

TOWN PLANNING SCHEME NO. 17A

CANNINGTON LAKES GUIDED DEVELOPMENT SCHEME

Gazetted: 20 March 1998

Last Scheme Amendment: 6 April 2018

Last Document Update: 24 March 2020

Disclaimer

Whilst this document is generally believed to be complete at the time of compilation and all reasonable efforts are made to ensure its currency, no warranty is given that it is free from error or omission.

The definitive City of Canning Town Planning Scheme No. 17A Text (and Scheme Maps) is that which is held by the City of Canning at any point in time.

CITY OF CANNING TPS17A – SCHEME AMENDMENTS

| AMD No. | GAZETTAL DATE | DETAILS |
|---------|---------------|--|
| 7 | 27/09/2016 | <ul style="list-style-type: none"> • Delete the designation 'Shopping', 'Light Industry', 'Highway Commercial' and 'Commercial' from the Town Planning Scheme No. 17A Map legend and substituting with a new 'Centre' designation as shown on the Scheme Amendment No. 7 Map. • Amend the designation of properties around the Queens Park Rail Station from 'Shopping', 'Single or Grouped Dwellings R17.5', 'Grouped/Multiple Dwellings', '2 Grouped Dwellings' and 'Light Industry' to 'Centre' as shown on the Scheme Amendment No. 7 Map. • Remove the 'Joint Accessway/Amalgamation' requirement over properties with a proposed designation of 'Centre' as shown on the Scheme Amendment No. 7 Map. |
| 8 | 06/04/2018 | <ul style="list-style-type: none"> • Amend the designation of numerous properties from 'Service Station', '2 Grouped Dwellings', 'Grouped/Multiple Dwellings' and 'Single or Grouped Dwelling R17.5' to 'Centre'. • Amend the designation of properties bound by Holton Way, George Way and Wharf Street from '2 Grouped Dwellings', 'Grouped/Multiple Dwellings' and 'Single or Grouped Dwellings R17.5' to 'Centre'. • Insert the designations 'Drainage/Waterway' and 'Residential' into the Scheme legend and applying the styling and hatching from the Planning and Development (Local Planning Schemes) Regulations 2015. • Amend all remaining properties with a designation of '2 Grouped Dwellings', 'Grouped/Multiple Dwellings' and 'Single or Grouped Dwellings R17.5' to 'Residential'. • Amend the styling and hatching of the designation of 'Public Open Space' to match that in the Planning and Development (Local Planning Schemes) Regulations 2015. • Amend the designation of 'Civic & Cultural' to 'Civic and Community' and update the styling and hatching to match the Planning and Development (Local Planning Schemes) Regulations 2015. • Amend the designation of 'Important Regional Road' to 'Other Regional Roads' and update the styling and hatching to match the Metropolitan Region Scheme. • Amend the designation of all properties with a designation of 'Public Purposes' and annotated as 'Drain' to 'Drainage/Waterway'. |

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| | | <ul style="list-style-type: none"> • Amend the designation of Lot 39 Wharf Street, Cannington and 77 George Way (Lot 81), Cannington from 'Public Purposes' to 'Drainage/Waterway'. • Delete the designation of 'Joint Accessway and/or Amalgamation' from the Scheme legend and all properties affected by the designation. • Delete the designation '2 Grouped Dwellings', 'Grouped/Multiple Dwellings', 'Single or Grouped Dwellings R17.5' and 'Service Station' from the Scheme legend. • Amend the designation of Lot 50 Manley Street, Cannington from 'Public Purposes' to 'Public Open Space'. • Remove the designation from a portion of the laneway between Wharf Street and Mallard Way (Lot 66 Mallard Way, Cannington), 132 Mallard way (Lot 103), Cannington, the laneway from Stockman Way to the back of properties facing Derisleigh Street (Lot 377 Stockman Way, Cannington and Lot 66 Derisleigh Street) and Lot 66 Toledo Close, Cannington. • Place a designation of 'Public Open Space' over a portion of Lot 66 Dealy Close, Lot 5108 Stockman Way and a portion of 40-46 Stockman Way, Cannington. |
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PART I – PRELIMINARY

1.1 CITATION

This Town Planning Scheme is the City of Canning Town Planning Scheme No. 17A – Cannington Lakes Scheme and may be cited as City of Canning Town Planning Scheme No. 17A (hereinafter called “the Scheme”) and shall come into operation on the publication of the Scheme Text and the notice of the Minister’s final approval of the Scheme in the “Government Gazette”.

