
OC0904 (14.2) Town Planning Scheme Review and Local Planning Strategy

Location: Whole Shire
 Applicant: Shire of Capel
 File Reference:
 Disclosure of Interest: Nil
 Date: 03.09.15
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 Attachment: Nil

MATTER FOR CONSIDERATION

Council agreement to initiate a review of Town Planning Scheme No. 7 by preparing a new Local Planning Scheme No. 8 and to support the concurrent preparation of a Local Planning Strategy.

BACKGROUND / PROPOSAL
Background

A Town Planning Scheme or a Local Planning Scheme is a statutory mechanism which applies land use and development provisions including zoning of land and development standards.

A Local Planning Strategy is a separate strategic 'land use planning' supporting document that seeks to provide long term (15 years) planning direction, applies State and regional planning policies, addressing local planning issues and provides the rationale for zoning and classification of land in the Scheme.

March 2006 refers. Council acknowledged (Minute OC0313) the need to commence an ongoing strategic land use planning program for the Shire in order to:

- Undertake a staged and orderly review of the Shire of Capel Land Use Strategy and Town Planning Scheme No. 7 (Scheme 7);
- Introduce the concept of sustainability into townsite strategies and related plans; and
- Provide for appropriate implementation of strategic plans.

Townsite strategies for the Boyanup, Capel and Peppermint Grove Beach town sites have been completed and a number of detailed studies have been initiated and completed to implement the actions required by the townsite strategies.

November 2011 refers. Council resolved (Minute OC0303) to continue with its strategic land use planning program for the Shire to implement Strategies En1 and En2 of the then Shire of Capel Strategic Plan 2009 – 2020 and that an annual report on associated actions be provided to Council.

The Strategic Plan 2009 to 2020 has been superseded by the Shire of Capel Strategic Community Plan 2013 -2031. As background En1 and En2 of the Strategic Plan were as follows:

- EN1 Review the Land Use Strategy and District Planning Schemes to incorporate sustainability principles (3.1)
- EN2 Plan to undertake specialised studies identified within endorsed land use strategies to ensure orderly and appropriate coordinated development and land use strategies (3.1).

The 2006 and 2011 resolutions were primarily based on a staged approach to achieve the following outcomes:

- The preparation of townsite strategies that together with the Capel Land Use Strategy form the basis of an overall strategic local planning framework.
- Continued work on a range of technical studies to implement townsite strategy recommendations to facilitate further review of Scheme 7, detailed planning and development.
- Collectively the above were to form the basis of a staged review of Town Planning Scheme 7.
- Since 2006 a number of significant Amendments to Scheme 7 have been progressed including:
 - Amendment No. 45 to reflect residential density changes and subdivision coordination within the Capel Townsite.
 - Amendment No. 48 to introduce provisions for the preparation and adoption and implementation of Development Contribution Plans.
 - Capel Omnibus Amendment No. 60 to reflect the Capel Townsite Strategy outcomes.
- The following factors in 2006 and 2011 contributed to the above approach:
 - In 2006 the Greater Bunbury Region Scheme (GBRS) was not yet finalised with its gazettal occurred in October 2007.
 - By 2011 the Greater Bunbury Strategy (GBS) were not yet fully developed or introduced with finalisation and introduction occurred in 2013.
 - Shire officers and Council (with the support of the Department of Planning) favoured a staged approach at the time to develop townsite strategies in place of a Local Planning Strategy and a full Scheme review given the GBS was not yet finalised. The intention was that progressive staged updates to Scheme 7 would occur, leading to a comprehensive Scheme review.

Proposal

Council is recommended to formally initiate a review of Scheme 7 to prepare a new Local Planning Scheme No. 8 (LPS8) and to concurrently prepare a Local Planning Strategy (LPS) based on the following key factors that are further detailed within the Comments section of this report.

The need for an LPS is summarised as following:

- WAPC requirement;
- The merit of consolidating the Shire's adopted local planning framework into a single document;
- The need to reflect the current regional planning framework;
- Consolidate the long term planning directions for the Shire;
- Identify planning issues to be addressed by the Scheme review; and
- Provide the rationale for Scheme zones and land use provisions.

