

<b>10.1.5 - Proposed Commercial Building – Lots 18 &amp; 22, (813 &amp; 815) South Western Highway, Byford (PA20/187)</b>	
<b>Responsible Officer:</b>	Manager Statutory Planning and Compliance
<b>Senior Officer:</b>	Director Development Services
<b>Disclosure of Officers Interest:</b>	No officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

### Authority / Discretion

Quasi-Judicial	When Council determines an application/matter that directly affect a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of quasi-judicial authority include local planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
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Proponent:	Urbis and Metrowest Special Projects
Owner:	Margaretha Catharina Gysberdina Martina, Wayne, Ashely Hughes-Odgers and Byford Premiere Holdings
Date of Receipt:	27 March 2020
Lot Area:	2.929m <sup>2</sup>
Town Planning Scheme No 2 Zoning:	'Urban Development'
Metropolitan Region Scheme Zoning:	'Urban'

### Report Purpose

The purpose of this report is for Council to consider a development application for the construction of a two storey commercial building at Lots 18 & 22, (813 & 815) South Western Highway, Byford. The commercial building will comprise of a Health Studio, Swim School and Children's Play Centre with an incidental café and associated car park on the ground and first floor. The subject site comprises of two land parcels, which form strategic parcels of the Byford town centre emanating north of Abernethy Road, between George Street and South Western Highway.

The application is presented to Council as the proposal seeks variations to both Scheme and Policy standards. These specifically pertain to car parking and external design. Furthermore, objections were received during the consultation period. Officers do not have delegated authority to determine development applications, which vary Scheme and/or Local Planning Policies provisions, or where objections cannot be satisfied by way of amendments or conditions, in accordance with Delegated Authority 12.1.1 – Determination of Development Applications.

While the proposal is considered generally consistent with the objectives of the 'Urban Development' zone, Structure Plan and Policy framework, conditions are required to address car parking issues (cash in lieu payment to the Shire) and external design adjustments. While important, these issues are considered incidental elements of the proposal, which subject to conditions do enable support based on the planning merits of the application.

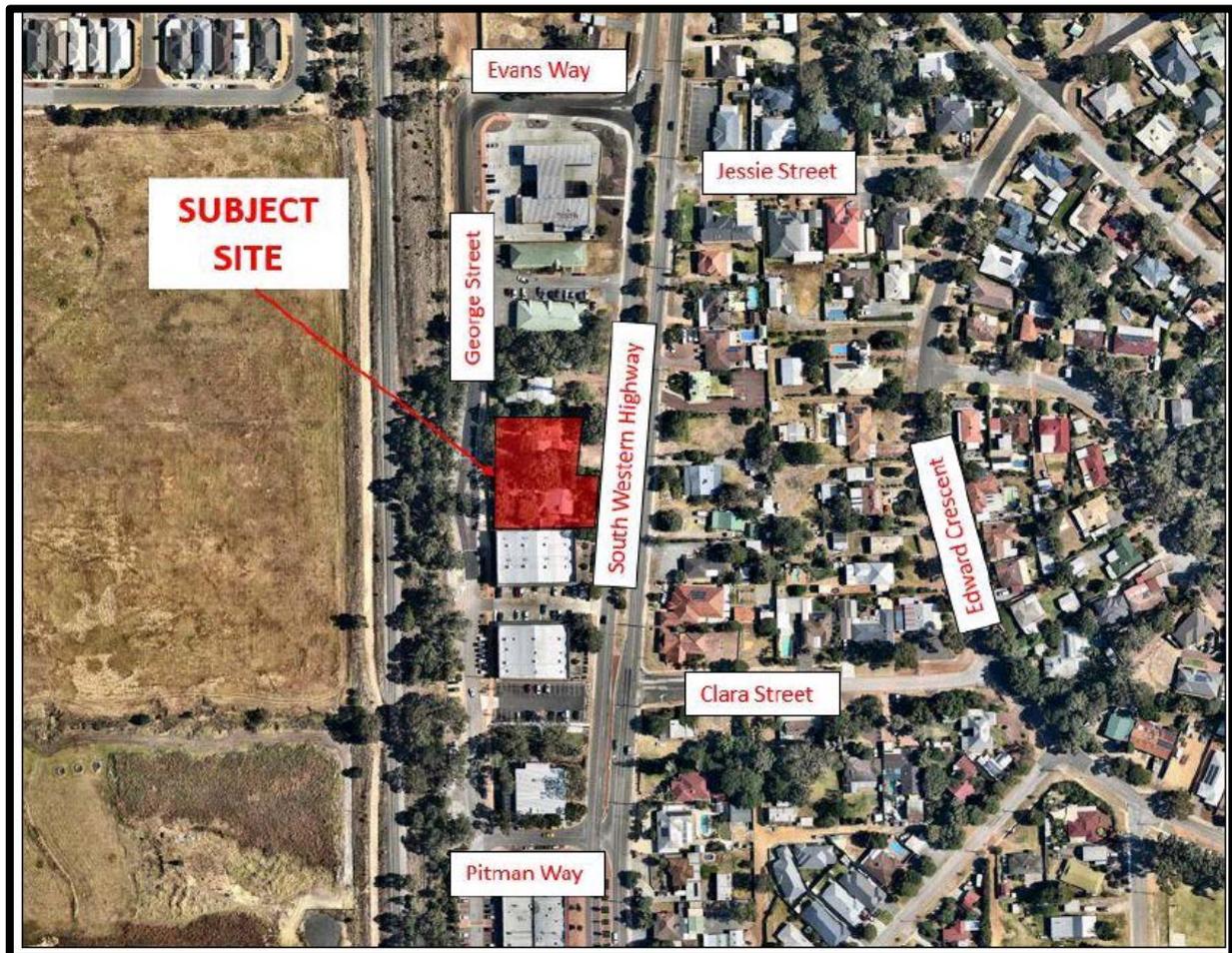
### Relevant Previous Decisions of Council

There is no previous Council decision relating to this application.

## Background

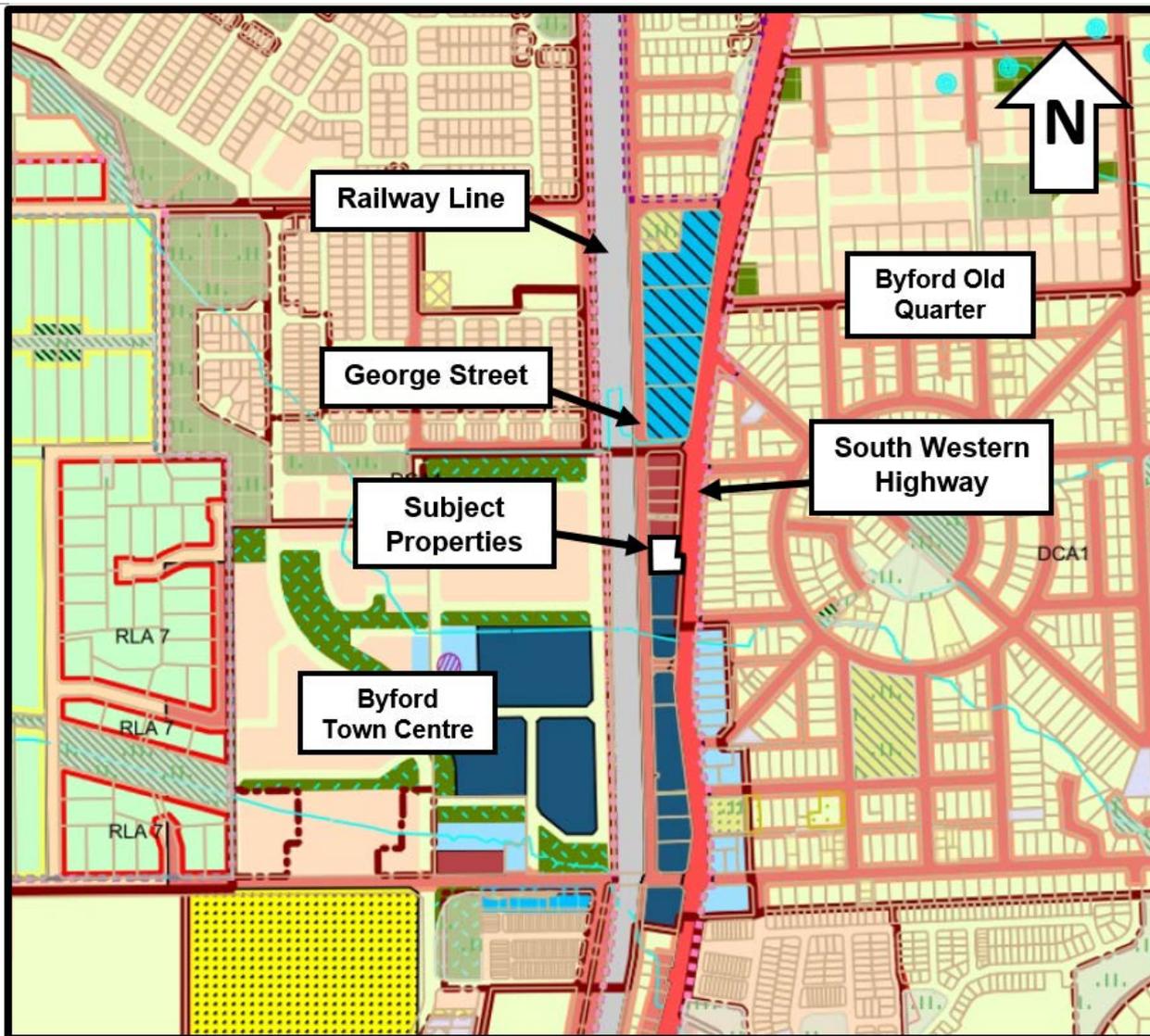
### Existing Development

The subject site comprises of two land parcels and has a total area of approximately 2.950m<sup>2</sup>. The site is bound by South Western Highway to the east and George Street to the west, as shown on Figure 1 below. Each lot contains a single detached residential dwelling and outbuildings, accessed via crossovers on South Western Highway. The site contains mature trees which would be cleared to facilitate development of the commercial building.