1.2 ARRANGEMENT OF SCHEME TEXT

The Scheme is divided into parts as follows:

- Part I – Preliminary
- Part II – General Objects
- Part III – Implementation
- Part IV – Administration

1.3 RESPONSIBLE AUTHORITY

The Authority responsible for enforcing the observance of this Scheme is the City of Canning (hereinafter called “the Council”).

1.4 MAPS

The following map is attached to and forms part of the Scheme:

Scheme Map

1.5 SCHEME AREA

The Scheme shall apply to the whole of the land contained within the inner edge of a broken black line on the Scheme Map. The said land is hereinafter referred to as “the Scheme Area”.

1.6 HEADINGS

The headings of Parts form part of the Scheme but any heading of clauses, subclauses or paragraphs are intended for reference only and do not form part of or affect the construction of the Scheme.

1.7 REVOCATION

The City of Canning Town Planning Scheme No. 17 published in the Government Gazette of 25 March 1977 and all amendments thereto are hereby revoked.

PART II – GENERAL OBJECTS

- 2.1 The general objects of the Scheme are:
- (a) To facilitate, co-ordinate and encourage the progressive and orderly subdivision and development of the land within the Scheme Area.
 - (b) To encourage the development of a mix of housing type and choice.
 - (c) To plan and make suitable provision for roads, ways and pedestrian accessways and Public Open Space in order to enhance the amenity and attractiveness of the area.
 - (d) To require development within the Scheme Area to be carried out in a manner which ensures equitable sharing of infrastructure costs.
 - (e) To protect the rights of existing and future residents of the Scheme Area so far as it is reasonably possible.

PART III – IMPLEMENTATION

3.1 SUBDIVISION AND DEVELOPMENT

- 3.1.1 The Scheme Map forms a basis for subdivision and development of the Scheme Area providing for a range of residential accommodation, commercial uses, public purposes and community facilities. Any subdivision or development in the Scheme area should generally be in accordance with the Scheme Map.
- 3.1.2 The WAPC may on advice from the Council permit alterations or variations to the subdivision pattern shown on the Scheme Map.
- 3.1.3 Council may permit alterations or variations to the development pattern shown on the Scheme Map.
- 3.1.4 Any alteration or variation to the Scheme Map should not impede the subdivision or development of the Scheme Area as a whole and should not be prejudicial to the amenity of the Scheme Area or be contrary to the general objectives of the Scheme.
- 3.1.5 In considering a proposed alteration or variation to the Scheme Map, the Council shall notify any owner of land it considers is affected by the proposed alteration or variation and shall invite each owner to make a submission to the Council regarding the proposal.
- 3.1.6 To clarify the intent of the Scheme, subdivision for the purpose of the Scheme is defined to include subdivision under the Town Planning and Development Act, 1928 (as amended), and all strata subdivision requiring the certification of the Council under Sections 23 and 24 of the Strata Titles Act 1985.

