



**SHIRE OF SERPENTINE JARRAHDAL**

**TOWN PLANNING SCHEME NO. 2**

**SCHEME AMENDMENT NO. 159**

**PLANNING AND DEVELOPMENT ACT, 2005 (AS AMENDED)  
RESOLUTION TO AMEND TOWN PLANNING SCHEME**

**Serpentine Jarrahdale Shire  
TOWN PLANNING SCHEME NO. 2  
AMENDMENT NO. 159**

RESOLVED that the Council, pursuant to Section 75 of the Planning and Development Act 2005 (as amended) amends the Shire of Serpentine-Jarrahdale Town Planning Scheme No. 2 by:

1. Rezoning Lots 81, 210 and 228 Cockram Street and Lots 87 and 88 Mundijong Road from 'Local Scheme Reserve – Public Open Space' to 'Urban Development';
2. Rezoning the section of unnamed road reserve (south of Cockram Street, abutting Lot 81) from 'Urban Development' to 'Public Open Space'; and
3. Amending the Scheme Map accordingly.

Dated this 26<sup>th</sup> day of November 2007

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ACTING CHIEF EXECUTIVE OFFICER

## Scheme Amendment Report

1. **LOCAL AUTHORITY** Serpentine Jarrahdale Shire
2. **DESCRIPTION OF TOWN PLANNING SCHEME:** Town Planning Scheme No 2
3. **SERIAL NO. OF AMENDMENT:** Amendment No. 159
4. **PROPOSAL:**
  1. Reclassification of a portion of Lot 81 and Lots 210 and 228 Cockram Street and Lots 87 and 88 Mundijong Road from 'Local Scheme Reserve – Public Open Space' to 'Urban Development';
  2. Reclassification of the section of unnamed road reserve (south of Cockram Street, abutting Lot 81) from 'Urban Development' to 'Public Open Space'; and
  3. Amending the Scheme Map accordingly.

## BACKGROUND

The proposed Amendment is to reclassify a portion of Lot 81 and Lot 210 (Reserve R33413) and Lot 228 (Reserve R33413) Cockram Street, Mundijong and Lots 87 & 88 Mundijong Road from 'Local Scheme Reserve – Public Open Space' to 'Urban Development' and a section of the unnamed road reserve (south of Cockram Street, abutting Lot 81) which has been incorporated into Reserve R4486 from 'Urban Development' to 'Public Open Space' within Town Planning Scheme No. 2 (TPS2).

At a confidential meeting of Council on 26 November 2007 it was resolved that:

OCM010/11/07 COUNCIL DECISION/Officer Recommended Resolution:

*Moved Cr Harris seconded Cr Randall*

- A. *Council receives and notes the report on the Consideration of Options to Address Zoning Anomaly Lot 81 (14) Cockram Street, Mundijong and Initiate Amendment No. 159.*
- B. *Council writes to the Minister for Lands seeking approval to commence the disposal process of Lots 210 and 228 (Reserve 33413) Cockram Street, Mundijong. Council requests that the Minister approve the consultation process for the disposal of this land be undertaken through the initiation of Amendment No. 159 to Town Planning Scheme No. 2 in accordance with the Planning and Development Act 2005. The Council provides an undertaking that 5,995m<sup>2</sup> in area will be provided as Public Open Space within the Mundijong/Whitby urban cell. The location of this Public Open Space is to be determined through the preparation of the Mundijong/Whitby District Structure Plan.*
- C. *Subject to the approval of the Minister for Lands being granted under Part B of this resolution and pursuant to Section 75 of the Planning and Development Act 2005, the Shire of Serpentine-Jarrahdale Town Planning Scheme No. 2 be amended by:-*

