

## SCHEDULE 11— DEVELOPMENT AREAS

[Clause 6.1.1]

### PROVISIONS RELATING TO SPECIFIED AREAS PART 1: WATTLE GROVE URBAN CELL 9

#### 1. Interpretation

In this Part 1 of Schedule 11:

**"Cell 9"** means the area shown on the map which follows and forms part of this Schedule;

**"Cell 9 ODP"** means such Outline Development Plan as is approved and adopted in respect of Cell 9 pursuant to clause 6.2.1 of the Scheme;

**"Cell Infrastructure Costs"** means:

- (a) the costs of and incidental to the preparation of the Cell 9 ODP and the carrying out of the Cell Infrastructure Works;
- (b) the administration costs of the Cell 9 ODP and the subdivision and development of Cell 9 including without limitation:
  - (i) an amount to reimburse the Council for such overhead supervision and management costs as may be incurred in the preparation of the Cell 9 ODP and the carrying out of the Cell Infrastructure Works; and
  - (ii) all legal costs, planning costs, payments to other professional consultants and advisers, survey and valuation costs, in each case whether incurred before or after the coming into operation of this Part and reimbursement to the Council for the time spent by its officers or any employee or agent of the Council in so far as that time was spent in connection with the carrying out of the Cell Infrastructure Works and including time spent prior to the coming into operation of this Part;
- (c) all compensation payable in respect of the carrying out of Cell Infrastructure Works and the expenses of determining and settling such compensation;
- (d) the cost of the acquisition of any land within Cell 9 for the purpose of carrying out Cell Infrastructure Works whether that land is purchased or acquired by compulsory acquisition or otherwise including without limitation the purchase price or compensation paid (as the case may be), and any other costs, fees or expenses whatsoever of or incidental to such acquisition;
- (e) the costs of extension or relocation of any services within Cell 9;
- (f) all legal costs and fees whatsoever incurred by the Council in or in contemplation of any arbitration or other legal proceedings arising out of or concerning the carrying out of the Cell Infrastructure Works or any appeal against a decision or determination of the Council exercising a power in relation to the Cell Infrastructure Works or in relation to the assessment or recovery of Cell Infrastructure Contributions and the fees and expenses of any witness expert or consultant for which the Council becomes liable in connection with any proceedings referred to in this paragraph and any costs ordered to be paid by the Council or payable pursuant to any settlement negotiated by the Council in such proceedings;
- (g) all interest paid or payable on moneys borrowed, credit obtained or financial accommodation extended for the purposes of carrying out Cell Infrastructure Works;

- (h) all other costs and expenses which the Council is required to meet in order to carry out the Cell Infrastructure Works; and
- (i) all costs and expenses of the exercise by the Council of any power conferred by clause 5 of this Part upon the Council;

**"Cell Infrastructure Contribution"** means, in relation to an owner, a sum of money which bears the same proportion to Cell Infrastructure Costs as the Dwelling Yield of all of that owner's land in Cell 9 bears to the Dwelling Yield of all land in Cell 9;

**"Cell Infrastructure Works"** means:

- (a) the acquisition of land for any public facility or service as identified on the Cell 9 ODP and also any of the works or facilities referred to in this definition;
- (b) the acquisition of land for a school as identified on the Cell 9 ODP;
- (c) the provision of land for and the improvement of public open space as identified on the Cell 9 ODP;
- (d) the creation of any water-way identified on the Cell 9 ODP;
- (e) the widening or improvement of the following roads within Cell 9:
  - Hale Road
  - Arthur Road (existing and proposed extension)
  - Sheffield Road;
- (f) the provision of any easement or way, including without limitation, any carriageway, cycleway, walkway or dual use path within Cell 9 as identified in the Cell 9 ODP;
- (g) the provision or upgrading of drainage works within Cell 9 including any contribution necessarily or unavoidably payable to the Water Corporation for the provision of drainage headworks by that body benefiting Cell 9;

**"Dwelling"** has the meaning set out in the Residential Design Codes;

**"Dwelling Yield"** means:

- (a) in relation to land permitted pursuant to the Cell 9 ODP to be developed for residential purposes, the maximum number of dwellings permitted on that land; and
- (b) in relation to land other than land described in paragraph (a), one Dwelling for each complete 450m<sup>2</sup> of that land;