**Figure 1: Aerial Photograph**

The general locality comprises of existing residential dwellings to the immediate north and east, and commercial developments to the south and north, as shown on Figure 2 below. An existing passenger and freight railway line is situated further west of the site.



Figure

## 2: Location Plan

### Proposed Development

The development application seeks approval to demolish the existing dwellings and all structures on both lots and construct a two storey commercial building comprising of a swim school, health studio and a child play centre with an incidental café as well as associated landscaping, access ways, signage and integrated parking. The ground floor comprises of the following, as shown on Figure 3 below:

- Internal lobby with lift;
- Construction of a two new crossovers from George Street;
- Escape stairs, accessed via the internal car parking area;
- Ramp and pedestrian stairs to the upper level, accessed via George Street;
- Swim school with a floor area of 300m<sup>2</sup>;
- Child play centre with a floor area of 927m<sup>2</sup> and an incidental café and associated play spaces, amenities, staff areas and storerooms.
- 36 parking bays comprising of 22 standard bays, one accessible bay and 13 staff bays;

- 10 bicycle bays situated along the George street;
- A bin store of 27m<sup>2</sup>;
- 343.5m<sup>2</sup> of landscaping, including five shade trees along George Street; and
- Pedestrian/cycling access to the subject site via a direct path from South Western Highway and direct from George Street.

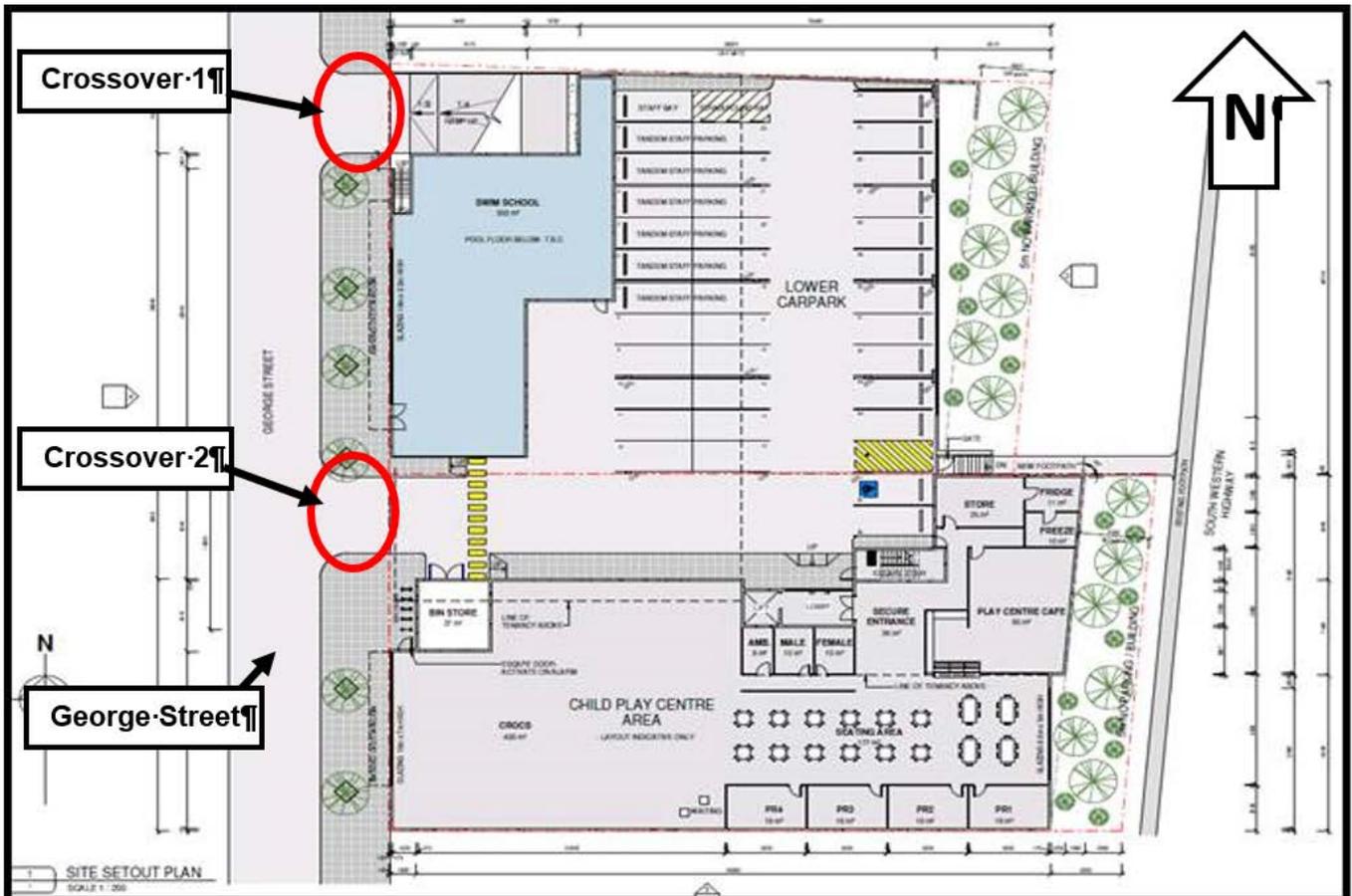
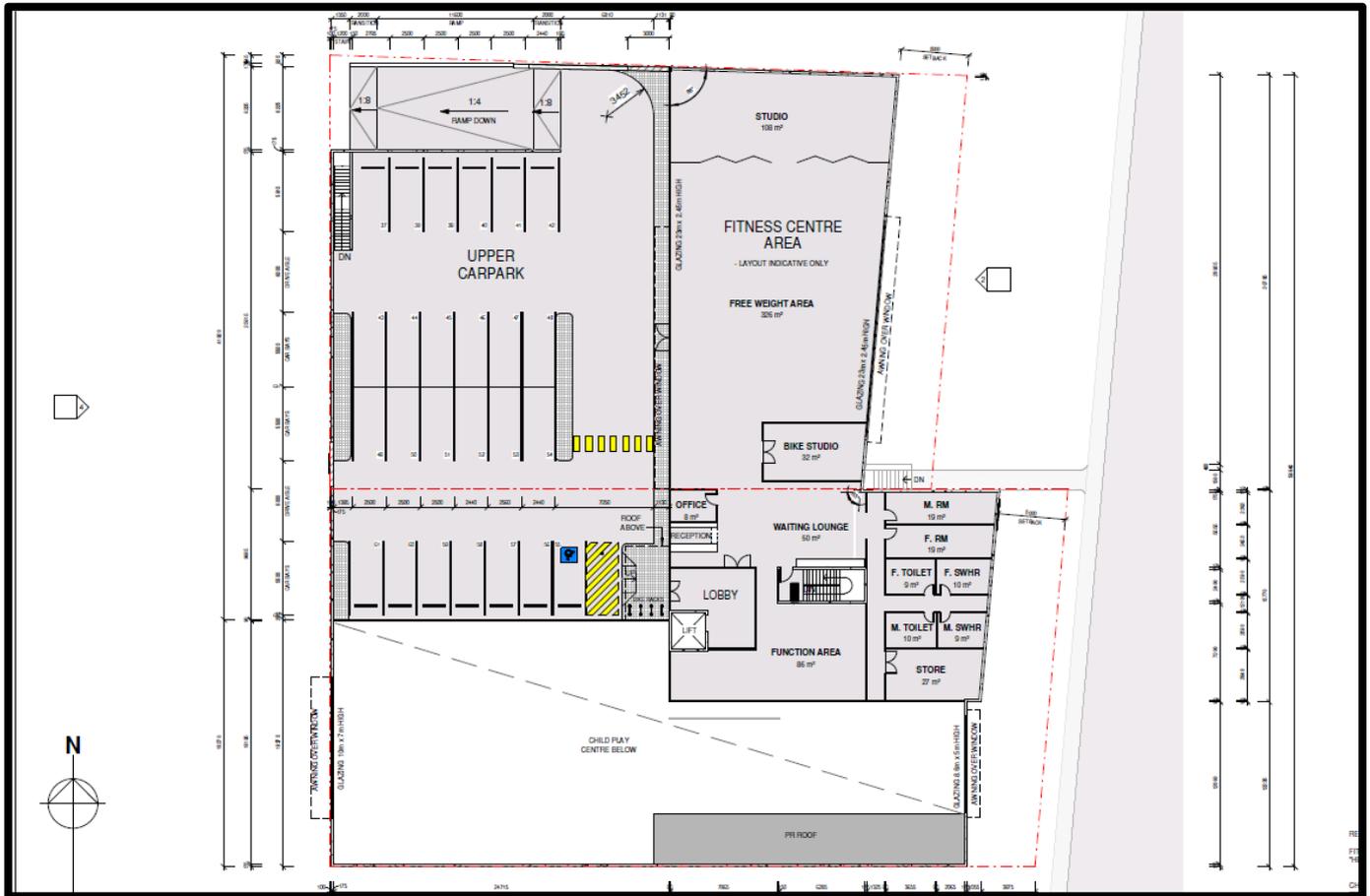


Figure 3: Ground Floor Plan

The upper floor, as shown on figure 4 below comprises:

- Internal lobby with lift;
- Heath studio with a floor area of 802m<sup>2</sup>;
- 25 parking bays including one accessible bay;
- Eight bicycle bays; and
- Single bin store.



