



## *Town Planning Scheme No. 3*

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**SHIRE OF CAPEL  
TOWN PLANNING SCHEME NO. 3**

**(Incorporating Amendments 1-8)**

The Capel Shire Council, under and by virtue of the powers conferred upon it in that behalf by the Town Planning and Development Act, 1928 (as amended) hereby makes the following Town Planning Scheme for the purpose of:-

- (a) setting aside land for future public use as reserves;
- (b) controlling land development;
- (c) other matters authorised by the enabling Act.

**PART 1 – PRELIMINARY**

- 1.1 This Town Planning Scheme may be cited as the Shire of Capel Town Planning Scheme No. 3 – Gelorup (hereinafter called “the Scheme”) and shall come into operation on the publication of notice of the Minister’s final approval thereof in the “Government Gazette”.
- 1.2 The Scheme shall apply to the whole of the land contained within the inner edge of the broken black line on the maps forming part of the Scheme. The said lands are hereinafter referred to as “the Scheme Area”.
- 1.3 The responsible authority for carrying out the Scheme is the Council of the Shire of Capel (hereinafter referred to as “the Council”).

**1.4 Arrangement of Scheme**

The Scheme Text is divided into the following parts:

- Part 1 – Preliminary
- Part 2 – General Objectives
- Part 3 – Method Of Carrying Out The Objectives
- Part 4 – Finance And Administration

The remaining documents of the Scheme are as follows:

- (1) Land Use Map
- (2) Scheme Map

**1.5 Interpretation**

In the Scheme the terms used will have the respective interpretations set out in Appendix “D” of the Town Planning Regulations 1967, unless otherwise specified by this Scheme.

**PART 2 – GENERAL OBJECTIVES**

- 2.1 The general objectives of the Scheme are to establish guidelines, strategy and specific controls for the progressive guidelines, strategy and specific controls for the progressive subdivision and development of the Scheme Area, so that adequate provision may be made for:-
  - (a) the major and distributor road network of the sub region as and where it interacts with the Scheme Area;
  - (b) the Collector and local road system within the Scheme Area to facilitate circulation of traffic;
  - (c) public open space, foreshore reserves, shops, community purposes and local authority purposes;
  - (d) road drainage and drainage of those parts of the Scheme Area that require such works;
  - (e) roads drainage reserves and easements as required;
  - (f) securing the amenity, health and convenience of the residents within the Scheme Area; and
  - (g) the prevention of soil erosion and land degradation.

## **2.2 Policies**

In order to achieve these objectives, the Scheme provides a statement of policy for the subdivision and development of the Scheme Area.

- (a) The minimum lot size shall be 4,000m<sup>2</sup> unless a lesser area is approved by the State Planning Commission after consultation with the Council. No further subdivision of the lots so created will be permitted;
- (b) The roads indicated on the Scheme Map are to be regarded as essential to both traffic circulation and the subdivision pattern for the Scheme Area and should be provided generally in the location and to the widths shown on the Scheme Map;
- (c) Public Open Space and road widening requirements are to be provided generally as shown on the Scheme Map;
- (d) The Scheme Area has been divided into 6 sub areas for which overall plans of subdivision shall be prepared by applicants. Sub areas 1 to 6 are bounded by roads and/or the Scheme boundary except areas 5 and 6 which are separated by the middle thread of the 5 Mile Brook and the boundary (extended where necessary) between AA lot 157 and AA lot 156; and
- (e) Land within the Scheme Area which has been subject to extractive industries and or other earthworks will be required to be rehabilitated to a standard which in the opinion of the Council is compatible with the intended future land uses within the Scheme Area.