The need for a new LPS8 is summarised as follows:

- The statutory requirement to review Schemes regularly;

- Ensure Model Scheme Text compliance;
- Reflect local and regional planning outcomes;
- The opportunity to improve planning outcomes; and
- The opportunity to improve assessment efficiencies.

STATUTORY ENVIRONMENT

Introduction

The statutory processes detailed within this report to initiate a Scheme review and concurrently prepare a Local Planning Strategy are in accordance with the *Planning and Development Act (2005)* and *Town Planning Regulations (1967)*.

The *Town Planning Regulations (1967)* will be replaced by the *Planning and Development (Local Planning Schemes) Regulations 2015* that were gazetted 25 August 2015 and come into force on 19 October 2015.

Shire officers have confirmed with the Department of Planning that Council is to follow the *Town Planning Regulations (1967)* prior to the introduction of the new 2015 Regulations on the 19 October and following this date the new 2015 Regulations will apply.

Requirement for a Scheme Review and Local Planning Strategy

Under the *Planning and Development Act (2005)*, all Local Governments are required to consolidate their Scheme or prepare a new Scheme to replace their existing Scheme every five years. The requirement for Scheme reviews every five years is not strictly enforced; however it does provide the impetus for Local Governments to undertake regular reviews of their Schemes.

Town Planning Scheme No. 7 and Town Planning Scheme No. 3

The Shire's current operational Town Planning Schemes are Town Planning Scheme No. 7 (Scheme 7) and Town Planning Scheme No. 3 (Scheme 3).

Scheme 7 relates to the whole of the Shire and was gazetted in 1998. Scheme 7 is recommended to be reviewed and replaced by Local Planning Scheme No.8 (LPS8).

Scheme 3 relates to the Gelorup residential area only and was gazette in 1976. Scheme 3 is primarily a guided development scheme that addresses subdivision and infrastructure contribution requirements. If possible, it would be preferable for the requirements of Scheme 3 to be included in the new LPS8 to avoid the need for two Schemes. This matter is further addressed in the Comments section of this report.

POLICY IMPLICATIONS

LPS8 and the LPS will be required to reflect a broad range of state and local policies and guidelines. The following is a sample of the state and local planning framework documents that will guide LPS8 and LPS development.

State Policies

- State Planning Framework
- State Planning Strategy
- South West Planning Framework
- Land Use Planning in Rural Areas
- State Coastal Planning Policy
- Urban Growth and Settlement
- Historic Heritage Conservation
- Development Contributions for Infrastructure

- South West Planning & Infrastructure Framework
- Planning for Bushfire Risk Management
- Greater Bunbury Strategy and associated policies

State Planning Manuals and Guidelines

- Local Planning Manual
- Draft Local Planning Strategy Guide (South West)
- Greater Bunbury Regional Hotspot Land Supply Update
- Tourism Planning Guidelines
- Coastal Planning and Management Manual
- Rural Planning Guidelines
- Planning for Bushfire Protection
- Basic Raw Materials Study – Bunbury-Busselton Region

Local Strategies and Polices

- Shire of Capel Strategic Community Plan (2013-2031)
- Shire of Capel Corporate Business Plan (2013-2017)
- Capel Townsite Strategy (2008)
- Boyanup Townsite Strategy (2010)
- Peppermint Grove Beach Land Use Strategy (2013)
- Shire of Capel Land Use Strategy (1999)
- Urban Landscape Strategy (2011)

FINANCIAL IMPLICATIONS

Budget

For 2015/16 the Shire has a budget of \$50,000 for Strategic Land Use Plans (funding from TPS reserve) OC0313/06.

The LPS8 text and LPS report are to be prepared in-house by Shire officers within the Strategic Projects section that will be covered by current salary budgets. This will involve the following tasks being undertaken in-house:

- Project management;
- LPS8 and LPS text and report preparation;
- Development of draft LPS8 and LPS mapping, plans and figures for external drafting; and
- Consultation and implementation of statutory planning processes.

LPS8 Maps and LPS plans and figures will need to be drafted externally within the available budget allocation. Shire officers have obtained a suitable cost estimate for drafting LPS8 zoning maps by the Department of Planning. Shire officers are also obtaining cost estimates from the Department of Planning and a consultancy to prepare LPS plans and figures.