**Figure 4: Upper Floor Plan**

Full details of the proposal are contained within **attachment 1**

### **Community / Stakeholder Consultation**

The application was advertised to surrounding landowners for a period of 21 days, from 7 April 2020 - 28 April 2020 within a radius of 100m, in accordance with Local Planning Policy 1.4 - Public Consultation for Planning Matters. The application was also advertised on the Shire's website for the same period.

At the conclusion of the community consultation, three submissions consisting of two objections and one letter of support were received. The objections relate to the following issues which are discussed under the relevant headings of the report and form part of the Officer assessment:

- Loss of community service or benefit to existing Children's Play Centre facilities in the locality;
- Proposed development is inconsistent with the local planning framework;
- Proposed development has inadequate car parking bays and bicycle spaces;
- Built form and design not consistent the public realm;
- Potential risk as the majority of the site is located within a bushfire prone area;
- No universal access to the development from South Western Highway;
- Inadequate passive surveillance of the car park area and surveillance from the streets;

- Proposed development is inconsistent with the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*;
- No provisions set out for public art component; and
- Insufficient Landscaping plans.

A summary of the submissions including the applicant's response on the objections can be viewed in **attachment 2**.

## **Consultation with other Agencies or Consultants**

### Main Roads Western Australia (MRWA)

The application was referred to MRWA as the site abuts Southern Western Highway, which is a Primary Regional Road under the Metropolitan Region Scheme (MRS). MRWA raised no objections to the proposal and recommended conditions relating to removal of the existing vehicle crossovers on South Western Highway. MRWA also advised that that signage should be subject to a separate detailed development application as there were insufficient details. The conditions and advice notes proposed by MRWA have been included in the recommendation.

### Department of Water and Environment Regulation (DWER)

The application was referred to DWER and no objections to the proposal were raised. DWER however recommended for the car park stormwater drainage system to be designed, constructed and managed in accordance with the Stormwater Management Manual for Western Australia (DWER, 2004). This has been reflected in the Officer recommendation.

## **Statutory Environment**

### Legislation

- *Planning and Development (Local Planning Schemes) Regulations 2015*;
- *Metropolitan Region Scheme*;
- *Shire of Serpentine Jarrahdale Town Planning Scheme No. 2;(TPS2)*;
- *Environmental Protection (Noise) Regulations 1997*;

### State Government Policies

- South Metropolitan Peel Sub-Regional Framework Towards Perth and Peel 3.5 Million;
- State Planning Policy 3.7 – Planning in Bushfire Prone Areas;

### Local Planning Framework

- Local Planning Policy 1.4 - Public Consultation for Planning Matters (LPP1.4);
- Local Planning Policy 4.16 - Landscape and Vegetation Policy (LPP4.16);
- Local Planning Policy 2.4 - Water Sensitive Design (LPP2.4);
- Local Planning Policy 4.15 - Bicycle Facilities (LPP4.15);
- Local Planning Policy 3.7 - George Street Design Guidelines;
- Local Planning Policy 3.8 - Byford Town Centre Built Form Guideline;
- Local Planning Policy 4.16 - Landscape and Vegetation;

- Local Planning Policy 24 - Design Out Crime;
- Local Planning Policy 1.8 - Cash-in-lieu for Parking
- Draft Shire of Serpentine Jarrahdale Local Planning Scheme No.3;
- Draft Shire of Serpentine Jarrahdale Local Planning Strategy;
- Byford Townsite Detailed Area Plan;

### **Planning Assessment**

Schedule 2, Part 9, Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Deemed Provisions) lists matters to be considered in the determination of development applications. A full assessment was carried out against the applicable matters relevant to this proposal and can be viewed within the Technical Assessment (**attachment 3**). For the purpose of this report, discussion is confined to the areas of policy variation and objections resulting in the item being presented to Council and where Council is required to exercise discretion.

#### Town Planning Scheme No. 2

The subject site is zoned 'Urban Development' under the Shire's TPS2. Clause 5.18 of TPS2 sets out the objectives of the 'Urban Development' zone, as "*to provide for the orderly planning of large areas of land in a locally integrated manner and within a regional context, whilst retaining flexibility to review planning with changing circumstances*". This objective is facilitated through the preparation of Structure Plans, which guide land use permissibility and development.

The subject site lies within the Byford District Structure Plan (BDSP) and the Byford Town Centre Local Structure Plan (LSP) which provide the relevant land use permissibility and indicative zoning applicable to the site. Pursuant to the BDSP and the LSP, the subject site is identified as 'Highway Commercial'. Refer to Figures 5 and 6 below.