*AMENDMENT NO. 159*

1. *Rezoning Lots 81, 210 and 228 Cockram Street and Lots 87 and 88 Mundijong Road from 'Local Reserve – Public Open Space' to 'Urban Development';*
  2. *Rezoning the section of the unnamed Road Reserve (south of Cockram Street, abutting Lot 81) from 'Urban Development' to 'Public Open Space'; and*
  3. *Amending the Scheme Map accordingly;*
- D. *Should the approval of the Minister for Lands not be granted under Part B of this resolution then the Shire shall initiate Amendment 159, as described in Part C of this resolution, without reference to Lot 210 and Lot 228 Cockram Street;*
  - E. *The Amendment documents are to be signed and the Western Australian Planning Commission is to be advised of Council's decision;*
  - F. *A copy of the signed documents are to be forwarded to the Environmental Protection Authority in accordance with Section 81 of the Planning and Development Act;*
  - G. *Request the Western Australian Planning Commission give consent to advertise the Amendments in accordance with the Town Planning Regulations. This request is to be undertaken concurrently with Recommendation E above. That Council forward a copy of the formal advice from the Environmental Protection Authority onto the Western Australian Planning Commission upon its receipt.*
  - H. *Council advise the owners of Lot 81 (14) Cockram Street of its resolution.*
- CARRIED 7/2*

Council reached this conclusion after a lengthy investigation. Initially, a landowner made a request to Council to resolve zoning matters associated with Lot 81 Cockram Street. After extensive research and consideration the Council has deemed it appropriate to reclassify a number of parcels of land in close proximity to Lot 81 to ensure orderly and proper planning in the area. Lots 210 (Reserve R 33413) & 228 (Reserve R 33413) Cockram Street and Lots 87 & 88 Mundijong Road are currently zoned 'Local Scheme Reserve – Public Open Space' and it is proposed to reclassify them to 'Urban Development' to enable a structure plan to determine the most appropriate location for residential development, public open space and other associated services.

Lot 232 (Reserve R 4486), a small section of unnamed and unused "Road Reservation", directly abuts Lot 81 to the east, south of Cockram Street and is also proposed to be reclassified as 'Local Scheme Reserve – Public Open Space'. The Department of Planning, in a letter dated 10 July 2008, indicated that Lot 232 does not exist anymore and is now part of Reserve R 4486 therefore the rezoning of Lot 232 is no longer required.

For administrative simplicity Council resolved to progress these reclassifications concurrently with the reclassification of Lot 81 Cockram Street.

### **Property Background Information**

#### *Portion of Lot 81 Cockram Street, Mundijong.*

Lot 81 Cockram Street is 10,117m<sup>2</sup> in extent and privately owned, with approximately 4,609m<sup>2</sup> zoned 'Urban Development' and approximately 5,508m<sup>2</sup> classified as 'Local Scheme Reserve – Public Open Space' under Town Planning Scheme No. 2 (TPS2).

In May 2007 the owners of the subject land wrote to Council regarding the anomaly, requesting the "Shire's intentions in solving the discrepancy" on the property. The letter identified a number of proposed options to address the anomaly, including the Shire purchasing the subject land. The owners preferred option was, at the time, that Council purchase the 5,508m<sup>2</sup> of reserved land and they retain the remaining 4,609m<sup>2</sup>.

The owners' request was presented to the Councillors at an informal meeting on the 5 June 2007, where it was requested that Council Officers investigate the purchase of the land further and present a report to Council for consideration.

Investigations into Lot 81 Cockram Street has identified that the land has been owned by the current owners since 1990 and appears to have been zoned part 'Urban Development' and part 'Local Scheme Reserve – Public Open Space' since the gazettal of TPS2 in August 1989.

In March 1996 the Western Australian Planning Commission (WAPC) refused a three lot subdivision application lodged by the current owners for the subject land. Reasons for refusal included the prior requirement of a Structure Plan for the Mundijong townsite, the inappropriateness of increased on-site effluent disposal and nutrient discharge into the Peel Harvey Coastal Plain Catchment, and the requirement of reticulated sewerage. One of the reasons for refusal was also that:

"The proposed 5508m<sup>2</sup> lot is reserved under the Shire of Serpentine Jarrahdale Town Planning Scheme for Parks and Recreation and is therefore not suitable for use as a house block."

A further advice to Local Authority note was placed on the subdivision refusal stating:

"The Local Authority is advised that it should consider amending Town Planning Scheme No. 2 to address the discrepancy between the scheme Parks and Reserve reserve affecting the land and the actual area used for recreation purposes."

A Development Application for a new dwelling to replace the existing dwelling was lodged and approved by Council in August 2004. In November 2004, the applicant advised that they would not be proceeding with the new dwelling.

The Council explored a number of options in relation to resolving the matter. This was presented to Council on 21 November 2007 for consideration. Upon careful consideration Council resolved to proceed with rezoning the portion of the land to zoned 'Local Scheme Reserve – Public Open Space' to 'Urban Development' for a number of reasons.

The amendment will:

- be in accordance with the advice note provided by the WAPC and address the WAPC concerns relating to the zoning anomaly;
- allow for a structure plan to guide development in an orderly and proper fashion in the area; and
- address the concerns raised by the landowner and provide them with greater development flexibility and reduce the risk of a costly compensation claim on the Shire.

*Lots 210 (Reserve R 33413) Cockram Street and Lots 87 & 88 Mundijong Road, Mundijong*

To provide a suitable zoning for future development in the area the Council resolved to reclassify Lots 210 (Reserve R 33413) Cockram Street and Lots 87 & 88 Mundijong Road, Mundijong from 'Local Scheme Reserve – Public Open Space' to 'Urban Development' concurrently with Lot 81.

There are a range of considerations when disposing of public open space:

- Zoning within the TPS 2;
- Procedures for amending a Reservation within the Land Administrative Act;
- Transfer of land matters such as financial transactions between the State and local government; and
- Associated advertising requirements.

This report briefly outlines the above considerations for information purposes, however it is predominately relates to the rezoning within the TPS 2.

The Shire Officers have previously endeavoured to identify any financial matters associated with public open space provisions. From a search of Council records dating back to July 1981 it appears that a Guide Plan/Structure Plan existed for Mundijong that included provisions for public open space and associated cash-in-lieu proposals dated 1977. However from extensive searching, Officer's have been unable to locate a copy of the Plan and it is noted in the Minutes of the Planning Committee Meeting dated 16 November 1992, that previous officers had also searched for the Plan without success.

Approximately \$7,230 had been received as public open space cash-in-lieu for Mundijong, however a search of the Shire archives did not locate any plans to implement the public open space cash-in-lieu proposal. There are no funds available in the public open space cash-in-lieu fund and it is unknown how these funds were utilised.

It also appears that Lots 87 and 88 were purchased by the Shire in early 1982 as freehold titles. It is unclear how the purchase of these properties was funded as the Minutes of the Council meeting on 15 March 1982 did not specify a source of the funding.

Lots 210 and 228 (both having the same Reserve Number 33413) are currently vested in the Shire for the purposes of public open space. It is unknown when Lots 210 or 228 were vested, however it is assumed that given both properties are classified as Section 20A Reserves (20A Reserves) that they were given up as part of the subdivision of the surrounding land. Whilst 20A Reserves are to be retained for public open space purposes, the WAPC does recognise (Development Control Policy 2.3 – Public Open Space in Residential Areas Section 4.1.2) that there may be occasions where the use of some discretion in the operation/use of public open space is warranted in order to secure better land utilisation and increased public benefit. In such circumstances, the Minister for Lands can, following consultation with the Commission, exercise this discretion.

On 10 July 2008 the Director General of then Department of Planning and Infrastructure of behalf of the Minister for Planning and Infrastructure indicated that the proposal was consistent with the rationalising of the reserves created under section 152 of the Planning and Development Act 2005.

Refer to Appendix A – Correspondence from Department of Planning and Infrastructure

The correspondence outlined that the then Department for Planning and Infrastructure (DPI) supported the disposal, subject to the Shire of Serpentine-Jarrahdale:

- *Acquiring replacement recreational land or using the proceeds to enhance other public open spaces;*
- *Making a payment to the DPI's State Land Services Business Unit of \$500 or 5% of unimproved market value as advised by the Valuer General, whichever is greater;*
- *Paying the statutory fees;*
- *Providing details of the proposed new site and budget forecasts to the State Land Services Business Unit;*
- *Giving an undertaking to supply a statement of income and expenditure in relation to the transaction, with surplus proceeds either being committed to a trust fund established by the Shire for capital improvements to recreational land or being passed to the Crown; and*
- *Advertising the intended change in the local newspaper. The DPI advises that the Town Planning Scheme No 2 will satisfy this action.*

It is noted that each proposal is subject to the specific agreement of the Minister for Lands. The Department of Planning and Infrastructure have recently confirmed that correspondence dated 10 July 2008 satisfies both the agreement of the DPI and the Minister for Lands.

Section 4.7.3 – Section 20A Reserves of Chapter 4 of the Department of Planning Infrastructure's Crown Land Administration and Registration Practice Manual outlines that where a "public recreation" reserve is to be cancelled or substantially reduced, the affected reserve is to be signposted to indicate the intended change, advertisements placed in the local newspaper and nearby landholders canvassed by mail in order to demonstrate ratepayer support. The Manual goes on to further state that town planning procedures where formal rezoning is required may satisfy this action. There is also a requirement for the disposal of 20A Reserves to be supported by details on the reasons for disposal and the location of replacement land.

As outlined by the Director General there is a requirement for the Council to purchase Lots 210 and 228 from the Crown. Section 4.7.3 – Section 20A Reserves of Chapter 4 of the Department for Planning and Infrastructure's Crown Land Administration and Registration Practice Manual states that disposal of 20A Reserves should generally be on the basis of payment to DPI of \$500 or 5% of unimproved market value (as advised by the Valuer General), whichever is the greater. Statutory fees are also payable by the Local Government.

Any surplus proceeds from the sale of 20A Reserves is also required to be spent on capital improvements to recreation land in the vicinity of the land sold and is subject to a community consultation regarding the intention of the expenditure. This would allow for funds to be spent on improvements to the Mundijong Oval facilities in the future when the reclassified land is sold.

The MWDSP has been approved by Council and endorsed by the Western Australian Planning Commission. A Local Structure Plan (LSP) for the relevant sub-precinct in accordance with the approved Mundijong-Whitby Implementation Strategy has not been developed and therefore the final land use classification/s for land within the relevant precinct is not yet known. It is however expected that the LSP will determine the land uses, including density and public open space designations and progress through an appropriate community consultation process as required within TPS 2. The proposed rezoning of the subject area will provide the Shire with flexibility when considering designation of future land use classifications within the urban cell.

The Council has initiated Amendment 159 to TPS 2 to reclassify Lots 81, 210 and portion of Lot 228 Cockram Street, and Lots 87 & 88 Mundijong Road, Mundijong from 'Local Scheme Reserve – Public Open Space' for the following reasons:

- Whilst the zoning of the subject area has a long history, it is unclear why private property is public open space in the first instance;
- This amendment will provide the Shire with flexibility when considering designation of future land use classifications inclusive of public open space within the urban cell;

- Reclassification of the land will provide clarity to the current owners of Lot 81 Cockram Street;
- Reclassification of the land would address any potential compensation claims over Lot 81; and
- Reclassification of the land can also resolve an existing anomaly on the Scheme map by the rezoning of a section of the unnamed Road Reserve (south of Cockram Street, abutting Lot 81) from 'Urban Development' to 'Local Scheme Reserve – Public Open Space'.



## SITE CONTEXT

### REGIONAL LOCATION

The Amendment Area, Lots 81, 210 (Reserve R 33413) and 228 (Reserve R 33413) Cockram Street, Mundijong and Lots 87 & 88 Mundijong Road, Mundijong, are located in the Mundijong town site, located in the Municipality of the Shire of Serpentine Jarrahdale, approximately 38 km south east of the Perth Central Area, 10km south of Armadale and 25km east of Rockingham.

### LOCAL LOCATION

The Amendment Area is situated in the locality of Mundijong and is generally bound by Mundijong Road to the south, Shire Office and recreational reserve to the east, Cockram Street to the north and Adonis Street to the west.

### AMENDMENT AERA

The Amendment Area comprises 5 separate lots. The following table details the lots, current land uses, area and Plan or Diagram Number.

**Table 1: Properties contained within the Amendment Area**

Lot No.	Current Land Use	Area (m <sup>2</sup> ) (Legal area identified on Landgate)	Owner	Street Name	Lot n Plan/ Diagram No.
Portion of L81	Residential dwelling and area of open space	10,128m <sup>2</sup>	K Jordan	Cockram Street	P106025 81
L210	Reserve R 33413 – open space	1,011m <sup>2</sup>	State of WA	Cockram Street	D047503 210
L228	Reserve R 33413 – open space	4,984m <sup>2</sup>	State of WA	Cockram Street	D078233 228
L87	Open space	11,363m <sup>2</sup>	Shire of Serpentine Jarrahdale	Munidijong Road	P106025 87
L88	Open space	10,347m <sup>2</sup>	Shire of Serpentine Jarrahdale	Munidijong Road	P106025 88

The Amendment Area has a total land area of approximately 3.7 hectares.

### EXISTING LAND USE

The existing land uses in the Amendment Area are in accordance with the existing zoning. Lots 210, 228, 87 and 88 are underdeveloped open space. The Shire currently maintains those parcels of land to a minimum standard, predominately managing the grass on site. There is a single residential dwelling located forward of Lot 81, with the rear of the lot, that coincides with the 'Local Scheme Reserve – Public open space' being largely undeveloped.

### SURROUNDING LAND USE

The surrounding land uses are, as identified within TPS 2, predominately residential in nature. The land to the south, west and north is zoned 'Urban Development'. Land to the west is reserved 'Local Scheme Reserve – Public Open Space' and 'Local Scheme Reserve – Public and Community Purposes'.

To the south the land use has traditionally rural in nature and to the west and north the land use is low density single residential dwellings and associated outbuildings. To the east the land use is recreational with a number of sporting facilities such as tennis and netball courts, pavilions and football field.

## ZONING

### Metropolitan Region Scheme

Under the provisions of the Metropolitan Region Scheme (MRS), the Amendment Area is zoned 'Urban'.

### Shire of Serpentine – Jarrahdale Town Planning Scheme No 2

Under the provisions of Town Planning Scheme No. 2 (TPS 2), the lots within in the Amendment Area are zoned:

- Portion of L81 – Urban Development and Local Scheme Reserve – Local Open Space
- Lot 210 - Local Scheme Reserve – Local Open Space
- Lot 228 - Local Scheme Reserve – Local Open Space
- Lot 87 - Local Scheme Reserve – Local Open Space
- Lot 88 - Local Scheme Reserve – Local Open Space

## PLANNING CONSIDERATIONS

The proposed Amendment is in accordance with State Planning Policy and the Shire's strategic vision. The Amendment ensures that the land is suitably zoned to enable the Shire to progress district structure planning in the area, in an orderly and proper manner.

### STATE PLANNING POLICY

#### Liveable Neighbourhoods

Liveable Neighbourhoods is an operative policy of the WAPC and encourages the establishment of vibrant and inclusive communities that are developed in a sustainable manner. Liveable Neighbourhoods encourages public open space to be distributed within the urban form to ensure that there is significant regional, district and local level open space to meet the needs of the community.

Element 4 – Requirement 41 indicates the following:

*'Where land for public open space is subsequently vested in a local government, that land is to be used only for public recreational purposes, and remain open to the general public at all times. The WAPC will request the Department for Planning and Infrastructure to ensure that this is done. The WAPC recognises that there may be occasions where the use of some discretion of this policy is warranted in order to secure better land use and increase public benefit. In such circumstances, the Minister for lands can, following consultation with the WAPC, excise that discretion.'*

As earlier identified the Department of Planning and Infrastructure has supported the rezoning and disposal of the reserve.

The Liveable Neighbourhoods policy will also guide the preparation of the Mundijong-Whitby District Structure Plan which will ensure the land uses, including public open space, will be distributed across the structure plan area to support the creation of an urban form that provides the services and facilities to support the wellbeing of the community and create a sense of place.

### Development Control Policy 2.3 – Public Open Space in Residential Areas

The Public Open Space in Residential Areas policy predominately identifies the need for 10 per cent of the gross subdivisible area of a conditional subdivision to be set aside for public open space at the cost of the subdivider. This policy in general outlines, the provisions relating to foreshore reserves, regional open space, community facilities and development of public open space. It outlines implementation procedures such as vesting under the town planning provisions. The Development Control Policy 2.3 reflects the Liveable Neighbourhood provisions.

## Section 4.1.2

*Where land for public open space is subsequently vested in a local government, that land is to be used only for public recreational purposes, and remain open to the general public at all times. The Commission will request the Department of Land Administration to ensure that this is done. However, the Commission recognises that there may be occasions where the use of some discretion in the operation of this policy is warranted in order to secure better land utilisation and increased public benefit. In such circumstances, the Minister for Lands can, following consultation with the Commission, exercise that discretion.*

**LOCAL PLANNING POLICY****Town Planning Scheme No. 2**

The proposed amendment is to reclassify portions of the land to 'Urban Development'. The purpose of the zone as defined in TPS 2.

## Clause 5.17

The purpose of the Urban Development zone is to provide for the orderly planning of large areas of land in a locality integrated manner and within a regional context, whilst retaining flexibility to review planning with changing circumstances.

TPS 2 indicates that an 'Urban Development' zone will provide for orderly and proper planning, a variety of land uses, including retail, commercial, industrial and public open space and optimisation of convenient road, cycle and other transport means for the community.

Development in the 'Urban Development' zone will be guided through the preparation of a local structure plan in accordance with the approved Mundijong-Whitby Implementation Strategy.

This amendment to TPS 2 ensures that the land is appropriately zoned to accommodate the local structure plan.

**Conclusion**

In summary, the Shire of Serpentine – Jarrahdale has resolved to amend Town Planning Scheme No 2 to reclassify a portion of Lots 81, 210 (Reserve R 33413) and 228 (Reserve R33413) Cockram Street, Mundijong and Lots 87 & 88 Mundijong Road, Mundijong from 'Local Scheme Reserve – Public Open Space' to 'Urban Development' and a section of the unnamed road reserve (south of Cockram Street, abutting Lot 81) which has been incorporated into Reserve R4486 from 'Urban Development' to 'Public Open Space'.

**PLANNING AND DEVELOPMENT ACT, 2005 (AS AMENDED)****SERPENTINE JARRAHDALÉ SHIRE****TOWN PLANNING SCHEME NO 2****AMENDMENT NO. 159**

The Council of the Shire of Serpentine Jarrahdale, under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act, 2005 (as amended), hereby amends the above Local Planning Scheme by:

1. Reclassification of a portion of Lot 81 and Lots 210 and 228 Cockram Street and Lots 87 and 88 Mundijong Road from 'Local Scheme Reserve – Public Open Space' to 'Urban Development';
2. Reclassification of the section of unnamed road reserve (south of Cockram Street, abutting Lot 81) from 'Road Reserve' to 'Local Scheme Reserve - Public Open Space'; and
3. Amending the Scheme Map accordingly.

Adopted by resolution of the Serpentine Jarrahdale Shire at the Ordinary Meeting of the Council held on

day of

2013

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SHIRE PRESIDENT

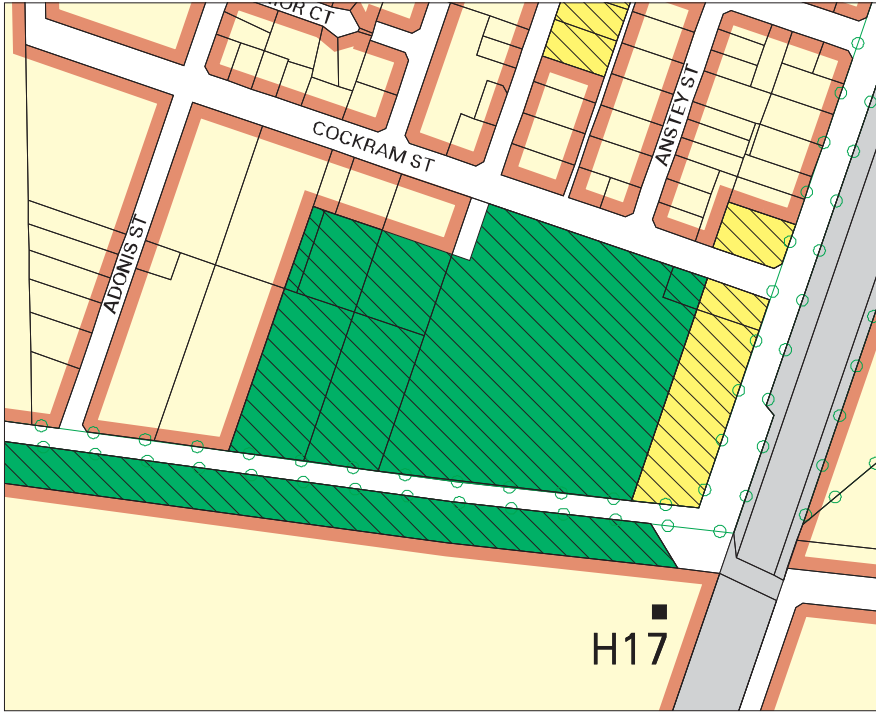
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CHIEF EXECUTIVE OFFICER