### **PART 3 – METHOD OF CARRYING OUT THE OBJECTIVES**

#### **3.1 Subdivision**

- (a) It is intended that as and when an owner of land within the Scheme Area desires to develop and subdivide his lands such development and subdivision shall be according to a plan which will be capable of forming part of an overall plan of subdivision and development of the Scheme Area in which the land is situated;
- (b) The Scheme Map indicates only the broad guidelines of structure planning. Overall plans of subdivision may be required by the Council and the State Planning Commission for the whole or parts of sub areas as they think fit before subdivisions will be approved for that sub area or part thereof as the case may be;
- (c) An owner of land within the Scheme Area who desires to subdivide his land either alone, or in conjunction with other owners, shall submit a plan of the proposed subdivision to the State Planning Commission as required by the Town Planning and Development Act 1928 as amended;
- (d) The State Planning Commission may refuse to permit subdivision and the Council may refuse to permit development in certain sections of the Scheme Area until Scheme works can be carried out therein or until other sections have been subdivided and/or developed; and
- (e) The State Planning Commission may impose upon a subdividing landowner a condition requiring the rehabilitation of land.

#### **3.2 New Roads**

- (a) Subject to the following clauses all new roads within the Scheme Area shall be constructed and drained at the expense of the owners of the land therein and each owner shall when subdividing his land, make the land available for the roads and pay the cost of the construction and drainage of the roads within the land owned by him;
- (b) The Council may construct and drain any subdivisional roads within the Scheme Area and acquire the land necessary for that purpose. If the Council shall do so prior to the subdivision of the land adjoining such road, the costs of the construction and drainage of the said road and all compensation and other costs consequent upon the acquisition of the land shall be paid to the Council by the respective owners of land in accordance with the foregoing provisions as and when they subdivide their land;
- (c) If an owner shall claim compensation for the resumption from him of land to be used as a road there shall set off against the amount of compensation payable to him, the amount by which the value of the remainder of his land has been or will be increased by the construction of the roads within the Scheme Area and by the operation of the Scheme;

- (d) If an owner shall subdivide his land and if he or his predecessors in title shall have claimed or shall have been paid compensation by reason of the resumption by the Council of the land for a new road within the Scheme Area he shall before the approval of his plan of subdivision release the Council from the payment of compensation paid by it to him or his predecessors, in title as the case may be;
- (e) In cases where the situation of a new road within the Scheme Area is such that it would be fair and equitable that the owners of adjoining land should each contribute to the cost of the construction or drainage of that road and apportion the value of the land made available for roads and such owners are unable to agree upon the amount (if any) payable by each of them the amount (if any) payable by each such owner shall be determined by arbitration in the manner hereinafter provided.

### **3.3 Closure of Roads**

Surveyed roads within the Scheme Area that are shown cross hatched on the Scheme Map shall be closed as and when Council deems it necessary for the orderly carrying out of the Scheme;

- 3.4 The Council shall at the appropriate time or times carry out such drainage works as are in its opinion necessary for the proper drainage of the Scheme Area and the connection of the land therein to a drainage system. The Council may acquire land for that purpose and may set aside land for drainage sumps and compensating basins and other works

### **3.5 Filling and Levelling of Land**

All filling and leveling of land and other earthworks necessary for subdivision shall be carried out by or at the expense of the owner, whose land is being subdivided.

### **3.6 Native Trees**

So far as is practicable and consistent with the economic subdivisional development of land, native trees and shrubs are to be retained. The Council may mark specific trees and shrubs are to be retained. The Council may mark specific trees or groups of trees and these are to be retained unless approval is given by Council, in writing for their removal.

