



# 11.1 - Request to Execute Documents associated with Extinguishment of Temporary Right of Carriageway from Lot 9000 Abernethy Road

## 11.1 – Request to Execute Documents Associated with Extinguishment of Temporary Right of Carriageway from Lot 9000 Abernethy Road – (E21/4202) PA21/235

|   |  |
|---|--|
| <b>Responsible Officer:</b>             | Manager Strategic Planning   |
| <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

|             |  |
|-------------|--|
| Legislative | Includes adopting local laws, local planning schemes and policies. |
|-------------|--|

### Report Purpose

The purpose of this report is to enable Council to consider approving the Shire President and Chief Executive Officer execute documentation related to extinguishing a temporary right of carriageway easement as a prerequisite step required to vest the land that will be the Shire's Community Purposes Reserve within the Byford Activity Centre. This is to give affect to Council's decision of August 2020, which agreed to the community purpose site.

### Relevant Previous Decisions of Council

*Ordinary Council Meeting – 17 August 2020 - OCM252/08/20*

*COUNCIL RESOLUTION / Alternative Officer Recommendation*

*That Council:*

1. *NOTES Coles' position that it is not prepared to enter into a draft Heads of Agreement at this time;*
2. *AGREES IN-PRINCIPLE to accepting the public open space (community purpose site) in an unimproved form, to provide the maximum flexibility in undertaking the future master planning and community engagement process, to determine the final layout, configuration and delivery of the various uses for the community purpose site;*
3. *NOTES that the current subdivision application (WAPC Reference No. 159458) will be presented to the September meeting of Council for consideration;*
4. *NOTES Coles' conditional offer to submit a further follower subdivision to create the public open space (community purpose site) from the further subdivision of Proposed Lot 9001;*
5. *SUPPORTS IN-PRINCIPLE the conditions specified in Coles' offer as follows:*
  - a. *Meet all costs associated with the preparation, lodgement and progression to WAPC conditional approval of the further follower subdivision application;*
  - b. *Meet all costs associated with the creation and transfer of the community purpose site, including subdivision works (if any) and all necessary fees and costs.*

### Contact Us

#### Enquiries

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#### In Person

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### Background

Following Council's resolution at the 16 August 2020 Ordinary Council Meeting, the landowner has progressed with subdivision to ultimately create the agreed community purpose site.

This involved a two-step subdivision process:

1. An initial super-lot subdivision, which create three lots, one balance title (Lot 9000), easements and roads; and
2. A second subdivision of the Lot 9000 balance title, to create the Shire's community purpose site.

Both subdivision processes have been undertaken and a near completion. This is an important outcome for the community.

To finally complete any subdivision that will vest land as a reserve, it is a requirement of the Land Administration Act 1997 that land intended to be vested as a reserve be free of all encumbrances.

### Community / Stakeholder Consultation

Nil.

### Statutory Environment

Under section 9.49 of the *Local Government Act 1995*, the common seal of a local government is not to be affixed to any document except as authorised by the local government. Council Policy 1.1.4 – Execution of Documents and Use of the Common Seal requires extinguishing of easements to be executed by the common seal.

### Comment

In respect of the Shire's community purposes reserve, there is a small portion of easement on the Shire's community purpose site, which reflects the previously constructed temporary turnaround circle. It is necessary for this portion of the right of carriageway easement to be removed, to enable the creation of the Shire's community purpose reserve as a reserve.

The portion of right of carriageway easement is depicted following in RED:



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Area of easement

Importantly, the temporary turnaround area will remain on Shire vested land, for care, control and management which is a more effective protection. The circle itself can also be considered for integration as part of the master planning for the activity centre, and specifically the community purposes reserve. This is a good option to protect.



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To give effect to the intent of Council’s previous resolution, the extinguishing of the easement of right of carriageway must occur.

## Options and Implications

### Option 1

That Council:

1. AUTHORISE the Shire President and the Chief Executive Officer to sign and affix the common seal to the ‘Consent of Shire of Serpentine Jarrahdale to Application to Extinguish Right of Carriageway Easement from land comprised in Lot 103 on Deposited Plan 414923 (**attachment 1**) and;
2. AUTHORISE the Shire President and the Chief Executive Officer to sign and affix the common seal to the Form A5 application (**attachment 2**).

### Option 2

That Council DOES NOT AUTHORISE this.

Option 1 is recommended.

## Conclusion

Council’s resolution to authorise the execution of the documents is required in order to affect the previous decision of Council to agree to the public purposes reserve within the Byford Activity Centre. Creation of this reserve is an important outcome for the community.

## Attachments (available under separate cover)

- **11.1 - attachment 1** – Consent of Shire of Serpentine Jarrahdale to Application to Extinguish Right of Carriageway Easement from land comprised in Lot 103 on Deposited Plan 414923 (E21/4200)
- **11.1 - attachment 2** – Form A5 application (E21/4197)

## Alignment with our Strategic Community Plan

|                       |   |
|-----------------------|---|
| <b>Outcome 4.2</b>    | A strategically focused Council                         |
| <b>Strategy 4.2.3</b> | Provide clear strategic direction to the administration |

## Financial Implications

The costs associated with this action are within the budget for this project.



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### Risk Implications

Risk has been assessed on the Officer Options and Implications:

| Officer Option | Risk Description   | Controls   | Principal Consequence Category | Risk Assessment |             |             | Risk Mitigation Strategies (to further lower the risk rating if required) |
|----------------|--|------------|--------------------------------|-----------------|-------------|-------------|---|
|                |  |            |                                | Likelihood      | Consequence | Risk Rating |   |
| 1              | There are no significant risks associated with this option                             |            |                                |                 |             |             |   |
| 2              | <i>Officers would be unable to achieve the creation of the public purposes reserve</i> | <i>Nil</i> | Organisational Performance     | Rare            | Moderate    | MODERATE    | <b>Nil</b>  |

**Voting Requirements:** Simple Majority

### Officer Recommendation

**That Council:**

- AUTHORISE** the Shire President and the Chief Executive Officer to sign and affix the common seal to the 'Consent of Shire of Serpentine Jarrahdale to Application to Extinguish Right of Carriageway Easement from land comprised in Lot 103 on Deposited Plan 414923' (attachment 1); and
- AUTHORISE** the Shire President and the Chief Executive Officer to sign and affix the common seal to the Form A5 application (attachment 2).