Shire officers are confident that LPS8 and LPS drafting costs will be within the available budget. Detailed quotes will be obtained once the Scheme review process has been formally initiated by Council.

Long Term

Achieving an updated LPS8 and LPS will assist with the following:

- The introduction of a MST compliant Scheme with updated provisions will introduce more widely used and accepted industry provisions that should contribute to greater clarity,

consistency, efficiency and productivity in the preparation and assessment of development applications and structure plans.

- Potentially reduce the need for Council to initiate and prepare Scheme amendments that will save both time and costs to all parties involved.

Whole of Life

There are no whole of life costs as there are no capital works proposed.

SUSTAINABILITY IMPLICATIONS

The Scheme review will allow Council to consider and incorporate planning related sustainability objectives and outcomes imbedded within the following:

- Shire of Capel Strategic Community Plan;
- Corporate Business Plan; and
- Existing key state and local strategies, policies and plans.

STRATEGIC IMPLICATIONS

Overview

LPS8 is required to be approved by Council, the WAPC and the Minister. The LPS is required to be approved by Council and the WAPC.

Progressive development, landuse change, subdivision and structure planning of land within the Shire will be assessed and determined against LPS8 and the LPS.

Strategic LPS Content

The LPS is proposed to:

- Set out Council's 15 year town planning vision for the Shire to approximately 2031. This timeframe matches well with the Shire's Strategic Community Plan and townsite strategies;
- Outline trends in growth, demographics, infrastructure provision, demand for the provision of urban land for infill and expansion, staged infrastructure, transport/road networks, open space and community facilities consistent with the Shire's existing strategic planning framework;
- Incorporate the key planning outcomes of adopted townsite and related strategies; and
- Assist to identify planning issues to be addressed in the review of Scheme 7.

Generally policy-neutral LPS8 and LPS

Preparation of a generally 'policy-neutral' LPS8 is recommended. This means that LPS8 will reflect:

- The existing state, regional and local strategic planning framework;
- The Model Scheme Text;
- Compliance with the GBRS (including regional open space reservations);
- No rezoning and/or identification of new investigation areas for new urban or rural residential growth areas beyond areas already identified; and

- No dramatic changes to anticipated landuse and development control.

This approach is recommended given that the Shire has an existing adopted strategic local planning framework in the form of various local townsite strategies that reflect a 15 to 25 year planning and development timeframe.

In consultation with the Department of Planning, the LPS is recommended to reflect and update where necessary the key outcomes of the various townsite strategies that will be retained as active separate adopted documents.

Notwithstanding the above, a review of Scheme 7 provides an opportunity to update existing zones (without significant up rezoning of new land for development), landuses, development standards and other relevant provisions, whilst retaining provisions that are unique to development within the Shire of Capel.

A generally policy-neutral approach is the most efficient, expedient and cost effective way to introduce a new LPS8 an LPS. Additionally, it is to be noted that Council has through its completed strategic planning, provided for substantial growth without the need to undertake planning for further urban expansion within the life of a new Scheme and LPS.

Shire of Capel Strategic Community Plan (2013-2031)

The following planning related strategies within the Strategic Community Plan are detailed to be considered as part of the Scheme review.

2. The Community Experience

Provide facilities and services which recognise the diverse needs of the community and strive to make the Shire a safe place to live, work and visit.

- Strategy 2.1 Provide social, recreational and cultural opportunities and facilities for our communities.
- Strategy 2.2 Encourage community engagement and participation.
- Strategy 2.3 Preserve and protect the character of the communities.

3. The Environmental experience

To preserve and enhance the natural and built environment to ensure it is liveable, sustainable and adapts to our communities’ needs and expectations.

- Strategy 3.1 Promote the diverse lifestyle opportunities of the Shire.
- Strategy 3.2 Maintain and enhance the quality of our unique natural environments.
- Strategy 3.3 Preserve and protect the character of the towns as they expand.

4. Economic Experience

Foster and support responsible and progressive economic development opportunities within the Shire.

- Strategy 4.1 Provide opportunities to take advantage of the Shire’s location.
- Strategy 4.2 Pursue diversity and vitality in the local economy.
- Strategy 4.5 Facilitate the development of district activity precinct for retail, commercial and professional service delivery.

5. Infrastructure Experience

Plan and facilitate safe, sustainable and efficient infrastructure and transport networks to meet the needs of the community.

- Strategy 5.1 Provide and maintain a safe and efficient transport, cycle, and pedestrian network throughout the Shire.
- Strategy 5.3 Improve connectivity throughout the Shire.

Strategy 5.6 Effectively manage the Shires’ assets and resources.

CONSULTATION

The following consultation has occurred at this early stage of the project:

- Preliminary consultation with senior Department of Planning (DOP) officers from Bunbury to confirm statutory process and the strategic Scheme review approach recommended to Council;
- Briefing Session with Councillors including senior DOP officers on 26 August 2015;
- Meeting with a senior DOP officer from Perth in relation to the introduction of the 2015 regulations to discuss the implications for Scheme 7 and the Scheme review; and
- Consultation with a range of Shire officers to assist in the identification of issues to be addressed in by the Scheme review.

Feedback from DOP officers has been positive and cooperative. Shire and DOP officers are supportive of maintaining regular contact during development of LPS8 and the LPS.

A Consultation Strategy for the project will be implemented by Shire officers to further the project timelines.

COMMENT

Key Reasons for Scheme Review and Local Planning Strategy

Preparation of a new LPS8 is recommended for the following key reasons:

- The legal requirement for Schemes to be consolidated or reviewed every five years;
- A new Scheme is required to align with a Local Planning Strategy;
- Scheme 7 is not compliant with the Model Scheme Text (MST);
- To assist in the implement of adopted townsite strategies;
- The merit of reviewing and introducing more contemporary land use permissibility and development controls given the extent and variety of urban development that has occurred over the last 10 to 15 years;
- The opportunity to improve planning outcomes; and
- The opportunity to improve planning assessment efficiencies.

Preparation of a concurrent Local Planning Strategy is recommended for the following key reasons:

- The preparation of a Local Planning Strategy is required pursuant to Regulation 12A(1)(a) of the Town Planning Regulations (1967);
- The merit of consolidating the strategic town planning vision for the Shire into a single strategic planning document to assist implementation of LPS8;
- To reflect and assist the practical implementation of various townsite strategies adopted by Council and the WAPC;
- To strategically review and consolidate knowledge on such matters as existing urban form,

demographics, population and employment projections, urban land supply, natural environment, agriculture, utility and community infrastructure, transport and heritage to guide progressive further detailed strategic planning and LPS8 implementation;

- To identify landuse planning issues to be addressed by the Scheme review; and
- Provide the rationale for Scheme zones and land use provisions.

Retention of Town Planning Scheme No. 3

It would be preferable for the Shire to only have one updated Scheme rather than retaining Scheme 3. Initial consultation with the Department of Planning indicates there are two acceptable options in relation to Scheme 3 as follows:

1. Retain Scheme 3 in its current form so it remains operational, or
2. Convert Scheme 3 to a Development Contributions Area and Development Contributions Plan to be included within the new Scheme LPS8 that would carry over the requirements of Scheme 3.

Shire officers will further research the merit of retaining or absorbing Scheme 3 into the new Scheme. The report recommendation reflects initially retaining Scheme 3 to allow for further research to be undertaken on its conversion to a Development Contributions Area and Development Contributions Plan as part of the Scheme review process.

Planning and Development (Local Planning Schemes) Regulations 2015

The *Town Planning Regulations (1967)* will be replaced by the *Planning and Development (Local Planning Schemes) Regulations 2015* that were gazetted 25 August 2015 and come into force on 19 October 2015. The new 2015 Regulations were prepared at the instruction of the Minister for Planning with the assistance of the Western Australian Planning Commission and Department of Planning.

The 2015 regulations provide for:

1. The requirement, preparation and adoption of local planning strategies.
2. The preparation, adoption, amendment, review and consolidation of local planning schemes. Regulation 65(2) requires existing Schemes adopted under the 1967 Regulations to be reviewed within the following timeframes:
 - 5 years, being 2020 if the Scheme is less than five years old.
 - 2 years, being 2017 if a Scheme is more than 5 years old. Council is also required to prepare approval and provide a Scheme review report to the WAPC within 6 months from 19 October 2015. As confirmed with the Department of Planning this would only apply to Scheme 7 if Council resolves to progress a Scheme review after 19 October 2015.
3. Model Scheme Text (MST) provisions for local planning schemes that are to be used by Local Government when preparing a new Scheme. Changes or departures from the MST provisions are strongly discouraged by the WAPC and should only be sought when required to address a fundamental issue; and any changes would need comprehensive planning and potential legal justification.
4. Mandatory provisions (described as “deemed” provisions) which apply to all planning schemes. *Planning Schemes) Regulations 2015*. When introduced these ‘deemed’ MST provisions will automatically override and replace any of the same provisions within a local

Scheme. Changes to the 'deemed' provisions cannot be made by Local Government and supplemental provisions are discouraged.

5. A common set of general and land use definitions; and
6. A set of standard forms relating to development approval.

As noted by point 2 above, the new 2015 Regulations will require Council to review Scheme 7 within 2 years with a Scheme review report to be provided to the WAPC within 6 months. While this report is required to follow the 1967 Regulations, the recommendation effectively also provides for compliance with the 2015 Regulations.

Scheme 7 has been subject to some updating, however it is increasingly out of step with the MST and the Scheme review process is the most appropriate way to achieve MST compliance. A substantial number of Scheme 7 provisions will be made redundant by the MST deemed provisions that further strengthens the need for Scheme review.

Requirement for Formal Resolution for TPS No. 8

To formally and statutorily begin the process of preparing a new Local Planning Scheme for the Shire it will be necessary for Council to pass a resolution deciding to prepare (initiate) a Local Planning Scheme. This resolution must be worded in accordance with the legal requirements of the *Town Planning Regulations (1967)*, including reference to a "Scheme Area Map".

Objects and Intentions of the New Scheme

In accordance with the legal process set out in the *Town Planning Regulations (1967)*, Council is required to forward its resolution to the Western Australian Planning Commission (WAPC), including a statement detailing the objects (objectives) and intentions of the new Scheme.

The new Local Planning Scheme will need to be advertised for public and agency comment and will be subject to review by the WAPC and Minister for Planning. Modifications are likely to be made to the draft new Scheme throughout this process. At this early stage it is not necessary to "lock-in" specific LPS 8 objectives and intentions.

The objectives and intentions listed below are preliminary only and may be changed or amended during preparation and approval of LPS8 and the LPS. The following preliminary objects and intentions (comparable to current Scheme 7 objectives) are recommended to be adopted:

Local Planning Strategy

To implement the recommendations of the Shire of Capel Local Planning Strategy.

Community

To provide facilities and services that recognise the diverse needs of the community and strive to make the Shire a safe place to live, work and visit.

Economy

To foster and support responsible and progressive economic development opportunities in the Shire.

Development

To facilitate sustainable growth and development taking account of the special assets and individual requirements of each locality in the Shire.

Infrastructure

To plan and facilitate safe sustainable and efficient infrastructure and transport networks to meet the need of the community.

Environment

To preserve and enhance the natural and built environment to ensure it is liveable, sustainable and adaptable to the communities' needs and expectations.

Heritage

To provide for the preservation and enhancement of areas, places and objects of cultural and heritage significance.

Agriculture and Natural Resources

To protect rural land for sustainable agricultural production and natural resource development and provide for a broad range of rural and ancillary land use opportunities.

Next Steps in the Inception Process

Should Council resolve to initiate a Scheme review, Shire officers will arrange for the resolution and relevant information to be forwarded to the WAPC. Once notification is received from the WAPC, notice of Council's decision to prepare a new Local Planning Scheme will be published in a newspaper circulating in the Shire, and adjoining Local Governments and relevant public agencies will be written to seeking initial input and comment.

The preparation of the draft new LPS8 will officially commence once notification has been received from the WAPC. Feedback received from the adjoining Local Governments and relevant public authorities will be considered during the preparatory stages.

Staging and Timing

Concurrent preparation of a new Scheme and LPS will involve the following key stages:

- Inception and initiation (including this report to Council);
- Research and formulation;
- Preliminary stakeholder consultation;
- Council adoption and referral to achieve consent to advertise;
- Formal community consultation (advertising);
- Assessment of submissions and potential modifications;
- Referral and refinements to achieve relevant approvals; and
- Ministerial approval and gazettal of new Scheme and WAPC approval of LPS.

A timeframe of 2 to 3 years is anticipated for the Scheme review and Local Planning Strategy. This timeframe is subject to the scope of the project remaining as recommended with no unforeseen major issues arising that may require extended negotiations.

CONCLUSION

In accordance with relevant existing and proposed legislation, the Shire's Scheme 7 is in need of review. This process will result in the preparation of a new Local Planning Scheme No. 8 and Local Planning Strategy for the Shire.

In summary, Council is recommended to:

- Resolve to prepare a new Scheme and Local Planning Strategy;
- Adopt preliminary objects and intentions for the new Scheme;
- Forward relevant information to the Western Australian Planning Commission.

VOTING REQUIREMENTS

Simple majority

OC0904 OFFICER'S RECOMMENDATIONS – 14.2/COUNCIL DECISION

Moved Cr Hearne, Seconded Cr J Scott

That Council resolves:

- 1) In pursuance of Section 72 of the Planning and Development Act (2005), to prepare Local Planning Scheme No. 8 with reference to an area situated wholly within the Shire of Capel and enclosed within the inner edge of the dashed black border on a plan, as contained in Attachment 1, titled "Scheme Area Map".**
- 2) For the purposes of compliance with Regulation 4(3)(c)(i) of the Town Planning Regulations (1967), to adopt the following as the preliminary objects and intentions of the Scheme:**

Local Planning Strategy

To implement the recommendations of the Shire of Capel Local Planning Strategy.

Community

To provide facilities and services that recognise the diverse needs of the community and strive to make the Shire a safe place to live, work and visit.

Economy

To foster and support responsible and progressive economic development opportunities in the Shire.

Development

To facilitate sustainable growth and development taking account of the special assets and individual requirements of each locality in the Shire.

Infrastructure

To plan and facilitate safe sustainable and efficient infrastructure and transport networks to meet the need of the community.

Environment

To preserve and enhance the natural and built environment to ensure it is liveable, sustainable and adaptable to the communities' needs and expectations.

Heritage

To provide for the preservation and enhancement of areas, places and objects of cultural and heritage significance.

Agriculture and Natural Resources

To protect rural land for sustainable agricultural production and natural resource development and provide for a broad range of rural and ancillary land use opportunities.

- 3) Pursuant to Section 72 of the Planning and Development Act (2005) and Regulation 4(3) of the Town Planning Regulations (1967), to forward to the Western Australian Planning Commission:**
 - a) A copy of Council's resolution deciding to prepare a new Local Planning Scheme, certified by the Chief Executive Officer;**
 - b) A map marked "Scheme Area Map", signed by the Chief Executive Officer, on**

**which is delineated the area of land proposed to be included in the Scheme;
and**

- c) A statement setting forth the objects and intentions of the Scheme and the anticipated format of the Scheme.**

And subject to Council receiving notification from the Western Australian Planning Commission pursuant to Regulation 4(6) of the Town Planning Regulations (1967):

- d) Publish a notice within the Government Gazette and a newspaper circulating in a district of the Shire of the passing of the resolution deciding to prepare a Local Planning Scheme, pursuant to Regulation 5(1); and**
 - e) Forward a copy of the notice to the Local Government of every adjoining district, the Water Corporation, the Department of Environment and Conservation and every other public authority likely to be affected by the Scheme, requesting details of matters that should be considered during the preparation of the Scheme, pursuant to Regulation 5(2).**
- 4) That a Local Planning Strategy be prepared concurrently with Local Planning Scheme No. 8 in accordance with approach detailed in the report to Council.**
 - 5) That the Western Australian Planning Commission be advised that Council will prepare a Local Planning Strategy concurrently with Local Planning Scheme No. 8.**

Carried 9/0