### **3.7 Scheme Contributions For Public Open Space, Local Authority Purposes, And Road Widening Provisions**

- (a) It is intended that the land shown on the Scheme Map as being required for public open space and road widening purposes, shall be reserved for the purpose shown;
  - (b) The Scheme Area has been calculated as approximately 446.2 hectares;
  - (c) The area of land capable of being subdivided has been assessed at approximately 360 hectares;
  - (d) Contributions are assessed as follows:-
    - (i) Public Open Space and Local Authority Purposes at the rate of five per cent of the gross subdivisional land area remaining to be subdivided
    - (ii) Road widening at the rate of 1.7 per cent of the area being subdivided.
- 3.8 Each owner of land within the Scheme Area, when subdividing his land and subject to hereinafter provided, shall vest in the Crown or, in the case of Public Open Space and Local Authority Purposes, transfer to the Council all the land shown on the Scheme Map as Public Open Space, Local Authority Purposes, Road Widening, or such other areas as the State Planning Commission requires.
  - 3.9 If the owner or a previous owner of a parcel or parcels of land the subject of subdivision transferred to Council or vested in the Crown Land for Public Open Space, Local Authority Purposes, or Road Widening, then the area of land required to be transferred to the Council as scheme contributions shall be reduced to the extent that the total contribution does not exceed 6.7 per cent of the original subdivided area.
  - 3.10 If within a parcel of land the subject of subdivision, the Scheme requires either no scheme contributions, or requires a lesser amount than the normal 6.7 per cent provision, the Council and the owner shall agree on a land transfer or a cash equivalent or a combination of land and cash, so that the owner's contribution equals 6.7 per cent of the value of the land the subject of the subdivision.

- 3.11 If, within a parcel of land the subject of subdivision and development more than 6.7 per cent is required by the Scheme for Scheme contributions, the Council shall pay to the owner by way of compensation the value of the land exceeding the 6.7 per cent. If the Council and the owner so agree the Council may transfer to the said owner other land in or near the Scheme Area either owned by the Council or acquired by it for that purpose to compensate him for the land in excess of the said land required by the Scheme in which case the amount payable by the Council to the owner shall be reduced accordingly.
- 3.12 If the Council shall have compulsorily acquired land as Scheme contributions, it shall be reimbursed all compensation and costs paid by it from moneys received by it from the sale of land or under preceding clauses hereof and upon the owner from whom the land was compulsory purchased subdividing his land the value of 6.7 per cent of his land to be made available for Scheme contributions hereunder shall be assessed on the basis that such land had not been compulsorily acquired or purchased.
- 3.13.1 Subject to the provisions of Clauses 3.13.2 to 3.13.6, land acquired under the Scheme for a school site or road widening shall be offered to the Crown by the Council at an in globo valuation determined in accordance with the provisions of the Scheme;
- 3.13.2 In Clauses 3.13.3 to 3.13.6, "Lot 106" means all that piece of land being portion of Boyanup Agricultural Area Lot 253 and being Lot 106 on Plan 12178 and being the whole of the land comprised in Certificate of Title Volume 1491 Folio 754.
- 3.13.3 Lot 106 was transferred to the Council as a school site pursuant to the Scheme but is no longer required for that purpose.
- 3.13.4 Notwithstanding that it is shown on the Scheme Map as a school site the Council may, subject to Clauses 3.13.5 and 3.13.6:
- (a) sell Lot 106 as one parcel; or
  - (b) with the approval of the State Planning Commission in accordance with the Act subdivide Lot 106 and sell the lots created by the subdivision.
- 3.13.5 The Council may sell Lot 106 or the lots created by the subdivision, as the case may be:
- (a) by public auction or tender or by private contract; or
  - (b) upon any terms and conditions it thinks fit;
- but in the case of a sale by private contract the price shall not be less than the price recommended by the Valuer General or a valuer referred to in Clause 4.6 unless after submitting the land for sale by public auction or tender that price has not been obtained.
- 3.13.6 The proceeds of Lot 106 or the lots created by the subdivision thereof received by the Council shall be applied as follows:
- (a) first in payment of any expenses of subdividing Lot 106 incurred by the Council;
  - (b) second in payment of the costs and expenses of and incidental to the sale;
  - (c) third in reduction of the Scheme costs.
- 3.14 The Council may sell or otherwise dispose of any land transferred to or acquired by it for the purpose of Public Open Space or Local Authority purposes provided that all moneys received by the Council in respect of such sales be expended by the Council in the acquisition or improvement of land for Public Open Space or Local Authority purposes within the Scheme Area concerned provided also that the amount of Public Open Space is not reduced below 5 per cent required under the Scheme.

- 3.15 In the event that an owner of land within the Scheme Area desires to make his contribution for public open space, local authority purposes, road widening or any other purpose particular to his land by payment of a cash sum or partly by payment of a cash sum and partly in land; then:
- (a) he shall give notice in writing to the Council of his desire to do so at the time of applying for subdivision of his land; and
  - (b) in the event that he desires to make his contribution partly by payment of a cash sum and partly in land he shall stipulate in his notice the apportionment he desires to make between cash and land;
  - (c) the Council may in its absolute and unfettered discretion resolve:
    - (i) to accept the contribution in the manner desired by the owner;
    - (ii) to require that the contribution be wholly in land;
    - (iii) to require that the contribution be wholly in cash; or
    - (iv) where the owner has desired an apportionment of his contribution between cash and land, to require that the contribution be apportioned between cash and land in certain proportions different from those desired by the owner; and
  - (d) the Council shall give notice to the owner of its resolution made pursuant to paragraph (c) hereof.
- 3.16 It is intended that moneys payable to the Council under Clause 3.10 and the proceeds of sale of land transferred to the Council pursuant to that Clause (other than land shown on the Scheme Map as or required or reserved for Public Open Space, Local Authority Purposes or Road Widening) will be used to make payments to owners under Clause 3.11. If an owner desires to subdivide his land before sufficient funds are available to make any payment to him under Clause 3.11 the transfer or vesting of the land for Public Open Space, Local Authority Purposes, or Road Widening then the payment under Clause 3.11 shall, unless the Council and the Owner otherwise agree, be postponed until the Council has sufficient funds to make the payment to the owner.

### **3.17 Rehabilitation**

- (a) With the intention of preventing soil erosion and any other form of land degradation, the Council and the State Planning Commission may require a subdividing landowner to take soil conservation action, including revegetation, to Council's satisfaction, to reduce or eliminate adverse effects on the environment of the residential and public land uses within the Scheme Area.
- (b) Soil conservation action including revegetation, is to be undertaken by the subdividing landowner to Council's satisfaction within the proposed Public Open Space area north of Sleaford Park Drive, (Boyanup AA Lots 245, 246 and Lot 100) prior to seeking clearance to a diagram or plan of survey for those residential lots adjoining its boundary.

## **PART 4 – FINANCE AND ADMINISTRATION**

- 4.1 After the final approval of the Scheme an owner of land within the Scheme Area who has submitted or joined in the submission of a plan of the proposed subdivision of his land may request and the Council shall supply to him as soon as is practicable a schedule of the Scheme Costs applicable to his land including his portion of the general Scheme Costs and any other costs applying particularly to his land.

### **4.2 Payment of Scheme Costs**

- (a) The contribution by an owner to Scheme Costs shall be:
  - (i) A sum bearing the same proportion to the total Scheme Costs as the area of that owner's land bears to the total area of land within the Scheme Area capable of being subdivided; and
  - (ii) Such additional costs as are appropriate for the development of that owner's land.
- (b) The Council shall not give any clearance or consent to the State Planning Commission or any other person or authority for the final approval of the subdivision of an owner's land until he has paid or made in full his contribution to the Scheme Costs and his contribution for public open space, local authority purposes, road widening and any other purpose particular to his land.

### **4.3 Scheme Costs**

The costs or estimated costs of the following items are hereinafter referred to as Scheme Costs:-

- (a) The administrative costs of the Scheme including an amount to reimburse the Council for such overhead and supervision costs as may be incurred in the implementation of the Scheme;
- (b) All fees and costs paid or payable to the Council's planning and other consultants;
- (c) All compensation payable and all costs and expenses of determining and settling compensation;
- (d) The acquisition of any land within or near the Scheme Area in the event of such land being acquired other than by resumption;
- (e) The drainage works necessary for the proper drainage of the Scheme Area including all necessary drainage works, reservations and easements whether inside or outside the Scheme Area
- (f) The construction or upgrading and drainage of those existing roads within the Scheme Area that in Council's opinion require construction or upgrading and drainage; and
- (g) The cost of such other works as the Council shall consider necessary for the proper planning of the Scheme Area and the implementation of this Scheme.

