

SHIRE OF MUNDARING  
TOWN PLANNING SCHEME NO. 6  
MAHOGANY CREEK GUIDED DEVELOPMENT SCHEME

The Shire of Mundaring, 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:-

SCHEME TEXT

Citation

1. This Town Planning Scheme may be cited as the Shire of Mundaring Town Planning Scheme No. 6 - Mahogany Creek Guided Development Scheme (hereinafter called "the Scheme").

Responsible Authority

2. The Authority responsible for enforcing the observance of the Scheme is the Shire of Mundaring (hereinafter referred to as "the Council").

Maps

3. The following maps are attached to this text and form part of the Scheme:-

Land Use Map.  
Scheme Map.  
Subdivisional Guide Map.

Scheme Area

4. The Scheme shall apply to the land within the Scheme Boundary as indicated on the Land Use Map according to the legend thereon. The said land is hereinafter referred to as "the Scheme Area".

General Objects

5. The general objects of the Scheme are:-
  - a) To facilitate, co-ordinate and encourage the progressive subdivision and development of land within the Scheme Area.
  - b) To improve and develop the Scheme Area to the best possible advantage.
  - c) To plan within the Scheme suitable zones.
  - d) To ensure proper drainage of the roads and of those parts of the Scheme Area which require drainage, or other such works.
  - e) To make provision for the creation of drainage reserves and easements.

- f) To make provision for the land to be used as public open space and drainage purposes.
- g) By means of a subdivisional guide map to suggest ways in which land within the Scheme area may be subdivided and developed.

Method of Carrying out Objects

- 6. As and when owners of land within the Scheme Area subdivide or develop their land such subdivisions and development shall be according to a plan which will be capable of forming part of an overall plan for subdivision of the Scheme Area.

Scheme Map

- 7. The Scheme Map forms a basis for subdivision and development of the Scheme Area but the Council may, with the consent of the Town Planning Board, permit alterations or variations to the Scheme Map where in the opinion of the Council circumstances justify such action provided no such alterations or variation shall be permitted if in the opinion of the Council it would impede the subdivision and development of the Scheme Area as a whole.

Subdivisional Guide Map

- 8. The Subdivisional Guide Map suggests the manner in which the land within the Scheme Area may be subdivided but it is not intended that the design shown thereon shall be binding on the Town Planning Board, the owners of the land, or on the Council.

Subdivision

- 9. An owner of the land within the Scheme Area who desires to subdivide his land either alone, or in conjunction with other owners shall submit to the Town Planning Board a plan of proposed subdivision in conformity with the Scheme Map with such modifications as may be permitted by the Council as aforesaid.

New Roads and Footways

- 10. Subject to the following clauses, all new roads and footways within the Scheme Area shall be constructed and drained at the expense of the owners of the land in which the roads and footways are situated and each owner shall when subdividing his land, make the land available for roads and pay the cost of construction and drainage of the roads within the land owned by him.

11. In cases where the situation of a new road or footway within the Scheme Area is such that in the opinion of the Council it would be fair and equitable that the owners of adjoining land other than Council should each contribute to the cost of construction or drainage of that road or footway and a proportion of the value of the land made available for roads or footways and such owners are unable to agree upon the proportion or the cost payable by each of them the amount (if any) payable by each such owner shall be determined by arbitration in the manner hereinafter provided.
12. The Council may construct and drain any new roads or footways within the Scheme Area and acquire the land necessary for that purpose. If Council shall do so prior to the subdivision of the land adjoining such road or footway the costs of the construction and drainage of the said road or footway and all compensation and other costs consequent upon the acquisition of the land shall be paid to the Council by each respective owner of land in accordance with the foregoing provisions upon the final approval of the Town Planning Board to the subdivision of his land or hereafter having received not less than three months' notice from the Council whichever shall first happen.
13. 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 or footway within the Scheme Area he shall before the approval of his plan of subdivision release the Council from a payment of compensation or repay to the Council the compensation paid by it to him or his predecessors in title as the case may be.
14. The Council shall pay one half of the cost of construction and drainage of the section of any road which abuts public open space in the Scheme Area and the owner's liability in respect hereof shall be reduced accordingly provided that:-
  - a) This provision does not apply to the end alignment of a cul-de-sac road if this is the only part of the road which abuts the public open space, or
  - b) Should the location of a public open space site be changed or should the proposed site not be set aside for public open space the Council's liability under this clause shall be transferred to those new sites or cancelled as the case may be.
  - c) In the case of a road subject to this clause being constructed by a developer or a private contractor the Council's contribution shall be one half of what Council considers to be a fair and reasonable cost for construction of the road.