3.2 ROADS, WAYS AND PEDESTRIAN ACCESS WAYS

- 3.2.1 Subject to the following clauses all roads, ways and pedestrian access ways created by subdivision or development in the Scheme Area shall be constructed and drained at the expense of the owners of the land on which the roads, ways and pedestrian access ways are situated and each owner shall when subdividing his land make the land available for the roads, ways and pedestrian access ways and pay the costs of the construction and drainage of the roads, ways and pedestrian access ways within the land owned by him.
- 3.2.2 Except as provided for in S28A of the Act, in cases where the situation of a road, way or pedestrian access way within the Scheme Area is such that in the opinion of the Council it would be fair and equitable that the owners of land served or capable of being served should each contribute to the cost of the construction and/or drainage of that road, way or pedestrian access way and contribute to the value of the land made available for that road, way and pedestrian access way and such owners are unable to agree upon the proportion of the costs payable by each of them the amount (if any) payable by each such owner shall be determined by arbitration in manner hereinafter provided.
- 3.2.3 In cases where Council is of the opinion that the provision of a pedestrian access way is of more benefit to the community at large than to the subdivider from whose land the pedestrian access way is to be provided, the Council may assume responsibility for all or part of the cost of construction and drainage thereof. The remaining costs, if any, shall be the responsibility of the subdivider.
- 3.2.4 The Council may construct and drain any roads, ways and pedestrian access ways within the Scheme Area and acquire the land necessary for that purpose. If the Council shall do so prior to the subdivision or development of the lands served or capable of being served by such road, way or pedestrian access way the costs of the construction and drainage of the said road, way or pedestrian access way 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 immediately prior to the clearance by Council of the plan/diagram of survey for the subdivision or the issue by Council of the Certificate of Local Government under the Strata Titles Act 1985 or after having been served with not less than three calendar months' notice from the Council calling upon the said owner to make such payment whichever shall first happen.

- 3.2.5 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 road, way or pedestrian access way within the Scheme Area he shall immediately prior to clearance by Council of the plan/diagram of survey for the subdivision or the issue by Council of the Certificate of Local Government under the Strata Titles Act 1985 release the Council from the payment of compensation or repay to the Council the compensation paid by it to the said owner or his predecessors in title as the case may be.
- 3.2.6 All existing roads within the Scheme Area may where the Council considers it to be in the interest of the community to do so be constructed and drained by the Council at no cost to the Scheme.
- 3.2.7 Should the Council form the opinion that rear service vehicle access is required for the future development of lots fronting Sevenoaks Street between Mallard Way and Stockman Way the owners of such lots shall be required at the time of subdivision or development to cede the land required for such access and to contribute to the costs of construction and drainage of such access in a fair and equitable manner as determined by Council unless such access is to be provided by agreement over private land. In the case of any dispute regarding the Council's determination of costs the matter shall be determined by arbitration in the manner hereinafter provided.

3.3 PUBLIC OPEN SPACE

- 3.3.1 It is intended that the land shown on the Scheme Map as "Public Open Space" shall ultimately be reserved under the zoning scheme of the City for that purpose.
- 3.3.2 Subject to subclause 3.3.3 the Council may as and when it deems fit acquire the land shown on the Scheme Map for the purpose of public open space or any part thereof either by purchase, exchange or compulsory taking or partly by one method and partly by any of the others.
- 3.3.3 Subject to subclause 3.3.4 each owner when subdividing the owner's land shall contribute towards public open space in the following manner:
- (a) The owner shall transfer to the Crown at no cost to the Crown so much of the owner's land as is shown on the Scheme Map as "Public Open Space".
 - (b) If no part of the owner's land is shown as "Public Open Space" on the Scheme Map the owner shall pay to the Council five per centum (5%) of the value of the land the subject of subdivision.
 - (c) If the value of the land to be transferred to the Crown pursuant to paragraph (a) hereof is greater or less than five per centum (5%) of the value of the land the subject of the subdivision the Council shall adjust the contribution by a payment of money or if the owner(s) so agree transfer of land or both so as to achieve the 5% level of contribution.