4.4 The Council shall fix a date upon which owners within the Scheme Area or their representative shall be given if they so desire the opportunity of discussing with Council the question of Scheme Costs and payment thereof. If the owner is unable to reach agreement with Council on the question of his Scheme Costs and methods of payment including the time within which payments are to be made, that owner may appeal to the Minister for Town Planning or to the Court as provided in Part V of the Town Planning and Development Act (as amended).

### **4.5 Estimate of Scheme Costs**

The Council may from time to time revise the estimate of Scheme Costs in respect of whole or part of the Scheme Area.

### **4.6 Valuations**

- (a) Where it is necessary to ascertain the value of any land for the purposes of the Scheme the value shall be determined by either the Chief Valuer of the Valuer General's Department of Western Australia or at the option of the Council by a disinterested and competent valuer appointed for that purpose by the Council and being a Fellow or Associate for the time being of the Western Australian division of the Australian Institute of Valuers (Incorporated).
- (b) If an owner objects to the value so determined he may give notice of such objection to the Council within twenty-eight days after having been informed of the said value or the revised value. If the valuer does not agree to change the value to a figure acceptable to the owner the value shall be determined by arbitration in accordance with the provisions hereinafter contained.
- (c) The date of valuation shall be the date on which Council resolves to commence negotiations.
- (d) The cost of such valuation shall be paid by the owner.

### **4.7 Land Owned or Acquired by the Council**

All or any of the land now owned by or subsequently acquired by the Council within or near the Scheme Area may be used by the Council for any purposes appropriate to the Scheme.

If such purpose is one for which an owner is required to make land available or for which land may be acquired by the Council pursuant to this Scheme the Council shall be compensated for the value of the land so used by the Council. If the Council shall subdivide or develop any land owned by it the provisions of this Scheme shall apply to the Council.

#### **4.8 Finance**

- (a) The Council shall do all things necessary in order to raise loans or to provide funds from other sources for the purpose of providing the final necessary for the implementation of the Scheme. If Council shall be unable to arrange the necessary finance it shall be under no liability to the owners of land within the Scheme Area or to any other person by reason of its failure to acquire lands or carry out works.
- (b) In the event of moneys received by Council pursuant to the provisions of the Scheme being greater than the amount necessary to repay the said loans and interest thereon or other moneys and carry out the general objects of the Scheme the balance thereof shall be applied by the Council in further improvements and facilities within or near the Scheme Area. Moneys received by Council pursuant to this Scheme shall not form part of its general revenue.

4.9 Within five years but not before the expiration of three years from the coming into operation of the Scheme the Council shall:

- (a) Review those Scheme Works which have been completed at that time;
- (b) Carry out those further Scheme Works at that time appearing necessary for the proper and orderly management of the Scheme;
- (c) Determine the cost of the works referred to in paragraph (a) hereof which have not been paid or for which at that time no owner has become liable and estimate the cost of the works referred to in paragraph (b) hereof; and
- (d) Recover from owners within the Scheme Area the costs and estimated costs referred to in paragraph (c) hereof.