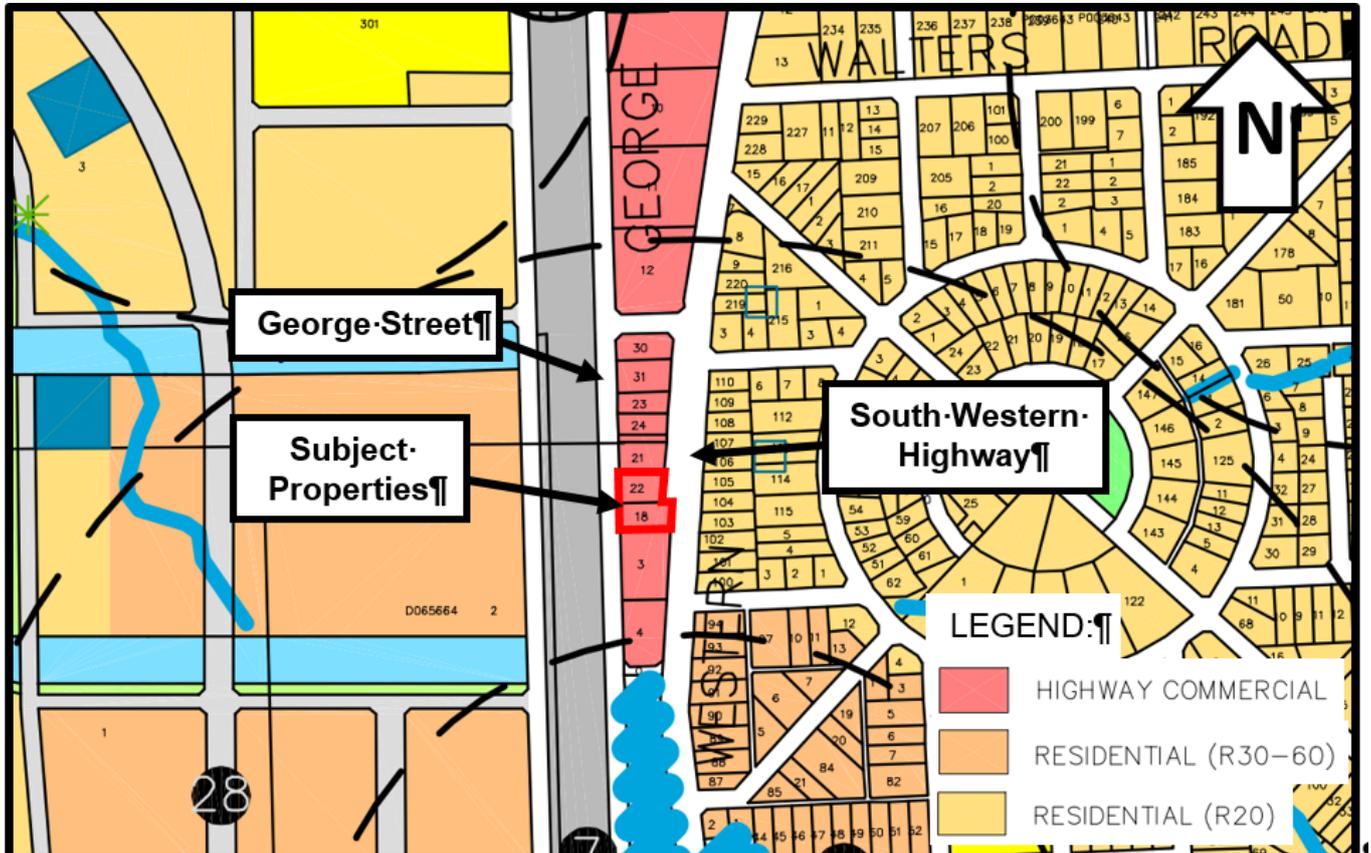
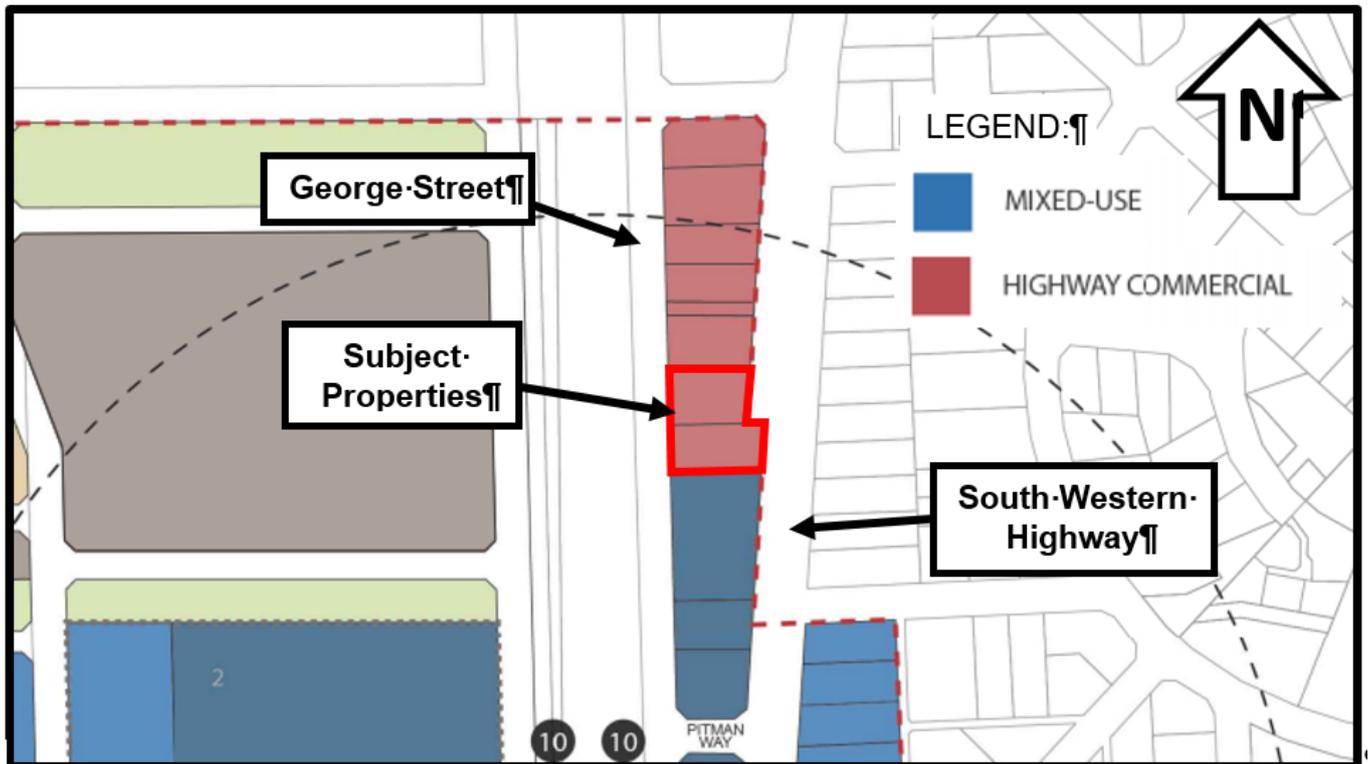


Figure 5: Byford Structure Plan



**Figure 6: Byford Town Centre Local Structure Plan**

Clause 5.23.1 of TPS2 states that the intent of the 'Highway Commercial' Zone is "to provide for a range of commercial development, including particularly bulk retailing and open air display, showrooms, bulky goods, offices, medical centres and consulting rooms which may not be suitable for an activity centre but be suitable for a highway frontage location"

The intent of the zone allows for a mixed range of land uses, particularly those that require larger buildings to facilitate the use. The proposed commercial development incorporates a range of commercial uses including private recreation and health studio. The land uses proposed are capable of approval within the 'Highway Commercial' zone, as designated under the Structure Plans, in accordance with TPS2.

#### Land Use Permissibility

The proposal falls within the two land use definitions of 'Health Studio' and 'Private Recreation' defined under TPS2 as follows:

**"Health Studio** - means land and buildings designed and equipped for physical exercise, recreation and sporting activities including outdoor recreation".

**"Private Recreation** - means land used for parks, gardens, playgrounds, sports arenas or other grounds for recreation which are not normally open to the public without charge".

Officers are satisfied that the proposed swim school and child play centre fall within the definition of 'Private Recreation' and the gym falls with the definition of 'Health Studio', as defined.

Under the Zoning Table of TPS2, 'Health Studio' and 'Private Recreation' land uses are 'AA' land uses in the 'Highway Commercial' zone, as designated under the BDSP and LSP.

### Orderly and Proper Planning

During the consultation period, concerns were raised regarding the consistency of the proposal with the planning framework. Officers consider that the proposal is consistent with most elements of orderly and proper planning, except as it pertains to car parking and visual design. These form the basis of the assessment following:

#### Draft Local Planning Scheme No.3 (consistent)

The subject site is located within the 'Mixed Use' zone under draft Local Planning Scheme No.3 (LPS3). The proposed land uses would both fall under the use class of "Recreation Private" which is defined as *"premises that are; (a) used for indoor or outdoor leisure, recreation or sport and (b) not usually open to the public without charge"*. Within the 'Mixed Use' zone, 'Recreation Private' is a discretionary ('D') land use and therefore capable of approval.

The objectives of the 'Mixed Use' zone under LPS3 promote a variety of compatible land uses which do not create any adverse impacts to the amenity of the district or to the health, welfare and safety of residents. Officers consider the development generally meets the objectives of the 'Mixed Use' zone as it provides a range of commercial facilities that are considered compatible with the surrounding locality, as discussed within the amenity section of the report.

#### Byford Structure Plan (consistent)

The purpose of this Structure Plan is to provide a *"broad-district level planning framework for development"* which provides the basis for the subsequent preparation of Local Structure Plans.

The subject site is designated as 'Highway Commercial' under the Byford Structure Plan. As discussed above, the purpose of the 'Highway Commercial' zone is to *"provide for a range of commercial development, including particularly bulk retailing and open air display, showrooms, bulky goods, offices, medical centres and consulting rooms which may not be suitable for an activity centre but be suitable for a highway frontage location"*.

As previously stated, the proposed land uses are generally found in commercial areas and often sit alongside showroom land uses.

#### Draft Byford District Structure Plan (consistent)

The proposed new Byford District Structure Plan is currently undergoing public advertising. The subject site is identified within the 'Town Centre' zone where the proposed land uses would be permitted and therefore consistent.

#### Byford Town Centre Local Structure Plan (consistent)

The subject site is designated as 'Highway Commercial' under the Byford Town Centre Local Structure Plan (LSP). The land use provisions of the LSP relating to the Highway Commercial Precinct state the intended uses are; office (including home office); consulting rooms/medical suites; showrooms and drive thrus.

As previously stated, the land uses are capable of approval and considered compatible with the zone and designation under the LSP.

### Byford Townsite Detailed Area Plan (DAP) (consistent)

The subject site lies within Character Area H – Highway Commercial of the DAP with the intention of accommodating “*showrooms, bulky goods, offices, medical centres, consulting rooms and the like*”. The DAP also sets out the aspirations of the future built form of the character area to which the proposal is generally consistent with, these are discussed further under the Built Form section of the report.

### Car Parking (not consistent)

Table V of TPS2 sets out parking requirements for specific land uses. The minimum number of car parking bays for a ‘Health Studio’ is one space per 15m<sup>2</sup> of floor area available for the public. Accordingly, as the ‘Health Studio’ has a floor area of 466m<sup>2</sup>, a minimum of 31 parking bays would need to be provided. The plans provided indicate 25 car parking bays on the upper floor where the ‘Health Studio’ is located. TPS2 does not include parking requirements for the land use of ‘Private Recreation’.

Parking requirements for non-residential uses within the Town Centre are also set out under section 1.20 of the Town Centre LSP which states that “*the minimum parking requirement for non-residential uses within the LSP is one bay for every 20m<sup>2</sup> gross leasable area (GLA), less any on-street parking adjoining the site*”. Accordingly, as the proposal comprises a GLA of approximately 1.725m<sup>2</sup>, a minimum of 87 parking bays would need to be provided. The plans provided indicate a total of 61 bays (36 on the lower floor and 25 on the upper floor) and as such the proposal has an overall shortfall of 26 bays. While there are undeveloped verge areas of George Street available nearby the development, they do not currently comprise any formalised parking and therefore do not provide for any reduction in the required parking for the development.

During the consultation period, concerns were raised regarding the overall shortfall of car parking bays. In that regard, the applicant provided the following justification to the shortfall in support of the proposal:

- *The different peak periods for the three tenancies (gym, swim school and children’s play centre) and the staggered lesson times for the swim school allows for reciprocal parking across the site and therefore alleviates demand on onsite car parking bays.*
- *The children’s play centre and swim school both occupy a substantial amount of the overall floor area relative to their occupancy and therefore it does not represent an accurate parking demand for such land uses, which are frequented by families utilising a single car.*
- *Upon reviewing the parking demand of the operation of other gym land uses, a study revealed that there is no statistically valid relationship between the peak parking demand and the gross floor area but rather a relationship between peak parking demand surrounding land uses and availability of public transport.*
- *The development is in close proximity to existing bus services within reasonable walking distance from the site, which operates along South Western Highway, and there are bus stops within a 300m distance of the subject site. It is also proximate to future passenger rail facilities which, consistent with adopted structure planning, are promoted for integration within the Byford Town Centre.*
- *The Traffic Impact Statement (TIS) **attachment 4** concluded that there is adequate public parking within close proximity of the subject site with 149 public parking bays within 500 metres of the subject site with minimal utilisation at peak times.*

The applicant also provided a traffic and parking demand study with the application, setting out a proposed parking and traffic demands study for the proposed development. This also included a detailed parking inventory and utilisation survey of the area within a 500m walking distance from

the subject site. This aimed to justify that existing public parking supply and demand within the immediate locality could warrant consideration for a reduction in the required parking amount.

While noting that the applicant argues that there is available public parking opportunities within the surveyed parking area, the Shire's technical assessment does not arrive at this same conclusion.

The Shire's technical assessment, commensurate with the requirements of the Scheme and Policy, reflects the planning principle that parking demand generated by a development should be provided for on the site of the development. Officers have identified that particularly the Swim School and Children's Play Centre components, do not necessarily comprise consistent or well known peak operational times that assumptions of parking demand should be based on.

This reflects issues such as:

- target audiences varying across school and non-school age groups;
- the nature of school holidays and public holidays affecting demand;
- how weather may impact demand;
- how seasonal variations impact demand.

Officers consider that the magnitude of risk represented by the shortfall in parking, could have an unacceptable impact on local amenity by creating unsafe traffic and car-parking congestion in the town centre environment along George Street. This would be from parking occurring in an ad hoc manner along the unmade verge section of George Street near the development, and parking exceeding the available existing on street bays that are located south of the subject land.

Officers note that where a business operates from land adjacent to a street, it has been a general planning principle upheld by the SAT that parking bays provided for public use in that street may be counted as part of the planning requirement for the business if there is a relevant discretion in the planning scheme to vary on-site parking standards (Flipside Pty Ltd and City of South Perth [2014] WASAT 145 at [33]). While the Shire's Scheme does have such discretion to vary, there are no parking bays in that adjacent section of George Street that are considered accessible and available to this development, to justify a reduction.

In reviewing the parking inventory and utilisation survey of the area submitted as part of the application, officers noted that this analysed the 500m walking distance from the subject site to establish the existing public parking supply and demand within the immediate locality. The parking survey area was divided into two zones labelled A and B, as detailed in Figure 7 below.



**Figure 7 Parking Survey Area**

This undertook parking utilisation surveys on a weekday and a weekend, Monday between 4:00pm to 7:00pm and Saturday from 10:00am to 1:00pm. Officers do not consider this to be a representative time to establish peak demand of car parking in the town centre.

Setting aside this concern, a total of 149 public parking spaces were recorded in the survey area within a 500m walking distance, between the subject site and Abernethy Road. The overall peak parking demand was recorded between 11:00am to 12:00pm on a Saturday with 59 bays occupied and 90 bays available within comfortable walking distance. The report argued that the available free public parking opportunities within the surveyed parking area would compensate for the LSP car parking shortfall of 26 bays for the proposed development.

Officers do not recommend support of the applicant's suggestion that this parking provision justifies a reduction in shortfall of parking for this development. Officers raise concerns that:

- the bays are not in the street adjacent or reasonably nearby the development;
- the Shire's monitoring of the town centre environment reveals high amount of parking utilisation;
- it would be a risk to base the consideration of a parking shortfall on a development that may have uncertain or inconsistent peak demand periods;
- while some very limited use by private development of existing public car parking spaces might be acceptable, it is inconsistent with orderly and proper planning for a private development which is generating a new parking demand to monopolise otherwise available public car park spaces;
- there could be impacts on the commercial viability of nearby businesses as a result of utilising current on street bays.

Parking in the George Street precinct south of the subject land is congested at peak times, and it is important that a development's scale match adequately with the facilities needed to support patronage of that scale. This creates three options:

1. That the scale of the development be reduced;
2. That the amount of car parking on the site be increased;
3. That, consistent with Clause 7.9 of the Scheme and adopted Council Policy LPP1.8, a cash in lieu of parking arrangement be considered.

That the scale of the development be reduced

Officers believe that the scale and form of development is befitting of a prominent town centre location such as the site proposed. It would be a less optimal planning outcome to have the scale of the development reduced, as this would reduce its ability to command a visual presence of the space both as viewed from South Western Highway and George Street. This is not consistent with the planning framework for the town centre.

That the amount of car parking on the site be increased

While this could be considered, it strikes at a predominant design component of the development. Imposing a redesign to require 26 bays is not considered to be incidental to the proposal, and accordingly would warrant the proposal needing to be refused.

That, consistent with Clause 7.9 of the Scheme and adopted Council Policy LPP1.8, a cash in lieu of parking arrangement be considered.

Council has a clause in its Scheme that deals with opportunities to consider cash in lieu of parking arrangements. This states as follows:

**7.9 CASH PAYMENT IN LIEU OF PROVIDING A PARKING AREA**

The Council may accept a cash payment in lieu of the provision of a parking area provided:

- (a) the cash payment is not less than the estimated cost to the owner of providing and constructing the parking area required by the Scheme plus the value, as estimated by the Council, of that area of his land which would have been occupied by the parking area;
- (b) before the Council agrees to accept a cash payment, the Council must either have already provided a public car park nearby, or must have firm proposals for providing a public car park nearby within a period of not more than eighteen months from the time of agreeing to accept the cash payment; and,
- (c) any such payment shall be paid into a special fund to be used to provide public car parks and the Council may use this fund to provide public car parks anywhere in its district.

Local Planning Policy 1.8 (Cash-in-lieu for Parking), has been adopted by Council, to further help guide Council in the situations where cash in lieu may be agreed to. This provides the following policy purpose:

1. Provide guidance for the application of the cash-in-lieu car parking provisions under Part 7.9 of Town Planning Scheme No. 2 (TPS2).
2. Provide for the equitable charging of cash-in-lieu contributions for on-site car parking spaces not provided for as part of developments.
3. Provide a formula where the cash-in-lieu provisions for car parking have been provided for in any planning application

The policy then provides that:

*The Shire may require cash-in-lieu car parking for non-residential development where there is a shortfall in the car parking requirement or where it is satisfied that the provision of parking onsite, and/or associated vehicle access would be detrimental to the overall development and integrity of the area;*

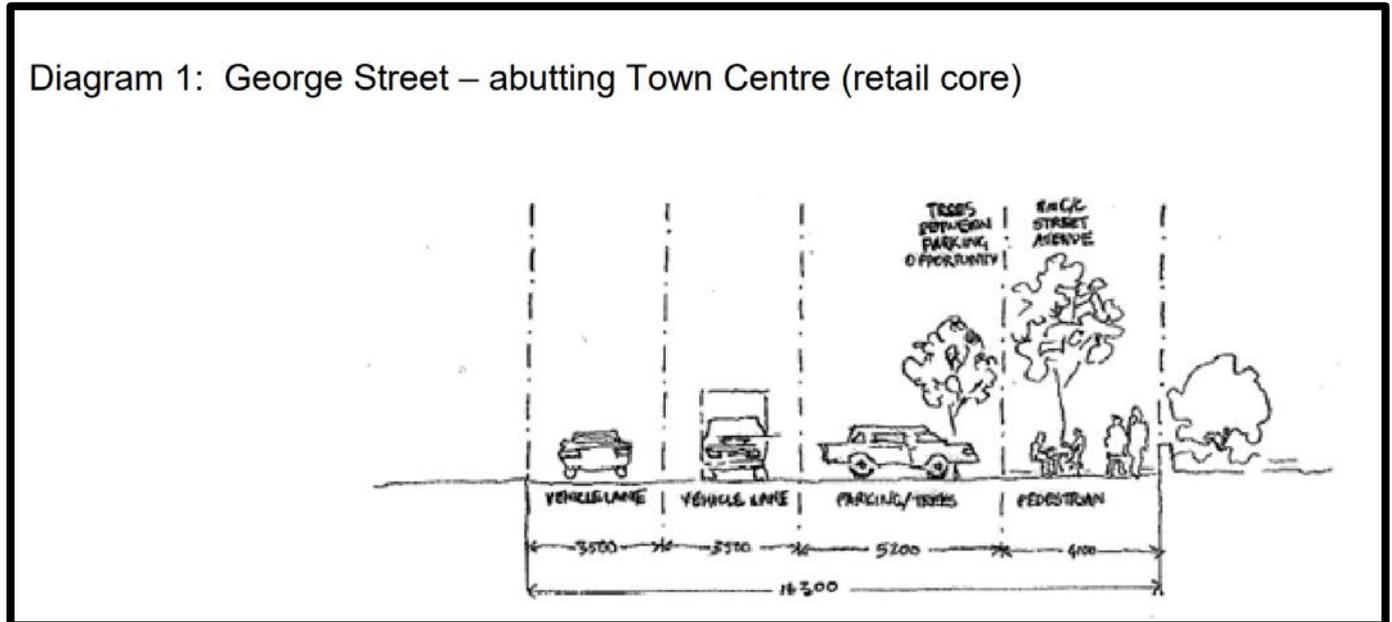
This proposed development is considered to meet both thresholds. That is, there is a shortfall of 26 bays, and as mentioned above, requiring the car parking on site could detract from the development and overall integrity of the area.

Officers recommend a condition be imposed that addresses the parking shortfall by way of a cash in lieu payment, with such payment to fund construction of on-street parking bays within the adjacent nearby verge areas of George Street. In accordance with the Scheme, Council has previously established firm proposals for such on-street parking to be provided on George Street, consistent with Local Planning Policy 3.8 (George Street Design Guidelines). This states at clauses 2 and 3 of the policy:

2. To maintain a consistent streetscape, the George Street road reserve between Pitman Way to Larsen Road should ensure continuity of the existing streetscape of the constructed portion of George Street.

3. Right angle parking and a 4.1m verge, paved to allow for pedestrian traffic, is to be provided on the eastern side of George Street.

The following image is contained in the policy:



In accordance with the Scheme, the payment can then be used by the Shire to construct the 26 bays in the eastern verge of George Street, as per the adopted policy of Council. This will be required within 18 months of the development being agreed to. Full costs

Officers therefore recommend that, in accordance with Clause 7.9 and the Local Planning Policy, that a condition be imposed as follows:

*The applicant providing a cash in lieu payment to the Shire of Serpentine Jarrahdale, in accordance with Shire of Serpentine Jarrahdale Town Planning Scheme No. 2, equivalent to 26 car parking bays prior to issue of a Building Permit.*

This would enable the provision of additional adjacent public car parking bays, consistent with the Scheme and policy framework adopted by Council.

This will benefit in maintaining the integrity of the development, and meeting the broader planning objective for a well planned and serviced town centre. The parking would be designed and located within the George Street road reserve, and be constructed utilising the cash in lieu paid by the development. This would include footpath links to the development.

### Access, Traffic and Parking

Vehicle access to the subject site is proposed via two crossovers from George Street direct to the lower floor and upper floor carparks, as shown on Figure 3 above. The northern crossover will provide access for the first floor car park via a proposed ramp and the southern crossover will provide access to the ground floor car park.

Pedestrian and cycle paths are provided along both frontages, linking the subject site to the surrounding locality. The applicant provided information that there is an existing bus service within reasonable walking distance of the site. This operates along South Western Highway and there are bus stops within a 30m distance of the subject site. The nearest bus stop is accessible from the subject site via existing formal footpaths and pedestrian crossing facilities. The level of service of these facilities however do not reasonably justify reductions in car parking otherwise provided (see previous discussion).

The TIS assessed traffic generated by the proposed development and its potential impact on the overall performance of the surrounding local road network, which includes South Western Highway, George Street, Jessie Street and Clara Street. The volume of traffic likely to be generated by the proposal was estimated using trip generation rates from the ITE Trip Generation Manual (10th Edition) which provides peak hour trip rates and directional traffic split for different types of land uses. The TIS provided that, based on the category of the commercial development, the development is estimated to generate approximately 880 vehicular trips per regular weekday with about 32 trips during the typical weekday AM peak hour and 88 trips during the typical weekday PM peak hour.

The TIS states that traffic increase on George Street would be less than the critical threshold with the most pronounced traffic increases being 46 vehicles per hour (vph) on George Street (south of the development) and 13vph on George Street (north of the development) during the afternoon peak hour. This is within the capacity of an Access Road (up to 3000 vehicles per day) and therefore there would be no adverse traffic impact.

### Built Form

The Byford Town Centre Design Guidelines have been prepared as Local Planning Policy 3.8 – Byford Town Centre Built Form Guidelines (LPP3.8). The guidelines seek to facilitate and coordinate desired built form and development outcomes within the town centre. Under the guidelines, the subject site is located within the ‘Highway Commercial Precinct.’ The Table below provides an assessment of the policy requirements applicable to the proposal:

<b>Provision</b>	<b>Policy Requirement</b>	<b>Proposal</b>	<b>Officer comment</b>
Land use	The following land-uses are encouraged: Highway Commercial; Office (including home office); Consulting rooms/medical suites; Showrooms and Drive Through's.	The proposal for Health Studio and Private Recreational land uses can be considered within the ‘Highway Commercial’ zone. The policy encourages specific land uses however these are not requirements and other land uses are not precluded from	Compliant

Provision	Policy Requirement	Proposal	Officer comment
		being able to be approved.	
Building Height	The preferred building height is 1-2 storeys.	The proposal comprises of a two storey building.	Compliant
Setbacks	A maximum setback of 5m to South Western Highway and not to be used as laydown or parking areas	Proposal is set back 5m from South Western Highway	Compliant.
Architectural character	Achieve a high standard of architectural design that responds innovatively to Byford's rural atmosphere whilst contributing to an attractive streetscape.	The northern and east elevations are considered too simplistic, commercial in nature and not reflecting the natural and built vernacular of Byford.	<p>The applicant has been given the opportunity to revise the built form with a specific design response to utilise recycled brick, contrast against tones of grey render for the concrete panel, and a grey stacked stone for the signage columns.</p> <p>The revised design of these elevations have improved, and subject to condition requiring some further minor adjustment, will be considered to achieve a high standard of architectural design for Byford and its rural character and atmosphere.</p>
Building articulation and materials.	<p>Provide built form of architectural quality and visual interest.</p> <p>Promote buildings of articulated design and massing with building façades that contribute to the character of the street and public domain.</p>	As discussed above, the built form is considered simplistic and not reflective of the character of Byford. Officers have recommended the inclusion of: vertical elements to provide for building depth and variation (i.e timber colonades and window frames);	The revised design of these elevations have improved, and subject to condition requiring some further minor adjustment, will be considered to achieve a high standard of architectural design for Byford and its rural character and atmosphere.

Provision	Policy Requirement	Proposal	Officer comment
		<p>additional textures such as brick or stone reflective of the Shire's rural character;</p> <p>The use of face brick, coupled with colour tone adjustments of dark to light greys.</p>	
Building Orientation	<p>Ensure that buildings make a positive contribution to the streetscape and public areas.</p> <p>Design and plan street edges to enhance the public domain and promote pedestrian movement.</p>	The building is primarily oriented towards George Street.	Compliant
Landscaping	<p>Retain and protect existing remnant vegetation to achieve a strong sense of place.</p> <p>Provision of landscaped areas, which compliment the surrounding Developments.</p>	Officers are concerned that the proposed Landscape Plan does not address how the trees to be removed have been adequately replaced.	Officers have recommended an updated Landscape plan by way of a condition.
Crime prevention	<p>Create an environment which is safe and secure for residents and visitors. Provide for surveillance (actual and perceived) between individual developments and the public domain and minimise opportunities for concealment and entrapment</p>	Officers are satisfied that the proposal has been designed with active frontages and open spaces to facilitate the passive surveillance of the building on both George Street and South Western Highway frontages including the internal car park. The pathway from South Western Highway leads upstairs to the second storey.	Compliant
Parking + Access	All developments should have access from George Street to spread	Vehicle access to the subject site is proposed via two	Compliant

Provision	Policy Requirement	Proposal	Officer comment
	<p>the traffic load.</p> <p>No vehicle access to or from South Western Highway will be permitted other than that shown on the existing South Western Highway Vehicle Access Strategy.</p> <p>On-site car parking spaces shall be provided for all new developments at the rates set out in the Byford Town Centre LSP</p>	<p>crossovers from George Street direct to the lower floor and upper floor carparks.</p> <p>No vehicle access is proposed from South Western Highway</p> <p>A minimum of 87 parking bays would need to be provided. The proposal has an overall shortfall of 26 bays.</p>	<p>Compliant</p> <p>Not compliant. Officers recommend a condition to require the applicant to pay cash in lieu, and for the Shire to build onstreet bays consistent with its committed plans under Local Planning Policy 3.8.</p>
Signage	Provision of signage which is informative and contributes positively to the overall streetscape and is not excessive or obtrusive.	The development proposes a number of wall signs as shown on the elevations. The applicant has not provided any detailed drawings of the signage.	Officers have recommended a condition requiring a signage strategy to be submitted to the Shire to ensure compliance with the relevant policies.
Visual and acoustic privacy	Design and site buildings to minimise noise impact.	The applicant has not provided information to determine noise levels emitted by the development.	Officers have recommended a condition requiring a noise assessment to be provided and all recommendations of the assessment be implemented, to ensure compliance with the policies.
Weather Protection	Provide weather shelter where buildings abut a street sidewalk to encourage pedestrian	The development proposes an awning over the George Street verge.	Compliant

Provision	Policy Requirement	Proposal	Officer comment
	amenity.		
Stormwater management	Ensure the implementation of best practice stormwater management principles.	The application did not include a stormwater management plan.	Officers have recommended a condition requiring an Urban Water Management Plan demonstrating how the stormwater would be managed.