Closure of Roads

- 15.1 Surveyed roads within the Scheme Area that are not shown as roads on the Scheme Map or are shown thereon as roads to be closed shall be closed and the lands used for the purposes shown on the Scheme Map.

- 15.2 If any of the land the subject of a closed road is to become part of a lot the owner of the remainder of the lot shall pay to the Department of Lands and Surveys or the Council as the case may be, a fair value for such land.

Drainage

16. The Council shall at the appropriate time or times carry out such drainage works as are necessary for the proper drainage of the Scheme Area.

Public Open Space

17. It is intended that the land coloured green on the Scheme Map shall be reserved for public open space and drainage purposes.
18. The Council may and when it deems fit acquire the said lands coloured green or any parts thereof either by purchase or resumption or partly by one method and partly by the other.
- 19.1 Each owner of the land within the Scheme Area shall prior to final approval by the Town Planning Board to the subdivision of his land and subject as hereinafter provided transfer to the Council an area of land equal to one tenth of the total area of land being subdivided or developed by him or such other areas as the Town Planning Board shall upon approval of the plan of subdivision require. If there is no such land transferred to Council in accordance with the foregoing, the owner when subdividing his land, shall pay to the Council 10 per centum of the value of the land, the subject of the subdivision."
- 19.2 Land to be transferred to the Council pursuant to this clause shall not include any land which is or is intended to be a road or part of a road created by the subdivision.
- 19.3 In the Scheme the expression "the total area of land being subdivided or developed" means the whole of the area the subject of the subdivision or development including any part thereof that is or is to become a road or portion of a road.
20. If within a portion of the Scheme Area the subject of subdivision and development it is not possible to transfer an area of land exactly equal to one-tenth of the total area of land being subdivided or developed the owner shall transfer to the Council land as nearly as possible equal in area to the said one-tenth of the said land and the Council shall pay to the owner or the owner shall pay to the Council a cash adjustment representing the value of the land by which the land transferred exceeds or is less than the said one-tenth of the area of land being subdivided or the case may require.
21. If within a portion of the Scheme Area the subject of subdivision and development, more than one-tenth of the total area is required by the Council for public open space or drainage purposes the owner upon subdivision shall transfer to the Council the land required by it for that purpose and the Council shall pay to the owner by way of compensation the value of the land exceeding the said one-tenth.

If the Council and the owner so agree the Council may transfer to the said owner other land in or near the Scheme Area if owned by the Council or acquired by it for that purpose to compensate him for the land in excess of the said one-tenth required by the Council in which case the amount payable by the Council to the owner shall be reduced accordingly.