#### **5.1 Powers and Authorities of Council**

In carrying out the provisions of the Scheme the Council shall have the following powers and authorities:

- (a) to make agreements with the owners or occupiers of any land within the Scheme Area;
- (b) to enter into agreements with purchasers or prospective occupiers of land within the Scheme Area;
- (c) to purchase develop and sell land within the Scheme Area;
- (d) to enter and inspect any land within the Scheme Area;
- (e) if any owner of land within the Scheme Area does not proceed with the subdivision or development of his land in accordance with the terms of the Scheme or by reason of the nature of his land is unable to subdivide or develop it and his failure to do so in the opinion of the Council will unduly delay the subdivision and development of the Scheme Area, the Council may exercise its powers to compulsorily acquire the land under Section 13 of the Town Planning and Development Act 1928 of such owner or owners of any part of parts thereof and proceed with the subdivision of the Scheme;
- (f) In the event of the Council exercising its powers under Clause (e) it shall have all the powers of an owner in the subdivision, development and disposal of the said land; and if the owner shall not have been paid compensation by reason of the compulsory purchase the Council before selling his land so subdivided and developed shall offer the new lots to the original owner upon his paying to the Council all costs and expenses consequent upon the compulsory purchase, subdivision or development of the said land and upon his releasing the Council from all claims for compensation in respect of such compulsory purchase. The said offer shall be made in writing and if not accepted within one calendar month of the service thereof the Council may proceed with the sale of the subdivided lots. All moneys received by it from such sale shall be applied firstly in payment of all costs and expenses consequent upon such subdivision and secondly in payment of all compensation in respect of the said land. The balance of any such moneys may be retained by the Council and the Council shall make good any deficit;
- (g) If the offer mentioned in Clause (f) hereof be not accepted the Council may retain all or any part of the said land but if it does so it shall be responsible to pay such costs of subdivision of the said land and compensation for its compulsory purchase as are then unpaid;

- (h) Excepting land transferred to it for Public Open Space Council may dispose of any lots to which it becomes entitled whether under clause (e) hereof or otherwise upon such terms and conditions as it may think fit and without limiting the generality of the foregoing the Council may sell the lots singly or in groups and on the conditions that buildings of a specified character with specified parking or other facilities shall within a limited period be constructed thereon or that the land and buildings be used for a specified purpose; and
- (i) Extend the time within which payments are to be made to the Council and agree to the securing of such payments.

5.2 Twenty-eight days written notice is hereby prescribed as the notice to be given pursuant to Section 10 of the Act. Any expenses incurred by Council under the said Section may be recovered from the person in default as a simple contract debt in such court of Civil Jurisdiction as is competent to deal with the amount of the claim.

**6.1 Claims for Compensation**

Claims for compensation by reason of the operation of this Scheme maybe made within six calendar months of the Scheme coming into operation.

**7.1 Change of Zoning**

The Council may from time to time apply for the consent of the Hon Minister for Town Planning to the zoning or rezoning of the land included within the Scheme Area.

**8.1 Arbitration**

Any dispute or difference to any matter which by the terms of the Scheme Text may be referred to Arbitration, may be referred to the Arbitration of a single Arbitrator in manner provided by the Arbitration Act 1895, or any statutory modification thereof for the time being in force and if the parties fail to agree on any one arbitrator he may be nominated by the President for the time being of the Law Society of Western Australia but if the dispute or difference relates to values only, the Arbitrator shall be appointed by the President for the time being of the Western Australian division of the Australian Institute of Valuers (Incorporated).

Adopted by resolution of the Council of the Shire of Capel at a special meeting of the Council held on the 6th day of July 1976 and the seal of the Shire was pursuant to that resolution hereunto affixed in the presence of:

The Common Seal of the Shire of Capel )  
 was affixed by authority of a resolution )  
 of the Council in the presence of- )

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**F R BROCKMAN, President**

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**W M WRIGHT, Shire Clerk**

This Scheme Text is to be read in conjunction with the approved maps of the Scheme described in clause 1.4 of this Scheme and to which formal approval was given by the Hon Minister for Town Planning on the 22nd day of September 1976.

Recommended: D J COLLINS  
 CHAIRMAN OF THE STATE  
 PLANNING COMMISSION

Date: 22nd September 1976

Approved: E C RUSHTON  
 MINISTER FOR TOWN PLANNING

Date: 22nd September 1976