**"this Part"** means this Part 1 of Schedule 11; and

**"Trust Account"** means the trust account established by the Council for compliance with clause 6.1 of this Part.

**2. Designation as Specified Area and Purpose**

- 2.1 (Designation): Cell 9 is hereby designated as an outline development plan area for the purposes of clause 6.2.1 of the Scheme and this Part shall apply to Cell 9.
- 2.2 (Purpose of designation): The purpose of establishing and designating Cell 9 as an outline development plan area is to permit the carrying out of Cell Infrastructure Works and the apportionment of Cell Infrastructure Costs equitably among the owners of land within Cell 9 so as to permit the orderly and proper planning of the urban subdivision and urban development of Cell 9 at no cost to the Council's ratepayers (other than the owners of land within Cell 9).

**3. Cell 9 ODP**

- 3.1 (Scheme provision to apply): The provisions of clause 6.2.1 of the Scheme are incorporated in this Part and apply to Cell 9 so far as they are not varied by or inconsistent with the express terms of this Part.
- 3.2 (Cell 9 ODP and subdivision and development) Subdivision and development (other than the development of a single residential dwelling on an existing lot) should be in accordance with the Cell 9 ODP.

**4. Cell Infrastructure Works**

- 4.1 (Council may carry out) The Council may in its discretion (but is not obliged to) carry out or contract with any person for the carrying out of Cell Infrastructure Works.
- 4.2 (Works not included in Cell Infrastructure Works) For the sake of clarity, the following works are not Cell Infrastructure Works:
  - (a) the provision of any sewerage works within Cell 9 including both headworks and reticulation;
  - (b) the provision or upgrading of a reticulated water supply to and within Cell 9;
  - (c) the provision of gas and electric power to and the reticulation of such services within Cell 9;
  - (d) the provision of telecommunications to and within Cell 9; and
  - (e) the provision of or contribution to the cost of providing any road within Cell 9 or the widening or improvement of any road within Cell 9 other than as specified in paragraph (d) of the definition of Cell Infrastructure Works.

**5. Council's Powers**

The Council has, for the purposes of carrying out or contracting with any person for the carrying out of Cell Infrastructure Works and for the purposes of implementing the provisions of this Part, but subject to the provisions of any other applicable law, the legal capacity of a natural person and, without limitation, has the following powers:

- (a) (enter into contracts): to enter into contracts for the purposes of this Part;
- (b) (acquisition and disposal of land): to:
  - (i) acquire any land within Cell 9 for the purpose of securing any objective of this Part;
  - (ii) deal with or dispose of any land that the Council owns within Cell 9 or which it acquires pursuant to this Part in accordance with the powers conferred upon it and for that purpose may make such agreements with any other owner or person or body whatsoever as it sees fit; and
  - (iii) without limiting the generality of sub-paragraphs (i) and (ii):
    - (a) the Council may compulsorily acquire land pursuant to the provisions of the *Public Works Act 1902*; and
    - (b) the Council may enter into any lease or licence or agreement for the use of any land it acquires for such period and on such terms as the Council thinks fit;
    - (c) (legal agreements): to enter into any agreement with any owner, occupier or other person having an interest in land within Cell 9 for the purpose of securing any of the objectives of this Part.

## 6. Establishment of Trust Account

- 6.1 (Establishment): The Council shall establish and maintain a trust account or fund.
- 6.2 (Debit and credits to Trust Account): The Trust Account shall be debited with Cell Infrastructure Costs and credited with Cell Infrastructure Contributions.
- 6.3 (Repayment of moneys borrowed): Moneys borrowed by the Council may be repaid to the Council out of the Trust Account.

## 7. Cell Infrastructure Contributions

- 7.1 (Restriction on subdivision and development): The owner of land in Cell 9 must not subdivide or develop that land or allow any person to do so without paying the Cell Infrastructure Contribution in accordance with the succeeding provisions of this clause 7.
- 7.2 (Manner of Payment): The Cell Infrastructure Contribution must be paid to the Council (or arrangements pursuant to clause 7.6 or clause 7.7 of this Part made with the Council to the satisfaction in all respects of the Council) prior to:
- (a) in the case of subdivision, the date upon which the Commission endorses its approval on a diagram or plan of subdivision of that owner's land (and the Council may withhold its clearance to any plan or diagram of subdivision until the owner has given to the Council evidence of compliance with this clause 7); or
  - (b) in the case of development, at the time of carrying out development or commencing any use of a parcel of land.
- 7.3 (Disputes): If there is a dispute between the Council and any owner in relation to the amount of a Cell Infrastructure Cost, that dispute must be referred to arbitration in the manner provided by the *Commercial Arbitration Act 1985* (in which arbitration a party may be represented by a legal practitioner).
- Where a Cell Infrastructure Cost is determined by arbitration to be different from that calculated and adopted by the Council at any time, the Council shall adjust Cell Infrastructure Costs so that they conform to such determination.
- 7.4 (Interest): Interest shall be payable on any overdue Cell Infrastructure Contribution at the rate payable from time to time on judgment debts as determined pursuant to section 142 of the *Supreme Court Act 1935*. Interest shall become payable from the date the Cell Infrastructure Contribution became due until the date of payment unless the Council for good reason shown by the owner agrees to suspend or waive interest.
- 7.5 (Charge): The liability (whether present or prospective) of any person to pay a Cell Infrastructure Contribution is a charge on the land to which that Cell Infrastructure Contribution relates and the Council may lodge a caveat against the title to that land at the Land Titles Office in respect thereof. The Council may from time to time withdraw a caveat to permit registration of a dealing in the land and thereafter lodge another caveat. On the payment of all Cell Infrastructure Contributions in respect of any land the Council shall withdraw any caveat which it has lodged against the title to that land.
- 7.6 (Acceptance of land in lieu of money): The Council may in its discretion agree to accept land within Cell 9 to the value of any moneys due in respect of a Cell Infrastructure Contribution.
- 7.7 (Payment on terms): The Council may in its discretion agree to accept payment of a Cell Infrastructure Contribution on terms of deferred payment and may secure the payment to the Council of any deferred payment in such manner as the Council may in its discretion decide.

- 7.8 (Estimates): The Council may, before any item of Cell Infrastructure Costs has been finally ascertained from time to time (but in any event shall at least annually) make estimates of that cost on the best advice or information available to the Council and in calculating Cell Infrastructure Contributions may rely upon such estimates.

**PART 2: MILNER ROAD, HIGH WYCOMBE, DA2.**

*AMD 23 GG 07/02/12*

In respect of the Urban Development Zone, identified as DA2 on the Scheme Map, the Structure Plan(s) for this area shall ensure — *AMD 75 GG 25/9/18*

- (i) the protection of the threatened ecological community in the area of Lot 12 (11) Ibis Place, High Wycombe, for conservation purposes. The boundary of the threatened ecological community shall be defined from botanical survey by a suitably qualified botanist and may extend beyond the lot boundary. In addition, a vegetation management plan shall be prepared and implemented. The management plan and boundary determination shall be completed on advice of the Department of Environment and Conservation and to the requirements of the Environmental Protection Authority, prior to determination of the Structure Plan; and
- (ii) The protection of declared rare flora, associated habitat, threatened fauna habitat, and low representation vegetation complexes in appropriately sized retention areas for conservation purposes. These retention areas shall be informed by Level 2 Flora and Vegetation and Fauna Surveys in accordance with EPA Guidance Statements 51 and 56 (or as revised), and targeted for Declared Rare Flora and threatened fauna, and associated habitat. The retention area size, location, protection and management mechanism shall be subject to OEPA advice prior to the WAPC endorsement of the structure plan.
- (iii) All future subdivision and development proposals must be consistent with the retention areas agreed under the above point. *AMD 75 GG 25/9/18*

**PART 3: FORRESTFIELD / HIGH WYCOMBE INDUSTRIAL AREA DA1.**

In respect of the Industrial Development zone generally bounded by Berkshire Road, Roe Highway, Sultana Road West and Milner Road, identified as Development Area 1, the structure plan for this area is to ensure that general and heavy industrial uses are not permitted. *AMD 34 GG 23/12/11*