As previously mentioned, Officers were concerned that the original design of the proposal, specifically the north and east elevations, were too simplistic and did not reflect the rural character of the Shire or the desired character of the town centre. Below are the first set of elevations, as viewed from the north and from the east (South Western Highway):

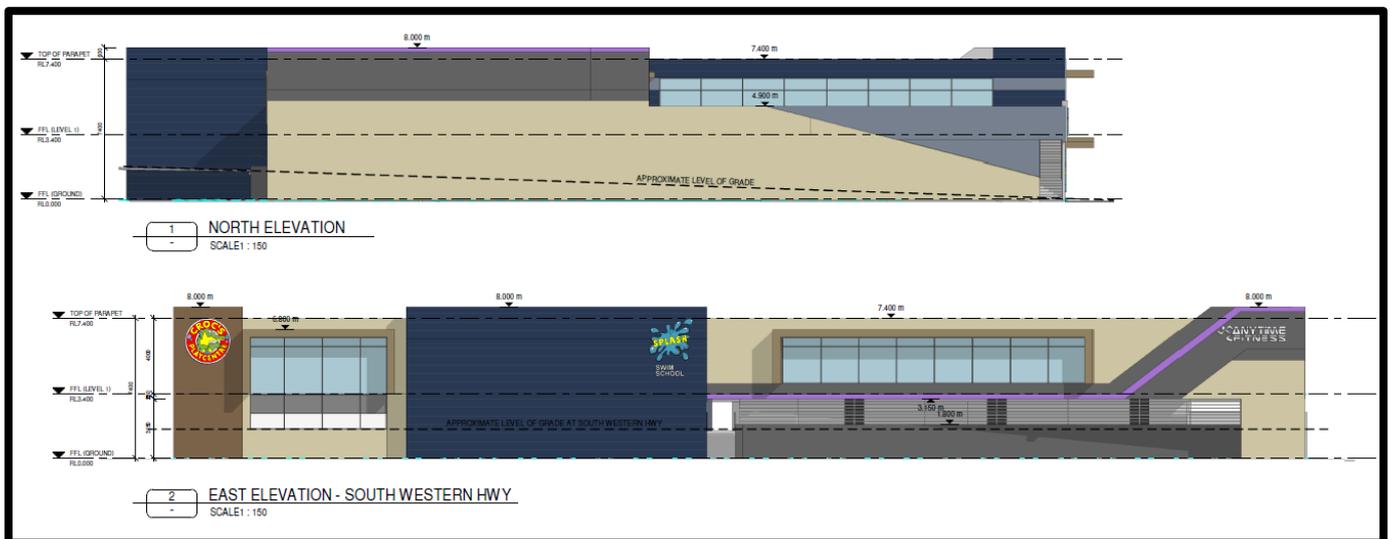


Figure 8: Proposed North & East Elevations

The applicant has provided updated elevations as follows:



Figure 9: Updated Elevations

The use of colours and materials on these elevations are provided as follows:



In reviewing these, there is a general acceptance that they are commensurate with the rural and natural character of Byford. Officers do recommend however, that the addition of recycled facebrick trim or further natural timbers around the window features fronting South Western Highway would assist in further grounding the development to its context. This would include a further material selection, and is conditioned in the officer recommendation.

The scale and setbacks of the building are otherwise considered consistent with the surrounding buildings and requirements of the planning framework.

Local Planning Policy 1.6 - (LPP 1.6) – Public Art For Major Developments

The objective of LPP1.6 is to facilitate public art to enhance public enjoyment, engagement and understanding of places through the integration of public art. The policy sets out the requirements for physical and financial contributions for public art for any development valued at \$1 million or greater.

During the consultation period, concerns were raised regarding a public art feature not forming part of the proposed development. If the application were to be approved, a contribution towards public art is considered capable of being dealt with by way of a condition, consistent with the policy requirements. The Officer recommendation includes a condition of approval for the provision of or contribution towards public art.

Local Planning Policy - 4.16 (LPP1.16) - Landscape and Vegetation

The key objective of LPP4.16, relevant to this application, is to “*contribute towards achievement of vegetation and landscape outcomes that meet the expectations of stakeholders and contribute towards the achievement of biodiversity and water use targets and the creation of vibrant places for our communities*”.

The site contains mature vegetation. The proposal includes removal of vegetation on site to facilitate the development of the commercial building. The applicant provided a Landscape and Vegetation Management Plan with the application. The landscaping plan shows areas of revegetation to offset the vegetation that will be lost. Officers have concerns in relation to the current on site vegetation, and the future landscaping proposed, and how this is to tie together to retain as many established vegetation as possible. Officers recommend the inclusion of a condition requiring an amended Landscape plan to ensure that lost vegetation is adequately replaced. The landscape plan would be required to incorporate Water Sensitive Urban Design (WSUD) principles and take into account the George Street Design Guidelines. It is considered that an updated Landscape Plan would address the concerns within the submission.

Local Planning Policy 2.4 (LPP2.4) - Water Sensitive Design

LPP2.4 aims to maximise water efficiency by encouraging best practice urban water management methods. The policy aims to ensure waters sensitive design best management practices are implemented for new developments with the Shire.

The application did not include a stormwater management plan, as raised as a matter of concern during the consultation period. An Urban Water Management Plan will be required demonstrating how the stormwater incident to the site is managed shall be provided prior to commencement of works. This will be included as a condition of approval. The car park stormwater drainage system to be designed, constructed and managed in accordance with the Stormwater Management Manual for Western Australia (DWER, 2004).

#### Local Planning Policy 4.15 (LPP4.15) – Bicycle Facilities

LPP4.15 provides guidance to developers on the design and requirements of bicycle parking and end of trip facilities for a specific land use. In accordance with the policy, bicycle facilities are to be provided in accordance with the schedule 1 of the policy.

A total of nine bicycle racks (18 bicycle spaces) have been provided for the patrons of the development. The bicycle storage areas are located adjacent to the fitness centre on level 1 and adjacent to child play centre on the ground floor. Based on the policy provisions, 43 bicycle spaces would need to be provided. During the consultation period, concerns were raised regarding the inadequate bicycle spaces. The applicant has provided information that the nature of the proposal is that the location and uses are largely car dominated due to the location with the Byford Town Centre, and the swim school and play centre being child dominated. Officers have considered that car driven children would form the main patrons of the swimming school children centre and were therefore satisfied the proposed spaces adequately cater for the proposal. This informs why officers have recommended conditions to address the critical car parking shortfall, rather than focus on the shortfall of bicycle parking provision.

#### Local Planning Policy 24 (LPP24) - Designing Out Crime

LPP24 encourages commercial development to incorporate principles of Crime Prevention through Environmental Design (CPTED). LPP24 sets out five key crime prevention principles that are to be applied to different levels of the planning framework according to the policy. A development application needs to be assessed against the Micro Principles of the policy. The principles relate to surveillance, access control, territorial reinforcement, target hardening, management, and maintenance.

The application has been assessed against the micro levels of design consideration, of which focuses on built form and schedule of materials were considered to be relevant. During the consultation period concerns were raised regarding passive surveillance of the car park area, surveillance of the streets and visual interaction.

Officers are satisfied that the proposal has been designed with active frontages and open spaces to facilitate the passive surveillance of the building on both George Street and South Western Highway frontages including the internal car park. Pedestrians currently access the subject site via existing pedestrian footpaths along South Western Highway.

The applicant has provided information that lighting for the centre will be adequately provided, with the gym operating 24/7 ensuring a consent level of surveillance. It is therefore considered that the application complies with the provisions of the policy. Pedestrian and cycling paths are provided along both frontages, linking the subject site to the surrounding locality.

#### Local Planning Policy 4.11 (LPP4.11) - Advertising

Local Planning Policy LPP 4.11 – Advertising sets out development standards and requirements for advertisements. The plans as submitted have identified nominal wall signage for three tenancies integrated into the façade of the development. No detailed drawings of the signage were provided with the application.

If the application is approved, a signage strategy will be required to be prepared and approved prior to operation of the site detailing the signage for the tenancies to ensure compliance with the policy and recommendations made by MRWA. It is worth noting that wall signs do not require development approval under the policy if they are compliant with the requirements of that planning policy.

#### State Planning Policy 3.7 - Planning in Bushfire Prone Areas

SPP3.7 provides the requirements and guidelines for development within areas identified as bushfire prone. The western portion of the subject site is identified within the bushfire prone area in accordance with the Department of Fire and Emergency Services (DFES) Map of Bushfire Prone Areas.

