)*.

Development Contribution Plans

- » Prior to the issue of a building permit*, the applicant must contribute *(insert \$ amount)* towards development infrastructure pursuant to the *Local Government's* Town Planning Scheme No. *(insert number)* to the satisfaction of the *Local Government*.
- » Prior to the occupation of the building, the applicant must contribute *(insert \$ amount)* towards development infrastructure pursuant to the *Local Government's* Town Planning Scheme No. *(insert number)* to the satisfaction of the *Local Government*.

[* The time for making a contribution may need to be amended in accordance with the relevant Local Government planning scheme.]

[Guidance note: Local Governments should also consider whether this condition may lawfully be imposed pursuant to the LPS Regulations and any relevant planning schemes/policies. Local Governments should also consider whether the condition meets the “Newbury test”, i.e. it must fairly and reasonably relate to the development.]

Alcohol Outlets

Restriction on Trading Hours

- » Unless a variation to the trading hours is approved in writing by the *Local Government*, the trading hours are limited to the following:
 - (a) Monday – Friday inclusive: Between (hour) and (hour) / not at all*;
 - (b) Saturday: Between (hour) and (hour) / not at all*;
 - (c) Sunday: Between (hour) and (hour) / not at all*; and
 - (d) Public Holidays: Between (hour) and (hour) / not at all*.

ADDITIONAL / ALTERNATIVE CONDITION (IF APPLICABLE)

- » The service of liquor is to be limited to the times specified in the management plan, generally being:
 - (a) Monday – Friday inclusive: Between (hour) and (hour) / not at all*;
 - (b) Saturday: Between (hour) and (hour) / not at all*;
 - (c) Sunday: Between (hour) and (hour) / not at all*; and
 - (d) Public Holidays: Between (hour) and (hour) / not at all*.

[* Delete options that are not applicable, having regard to the *Liquor Control Act 1998* (WA) and any relevant planning policy / local law of the Local Government.]

ADDITIONAL / ALTERNATIVE CONDITION (IF APPLICABLE)

- » No extended trading permits to allow an increase in trading hours will be granted.

Interior Design Requirements

- » With the exception of the dance floor, the premises are to be furnished with chairs, lounges and tables.
- » Tables and chairs must be set up throughout the licensed premises to accommodate not less than *(insert number)* patrons.
- » At all times the premises are to be set up for dining. The approved 'lounge' areas situated in/on/at the *(insert description location e.g. ground floor, first floor, etc)* must be set up and operated in accordance with the approved plans at all times. All dining furniture is to remain in situ during the hours of operation.
- » No more than *(insert number)* tables and *(insert number)* chairs shall be set up in the alfresco dining area.

Capacity Limits

- » The capacity of the venue must not exceed *(insert number)* patrons.
- » The *(insert description of location e.g. the public bar area, the eating and drinking area, etc.)* is limited to a maximum floor area of *(insert number)* square metres. Any increase in this area requires a development approval from the *Local Government*.

Noise / Entertainment Restrictions

- » Prior to commencement of the approved use, the applicant must submit for approval by the *Local Government* a noise management plan prepared by an accredited acoustic engineer, which shall detail noise attenuation measures sufficient to ensure compliance of the approved use with the *Environment Protection (Noise) Regulations 1997* (WA) as amended from time to time. The noise management plan as approved by the *Local Government* must be implemented at all times.

Provision of Security Patrols and Crowd Controllers

- » A minimum of *(insert number)* security personnel, licensed pursuant to the *Security and Related Activities (Control) Act 1996* as amended from time to time, must provide security at the premises at the following times:
 - (a) Monday – Friday: Between (hour) and (hour) / not at all*;
 - (b) Saturday: Between (hour) and (hour) / not at all*;
 - (c) Sunday: Between (hour) and (hour) / not at all*;
 - (d) Public Holidays: Between (hour) and (hour) / not at all*; and
 - (e) At any other times when the premises are occupied by more than *(insert number)* people*.
- [* Delete options that are not applicable.]
- » During these times, at least *(insert number)* licensed security guard(s) are to patrol the areas outside of the building.

Provision of Food

- » The kitchen must remain open with staff available to provide the full menu at all times during trading hours* / until 30 minutes before closing time on any night* / at all times up until *(hour)* Monday to Saturday and *(hour)* Sunday*.
 - » The licensed premises must contain kitchen facilities that are suitable for the preparation of the meals supplied by the licensee.
- [* Delete options that are not applicable.]

Alternative Transport Provisions

- » Internal promotion encouraging the use of public transport (specifically taxis) to be clearly visible to patrons.
 - » Patrons must also have access to an operational telephone inside the premises with phone numbers of taxi companies* / a taxi rank* / a complementary taxi calling service*.
- [* Delete options that are not applicable.]

Bushfire

Bushfire Management Plans

- » The applicant must implement all of the recommendations contained in the Bushfire Management Plan prepared by *(insert name of BAL Assessor or Bushfire Planning Practitioner)* dated *(insert date)* and approved by the *Local Government* for the duration of the development.

[Sample advice note: Please be advised that prior to lodging an application for a building permit, certain conditions of planning approval may need to be satisfied in

order for an amended Bushfire Attack Level (BAL) assessment to be lodged as part of the building permit. This may involve clearing and other measures to downgrade the BAL rating.]

[Guidance note: Local Governments should consider whether it is appropriate to require an Emergency Evacuation Plan (EEP) as part of the development application (as opposed to requiring an EEP as a condition of development) having regard to all the circumstances of the case and *State Planning Policy 3.7*.]

Construction of Dwellings

- » The dwelling and/or extensions must be constructed in accordance with Australian Standard 3959 – Construction of Buildings in Bush Fire Prone Areas (or superseding standard) and the approved Bushfire Management Plan.

Landscaping / Fuel Loadings

- » Prior to the use or occupation of the development, the Asset Protection Zone (APZ) must be established and the property thereafter maintained in accordance with the Bushfire Management Plan as approved by the *Local Government*.

Notification on Title

- » A Section 70A Notification pursuant to the Transfer of Land Act 1893 (or as amended) must be placed on the titles of all lots, at the full cost of the applicant, alerting landowners to the existence of the approved Bushfire Fire Management Plan and advising landowners of their obligations in respect to the use and ongoing management of the land.