# SERPENTINE JARRAHDALÉ OCM158.2/03/13 TOWN PLANNING SCHEME No. 2

PLANNING AND DEVELOPMENT ACT 2005 TOWN PLANNING  
REGULATIONS 1967

## AMENDMENT No. 159



EXISTING SCHEME

### LEGEND

#### METROPOLITAN REGION SCHEME RESERVES

RAILWAYS

#### LOCAL SCHEME RESERVES

LOCAL ROADS

PUBLIC AND COMMUNITY PURPOSES

PUBLIC OPEN SPACE

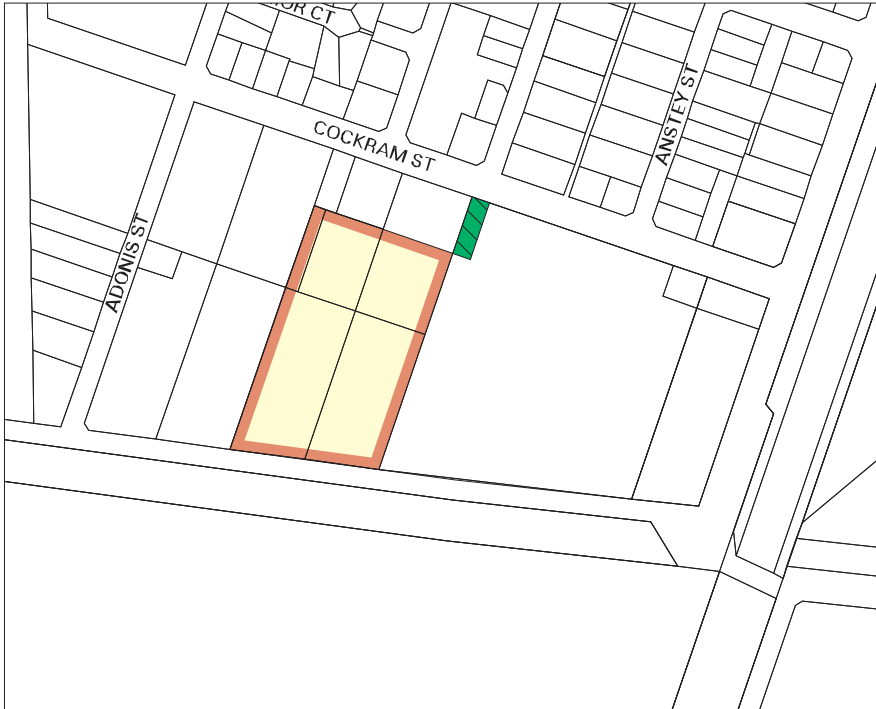
#### ZONES

URBAN DEVELOPMENT

#### OTHER

N32 AREA OF NATURAL BEAUTY  
(SEE SCHEME TEXT)

HISTORIC/SCIENTIFIC BUILDING OR OBJECT  
(SEE SCHEME TEXT)



PROPOSED AMENDMENTS

**FINAL APPROVAL**

Adopted for final approval by resolution of the Serpentine Jarrahdale Shire at the Ordinary Meeting of Council held on the ..... day of ..... 20....., and the Seal of the Municipality was pursuant to that resolution hereunto affixed in the presence of:

(Seal)

\_\_\_\_\_  
SHIRE PRESIDENT

\_\_\_\_\_  
CHIEF EXECUTIVE OFFICER

Recommended/Submitted for  
Final approval

\_\_\_\_\_  
DELEGATED UNDER S.16 OF PD Act 2005

DATE: \_\_\_\_\_

Final Approval Granted

\_\_\_\_\_  
MINISTER FOR PLANNING

DATE: \_\_\_\_\_