Pursuant to the provisions of SPP3.7, the application included a Bushfire Management Plan (BMP) for the subject site prepared by Fire Protection Association Australia. The BMP indicated the development would have a Bushfire Attack Level (BAL) of BAL-29, which is consistent with the requirements of SPP3.7. During the consultation period, concerns were raised regarding the potential risk as the majority of the site is located within Bushfire prone area. Shire Officers are satisfied that the BMP adequately addresses the requirements of SPP3.7.

### Amenity

The proposed development comprises of three tenancies (gym, swim school and children's play centre) and is likely to generate noise potentially impacting the adjoining residential property and residential premises to the east of the development. In that regard, Officers have recommended that the applicant carry out an Environmental and Transport Noise assessment as a baseline to the following outcomes:

- Aid in effective building design to enable acceptable indoor noise levels while attenuating for traffic and rail noise cause by South Western Highway and the Freight rail; and
- Able to accurately quantify noise impacts on the nearby sensitive receptors (residential premises across the Highway).

The recommendations of the Environmental and Transport Noise assessment would be required to be detailed within a Noise Management Plan. Officers have recommended a condition in this regard to ensure that the development would comply with the assigned noise levels under Regulation 7 of the *Environmental Protection (Noise) Regulations 1997*.

### Existing Child Play Centres

During the consultation period, concerns were raised regarding the increasing number of Child Play Centres in the locality. Within the planning framework, competition between individual trade competitors is not a town planning consideration, as determined in the *High Court in KFC vs Gantidis*. The *Trade Practices Act 1974* (Cth) is one of the appropriate vehicles for regulating economic competition. Matters of competition are to be resolved through market forces. The only exception to this may be where as a result of a proposal; the community is afforded a lesser level of access to commercial and community services and facilities, which is not the case in this instance. What is a relevant planning consideration is protecting amenity, having regard to the primary purpose for which the land is zoned, the orderly and proper planning of the zone, and the preservation of both current and the amenity of the neighbourhood. Furthermore, the Shire does not have the ability to consider this factor when assessing development applications under the *Planning and Development (Local Planning Schemes) Regulations 2015*.

## Options and Implications

### Option 1

That Council APPROVES the application subject to appropriate conditions.

### Option 2

That Council REFUSES the application providing appropriate reasons.

Option 1 is recommended.

## Conclusion

The application seeks approval for a two storey commercial building comprising of a 'Health Studio', Swim School and Child Play Centre. It is considered that the proposal is acceptable provided appropriate conditions are imposed that:

- Minor improvement in appearance of the proposal to reflect a relevant rural Byford architectural character, through attention to the window trims facing South Western Highway;
- Parking shortfall is addressed by way of cash in lieu payment and subsequent construction;
- Revised landscaping plans.

Overall, the proposed development will increase the range of local services and provide employment opportunities for the local community that will assist to support the population growth within the Shire. Notwithstanding the objections received, the proposal is considered to meet the objectives and intent of the zone and Structure Plans. As such, for the reasons outlined in the report it is recommended that Council approve the application subject to conditions

## Attachments (available under separate cover)

- **10.1.5 - attachment 1** - Development Plans - (IN20/13247)
- **10.1.5 - attachment 2** - Summary of Submissions (E20/7389)
- **10.1.5 - attachment 3** - Technical Assessment (E20/7392)
- **10.1.5 - attachment 4** - Traffic Impact Statement (IN20/13245)
- **10.1.5 - attachment 5** - Bushfire Management Plan (E20/6851)

## Alignment with our Strategic Community Plan

<b>Outcome 3.1</b>	A commercially diverse and prosperous economy
<b>Strategy 3.1.1</b>	Actively support new and existing local business within the district.
<b>Outcome 4.2</b>	A strategically focused Council
<b>Strategy 4.2.1</b>	Build and promote strategic relationships in the Shire's interest.

## Financial Implications

Nil

### Risk Implications

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
That Council refuse the development and the decision is appealed to the SAT.	Possible (3)	Minor (2)	Moderate (5-9)	Financial Impact - 1 Insignificant - Less than \$50,000	Accept Officer Recommendation

### Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

A risk rating of **6** has been determined for this item.

The Chief Executive Officer, Mr Martin advised the Presiding Member, Councillor Rich and Councillors that there was a typographical error in No. 2 of the Officer Recommendation and the word should be facebrick, not facebrook, which has been corrected on the version shown.

Voting Requirements: Simple Majority

OCM209/07/20

**COUNCIL RESOLUTION / Officer Recommendation**

**Moved Cr Strange, seconded Cr Coales**

That Council APPROVES the development application for the construction of a commercial building comprising of a 'Health Studio', Child Play Centre and Swim School as contained within attachment 1 at Lots 18 & 22, (813 & 815) South Western Highway, Byford subject to the following conditions:

1. The development is to be carried out in compliance with the plans and documentation listed below and endorsed with the Shire of Serpentine Jarrahdale stamp, except where amended by other conditions of this consent.

Plans and Specifications	<p>Plans P1 – P7 received at the Shire Offices on 27 March 2020</p> <p>Traffic Impact Statement prepared by Transcore and dated 7 February 2020</p> <p>Bushfire Management Plan prepared by Fire Protection Association Australia and dated 24 March 2020</p>
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2. Prior to the issue of a Building Permit, revised elevation and development plans being submitted to and approved by the Shire of Serpentine Jarrahdale. These revised plans are to demonstrate the addition of either recycled facebrick or natural timbers to the windows trim facing South Western Highway, reflective of the Shire's rural character.
3. Prior to occupation, the provision of public art being provided in accordance with Local Planning Policy 1.6 – Public Art for Major Developments to the satisfaction of the Shire.
4. Prior to the commencement of works, the landowner/applicant must contribute towards development contribution infrastructure provisions, pursuant to the Shire of Serpentine Jarrahdale's Town Planning Scheme No.2.
5. Arrangements being made with the Shire of Serpentine Jarrahdale for the landowner/applicant to contribute towards the costs of providing community and/or common infrastructure, as established through the amendment (when gazetted) to the Shire of Serpentine Jarrahdale Town Planning Scheme No.2.
6. Prior to occupation of the development, all vehicle parking areas (both on and offsite), accessways and crossovers shall be designed, constructed, sealed, kerbed, drained, linemarked in accordance with the approved plans and thereafter maintained to the satisfaction of the Shire of Serpentine Jarrahdale. A suitable legal agreement being prepared to be prepared at the Applicants cost, to the satisfaction of the Shire.
7. Prior to operation, an updated Landscape and Vegetation Management Plan, showing all areas of retained vegetation, additional planting including all car parking areas, access roads and road verges shall be submitted to and approved by the Shire of

**Serpentine Jarrahdale. Once approved, the Landscape and Vegetation Management Plan shall be implemented in its entirety and maintained thereafter.**

- 8. Prior to issuing of a Building Permit, an Urban Water Management Plan (UWMP) shall be submitted to and approved by the Shire of Serpentine Jarrahdale. Once approved, the UWMP shall be implemented and maintained thereafter. The Plan shall be prepared in accordance with the Byford Town Centre Local Water Management Strategy and Local Planning Policy 2.4 – Water Sensitive Design.**
- 9. Prior to issuing of a Building Permit, a Signage Strategy must be submitted to and approved by the Shire of Serpentine Jarrahdale. The Strategy shall demonstrate compliance with Local Planning Policy No 4.11 - Advertising Signs. Once approved, signage shall be displayed and maintained in accordance with the strategy.**
- 10. Prior to occupation, a Waste Management Plan must be prepared and submitted to the Shire of Serpentine Jarrahdale. The Waste Management Plan must include the following:**
  - a. The location of bin storage areas and bin collection areas;**
  - b. The number, volume and type of waste to be placed in the bins;**
  - c. Management of the bins and the bin storage areas, including cleaning, rotation and moving bins to and from the bin collection areas; and**
  - d. Frequency of bin collections.**

**Once approved, the Waste Management Plan shall be implemented and maintained thereafter.**
- 11. Prior to occupation, a lighting plan shall be submitted to and approved by the Shire of Serpentine Jarrahdale. The approved lighting plan shall be implemented and maintained thereafter.**
- 12. Prior to operation, an Environmental and Transport Noise Assessment, incorporating field noise measurements, shall be submitted to and approved by the Shire. Recommendations resulting from the Environmental and Transport Noise Assessment shall be incorporated within a Noise Management Plan to the satisfaction of the Shire and implemented/adhered to in its entirety.**
- 13. Prior to occupation, the redundant crossovers on South Western Highway shall be removed and the verge reinstated at the applicant's cost to the satisfaction of the Shire.**
- 14. The applicant providing a cash in lieu payment to the Shire of Serpentine Jarrahdale, in accordance with Shire of Serpentine Jarrahdale Town Planning Scheme No. 2, equivalent to 26 car parking bays, prior to issue of a Building Permit.**

#### **ADVICE NOTES**

- 1. Prior to commencement of works, a demolition licence for the removal of the existing dwellings and all structures is to be obtained from the Shire of Serpentine Jarrahdale.**

**CARRIED UNANIMOUSLY 8/0**