22. The Council may sell or otherwise dispose of any land transferred to or acquired by it under the preceding clauses and not required by it for public open space or drainage purposes; provided that all moneys received by the Council under Clause 20 hereof shall after making all the necessary payments to owners under the foregoing clauses and after payment to it of the costs of the land (if any) acquired for transfer to the owners under Clause 21 hereof, be expended by the Council in the acquisition or improvement of land for Public Open Space or drainage purposes in and near the Scheme Area.
23. If the Council shall have resumed land for public open space roads or drainage purposes it shall be reimbursed all compensation and costs from moneys received by it from the sale of land or under the preceding clauses.
24. Upon the owner from whom the land was resumed subdividing his land the value of one-tenth of his land to be made available for public open space or drainage purposes hereunder shall be assessed on the basis that such land has not been resumed.
25. Where development is proposed on a parcel of land not less than two thousand square metres in area and no public open space contribution has been made in respect thereof as a condition of its subdivision from the larger area of land the Council shall require as condition of Planning consent that the developer pay to it a sum equal to ten per cent of the value of the parcel of land as at the date of the granting of approval to develop.
26. Wherever in the Scheme the term "Public Open Space Trust Fund" is used it shall refer to a special public open space trust fund established solely for the purpose of the Scheme.
27. All moneys received by the Council pursuant to Clauses 20, 21, 22 and 23 shall be paid into its Public Open Space Trust Fund. The Council shall apply the moneys standing to the credit of the Public Open Space Trust Fund in repaying any loan moneys or finance made available by it and interest on such moneys expended on acquisition and development of public open space within the Scheme Area. In the event of the moneys standing to the credit of the Public Open Space Trust Fund being insufficient to pay the said loans and interest and other moneys the Council shall repay the balance thereof from its general funds. In the event of the moneys in the Public Open Space Trust Fund being greater than the amount necessary to repay the said loans and interest and other moneys the balance thereof shall be applied by the Council in further improvements and facilities in the Scheme Area.

Schema Costs

28. The costs or estimated costs of the following items are hereinafter referred to as "Schema Costs":-
- a) The administrative costs of the Scheme including the amount to reimburse the Council for such overhead and supervision costs as may be incurred in implementation of the Scheme.
  - b) All fees and costs paid or payable to the Council's Planning and other Consultants.
  - c) The costs to the Council of any drainage works necessary for the proper drainage of the Scheme Area and the acquisition of land for that purpose.
  - d) One half of the cost of construction of drainage of the roads which abut a Public Open Space as described in Clause 14.
  - e) All compensation payable and all costs and expenses of determining and settling compensation.
  - f) Any costs incurred by Council in conducting an arbitration.
  - g) All other costs or expenses incurred by the Council in order to implement and complete the Scheme.

Payment of Schema Costs

29. Each owner shall prior to final approval by the Town Planning Board to the subdivision of his land or after having been given not less than three months' notice from the Council, whichever occurs first, shall pay to the Council an amount which bears the same proportion to the total Schema costs as the area of the owner's land being subdivided or capable of being subdivided bears to the whole of the land which is privately owned within the Scheme Area. For the purpose of this clause privately owned land means privately owned land within the Scheme Area excluding drainage reserves, parks and recreation areas, public open space shown on the Scheme Map.

Estimate of Schema Costs

30. If any of the items of Schema costs have not been paid or ascertained at the time of subdivision of a parcel of land or the giving of a notice by the Council as aforesaid, such costs may be estimated by the Council. An estimate may be revised from time to time.

Valuations

31. Where it is necessary to ascertain the value of any land for the purpose of the Scheme the value shall be determined by a valuer being a member of the Commonwealth Institute of Valuers appointed by the Council.
32. If an owner shall object 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 provision hereinafter contained.

33. If the valuation made by the valuer shall be changed as a result of an objection the valuer may reconsider the values placed on other lands and make such revaluations as he may consider just and equitable. The owners affected by such revaluations shall forthwith be notified of any change in values.
34. When it becomes necessary to make a valuation by reason of an application for consent to a subdivision or development the cost of the valuation shall be paid by the person making the application.

Arbitration

35. Any dispute or difference between the owners or owner and the Council as to their respective rights under the Scheme and any matters which by the terms of this Scheme may be determined by arbitration may be referred to the arbitration of a single arbitrator in the 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 upon any one single arbitrator he may be nominated by the President of the Law Society of Western Australia.