- 3.3.4 For the purpose of the application of this clause any portion of an owner's land provided by the owner for any public utility shall be excluded from the area of land the subject of the subdivision in making the calculation of five per centum (5%) public open space.
- 3.3.5 For the purpose of this Clause 3.3, where the Council is of the opinion that a proposed subdivision will not facilitate an increase in residential density the Council may, subject to the approval of the Commission, waive the requirement for a public open space contribution for the subject subdivision under the preceding subclauses. The provisions of this subclause may be applied retrospectively, in any case, where it is appropriate in the opinion of the Council to do so.
- 3.3.6 All monies received by the Council pursuant to this clause shall be paid into a special trust fund known as the "Scheme 17 Public Open Space Trust Fund".
- 3.3.7 The Council shall apply moneys standing to the credit of the Scheme 17 Public Open Space Trust Fund in repaying any loan moneys or finance made available to it and interest thereon expended on the acquisition and development of public open space in the Scheme Area. The Council may in the same way refund moneys advanced from its municipal fund together with interest at the rate payable on moneys borrowed from the Council's bank or overdraft from time to time.
- 3.3.8 In the event of the moneys standing to the credit of the Scheme 17 Public Open Space Trust Fund being insufficient to repay the said loan and other moneys and interest the Council shall repay the balance thereof from its municipal fund.
- 3.3.9 In the event of the moneys in the Scheme 17 Public Open Space Trust Fund being greater than the amount necessary to repay the said loans and other moneys and interest the balance thereof shall be applied by the Council in providing improvements to public open space or drainage areas in or near the Scheme Area.
- 3.3.10 Where an owner of land in the Scheme Area has fulfilled obligations for contributions of land or moneys for Public Open Space pursuant to the provisions of this Scheme, no further contribution shall be required if that land is the subject of further subdivision.

PART IV – ADMINISTRATION

4.1 FINANCE

The Council may borrow money for the purpose of the Scheme or finance it in such other ways within its powers as the Council deems proper. The Council shall keep proper records of all financial transactions relating to the Scheme.

4.2 NOTICES

4.2.1 Twenty eight (28) days written notice is hereby prescribed as the notice to be given pursuant to section 10 of the Act. In the exercise of the powers under section 10 of the Act, the Council may by any of its Members, or by any officer, servant, agent or contractor of the City enter the land the subject of the notice for the purpose of carrying out any necessary inspection, survey or work to remedy a breach of the Scheme. The City may recover from a person who would be liable to pay expenses under the provisions of subsection 10(2) in connection with the cost of remedying the breach, the cost of storage and disposal of any goods, material or thing taken from the subject land in order to remedy the breach. Any expenses incurred by the City pursuant to section 10 and the provisions of this clause 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. Neither the City nor any person acting on behalf of the City pursuant to this clause shall be liable for any act or default alleged to have caused damage to the subject land or any goods material or thing removed from the land unless the damage is caused negligently or by a failure to act bona fide in the exercise of the powers provided by this clause and section 10 of the Act.

4.2.2 Any notice to be served or given to an owner pursuant to the Scheme may be sufficiently served if sent to such owner by registered post in an envelope addressed to him at his address appearing in the Rate Book of the Council and a notice so sent shall be deemed to have been served on the day on which it would in the ordinary course of post reach the address to which it was sent.

4.3 VALUATIONS

4.3.1 Where it is necessary to ascertain the value of any land for the purpose of the Scheme the value shall be determined by either the Chief Valuer of the State Taxation Department or at the option of the Council by a disinterested and competent valuer appointed by the Council. The valuation shall be made on the basis of the fair nett expectance inclusive of subdividers profit from the sale of the vacant land in its optimum subdivided form for dwellings.

- 4.3.2 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. 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 and in making his determination the arbitrator shall have regard to the parity between the valuation the subject of the objection and the values of other land in the Scheme Area and if the evidence relating to land values shows a disparity the arbitrator shall assess a value which is comparable with the basis of and valuations made of the other land in the Scheme Area.
- 4.3.3 When it becomes necessary to ascertain the valuation of any land as a result of a proposed subdivision the date of the valuation shall be the date immediately before the date the local authority grants its clearance of the relevant conditions of the subdivision or issues a Certificate of Local Government under S23 of the Strata Titles Act 1985.