Moneys Received by Council

36. No moneys received by the Council pursuant to the provisions of the Scheme shall form part of the general revenue of the Council.

Powers and Authorities of the Council

37. In carrying out the provisions of the Scheme the Council shall have the following powers and authorities:-
- a) To enter and inspect any land in the Scheme Area.
  - b) To make agreements with the owners or occupiers of any land within the Scheme Area.
  - c) To enter into agreements with the purchasers or prospective purchasers or prospective occupiers of land within the Scheme Area.
  - d) If an 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 is in the opinion of the Council will unduly delay the subdivision and development of the Scheme Area the Council may resume or purchase the land of such owner or owners and proceed with the subdivision and development of the said land in accordance with the provisions of the Scheme.
  - e) In the event of the Council exercising its powers under Clause (d) it shall have all the powers of an owner in the subdivision, development and disposal of the said land; if the said land shall have been resumed and if the owner shall not have been paid compensation by reason of the resumption, the Council before selling the land as subdivided and developed shall offer the new lots to the original owner upon his paying to Council all costs and expenses consequent upon the resumption, subdivision or development of the said land and upon his releasing the Council from all claims for compensation in respect of such resumption.

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 sales shall be applied firstly in the payment of all costs and expenses consequent upon such subdivision and secondly in payment of all compensation in respect of the resumption of the said land. The balance, if any, of such moneys may be retained by the Council and the Council shall make good any defect. An offer may be served by registered post sent to the owner's address in the rate book of the Council and shall be deemed to have been served forty eight hours after posting.

- f) If the offer mentioned in Clause (a) hereof is 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 in compensation for its resumption as are then unpaid.
- g) The Council may resume any land within the Scheme Area for public open space or drainage purposes, or in order to make it available for a particular use shown in the Scheme Map in cases where the owner of the area will not agree to make land available for that purpose in accordance with the provisions of the Scheme.
- h) To dispose of any lots to which it becomes entitled to whether under clause (d) hereof and otherwise upon such terms and conditions as it may think fit and without limiting the generality of the foregoing the Council may sell lots singly or in groups or on the conditions that buildings of a specified character with specified parking or specified facilities shall within that limited period be constructed thereon or that land and building be used for a specified purpose.
- i) The Council may subdivide or develop or both any land transferred to it pursuant to Clauses 19, 20 and 21 hereof but those clauses shall not apply to any such subdivision or development by the Council.
- j) To extend the time within which payments have to be made to Council and agree to the securing of such payments.
- k) To transfer any land owned by it or acquired by it pursuant to the Scheme as compensation or part compensation and to enter into agreements relative to the determination and settling of compensation.

38.

Traces

Persons subdividing or developing land shall so far as is reasonably practicable retain and maintain existing traces on the land.

Administration

39.

Twenty-eight (28) days written notice is hereby prescribed as the notice to be given pursuant to Section 10 of the Act. Any expenses incurred by the 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.

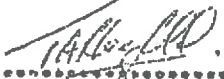


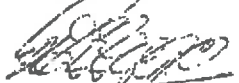
40. The Council may at any time exercise the powers conferred by Section 13 of the said Act.

Claims for Compensation


41. Claims for compensation by reason of the operation of the Scheme may be made within six months of the Scheme coming into operation.


ADOPTED by Resolution of Council of the Shire of Mundaring at an ordinary meeting of the Council held on the 2nd day of September 1976 and the Seal of the Municipality was pursuant to that Resolution hereunto affixed in the presence of :-

  
.....  
SHIRE PRESIDENT

  
.....  
SHIRE CLERK

This SCHEME TEXT is to be read in conjunction with the approved maps of the Scheme described in Clause 3 of this Scheme and to which formal approval was given by the Hon. Minister for Town Planning on the 28 day of October 1976.

  
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Recommended  
Chairman of the Town Planning Board  
Date: 28 Oct 76 .....

  
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Approved  
Minister for Town Planning  
Date: -1 OCT 1976 .....