4.4 ARBITRATION

Any dispute or difference between the owners as to their respective rights under the Scheme or between an owner and the Council and any matter which by the terms of this Scheme may be determined by arbitration may be referred to the arbitration of a single arbitrator in manner provided by the Commercial 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 for the time being.

4.5 POWERS AND AUTHORITIES OF COUNCIL

- 4.5.1 In carrying out the provisions of the Scheme the Council shall have the following powers and authorities:
- (a) To enter and inspect any land within 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 purchasers or prospective purchasers or prospective occupiers of land within the Scheme Area.
 - (d) To enter into agreements with the Crown and any department of the State with reference to the carrying out of any of the objects or works of the Scheme.
 - (e) The Council may acquire such land as it considers necessary for the purposes of the Scheme.

- (f) If any owner of land within the Scheme Area does not proceed with the subdivision or development of his land in accordance with 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 resume or purchase the land of such owner or any part or parts thereof and proceed with the subdivision and development of the said land in accordance with the provisions of the Scheme. In so doing the Council may enter into agreements with adjoining owners as to the sharing of costs and to ownership of lots part of which are outside the land resumed by the Council.
 - (g) In the event of the Council exercising its powers under paragraph (f) it shall have the powers of an owner in the subdivision development and disposal of the said land; if 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 so subdivided and developed shall offer the new lots wholly within the subdivision and the benefit of any agreement with adjoining owners to the original owner upon his paying to the 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, subdivision and development. The said offer shall be made in writing and if not accepted within twenty-eight days of the service thereof the Council may proceed with the sale of the subdivided lots. All monies received by it from such sale shall be applied firstly in payment of all costs and expenses consequent upon such subdivision and development 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 deficit.
 - (h) If the offer mentioned in paragraph (g) hereof be not accepted the Council may retain all or any part of the said land but if it does not it shall be responsible to pay such costs of subdivision of the said land and compensation for its resumption as are then unpaid.
 - (i) To dispose of any lots to which it becomes entitled whether under paragraph (f) hereof or otherwise upon such terms and conditions as it may think fit.
 - (j) To extend the time within which payments are to be made to the 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 and to enter into agreements relative to the determination and settling of compensation.
- 4.5.2 If the Council is or shall be the owner of any land in the Scheme Area other than as the Responsible Authority under the Scheme such lands may be sold by the Council and the proceeds of sale shall be used by the Council in such manner as it shall think fit.
- 4.5.3 The Council may at any time exercise the powers conferred by Section 13 of the Act.

4.6 CLAIMS FOR COMPENSATION

The time within which a person may make a claim for compensation pursuant to Section 11 of the Town Planning and Development Act, 1928 (as amended), is six months from the date of publication of the Scheme in the Government Gazette pursuant to subsection 7(3) of the said Act.

Adopted by Resolution of the Council of the City of Canning at the Ordinary Meeting of Council held on the 30th Day of July 1996 and modified on the 23rd Day of September 1997.

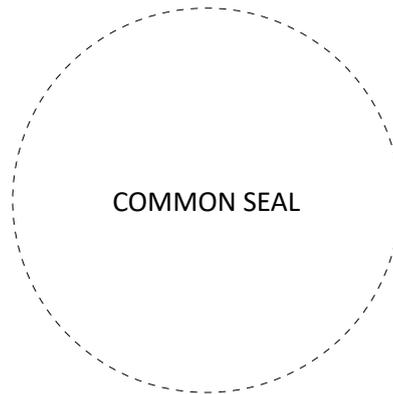
M S Lekias, Mayor, JP

I F KINNER, Chief Executive Officer

Adopted for Final Approval by Resolution of the Council of the City of Canning on the 23rd Day of September 1997 and the Common Seal of the Municipality was, pursuant to that Resolution, hereunto affixed in the presence of:

M S Lekias, Mayor, JP

I F KINNER, Chief Executive Officer



Recommended/Submitted for
Final Approval

Chairman, Western Australian Planning Commission

Date:

Final Approval Granted

Minister for Planning

Date:
