



Shire of  
Serpentine  
Jarrahdale

# Special Council Meeting Minutes

Thursday, 6 July 2017

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Minutes of the Special Council Meeting of the Shire of Serpentine Jarrahdale held on Thursday, 6 July 2017 in the Council Chambers, Civic Centre, 6 Paterson Street, Mundijong. The Shire President declared the meeting open at 7.00pm and welcomed Councillors, Staff and members of the gallery and acknowledged that the meeting was being held on the traditional land of the Noongar People and paid his respects to their Elders past and present.

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## Minutes

### 1. Attendances and apologies (including leave of absence):

#### In Attendance:

**Councillors:** J Erren ..... Presiding Member  
D Atwell  
K Ellis  
D Gossage  
S Hawkins  
S Piipponen  
M Rich  
J See

**Officers:** Mr K Donohoe ..... Chief Executive Officer  
Mr D Elkins ..... Director Engineering  
Mr A Schonfeldt ..... Director Planning  
Mr P Kocian ..... Acting Director Corporate and Community  
Ms K Cornish ..... Governance Advisor  
Ms A Liersch ..... Minutes and Governance Officer (Minute Taker)

**Leave of Absence:** Nil

**Apologies:** Nil

#### Observers:

Shire Officers - Nil

Members of the Public - 6

Members of the Press - Nil

### 2. Public question time:

#### 2.1 Response to previous public questions taken on notice

Nil

#### 2.2 Public questions

Nil



### 3. Public statement time:

Nil

### 4. Petitions and deputations:

Nil

### 5. Declaration of Councillors and Officers interest:

Nil

### 6. Receipt of minutes or reports and consideration of adoption of recommendations from Committee meetings held since the previous Council meetings:

#### 6.1 Reports for consideration:

<b>SCM005/07/17 - Byford Traditional Infrastructure Development Contribution Report No.4 (SJ1842)</b>	
Author:	Rob Casella – Senior Strategic Planning
Senior Officer/s:	Deon van der Linde – Executive Manager Strategic Planning Andre Schonfeldt – Director of Planning
Date of Report:	13 June 2017
Disclosure of Officers Interest:	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> .

#### Introduction

The purpose of this report is for Council to consider the submissions received and to adopt the Byford Traditional Infrastructure Contribution Plan (DCP) Report No.4.

The Shire of Serpentine Jarrahdale Town Planning Scheme No.2 (TPS2) Appendix 16A – Byford Development Contribution Area – Scheme Development Contribution requires that “*A Cost Review is to be undertaken at least annually at which time the Contribution Rate will be established...*”. The Byford Traditional Infrastructure Contribution Plan requires that “*The DCP Report, incorporating cost estimates and cost escalators, will be reviewed at least annually, allowing for more frequent reviews to be completed on an as-required basis having regard to cost volatility and development priorities.*”

This item presents the annual review that complies with these requirements to Council. Officers do not have delegated authority to determine whether the report is deemed satisfactory for implementation, therefore the item is presented to Council for determination.

Officers recommend that the Byford Traditional Infrastructure Contribution Plan Report No.4 be adopted as the operative development contribution plan until the adoption of Byford Development Contribution Plan No.5.



## Background

Council adopted the Byford District Structure Plan (BSP) in August 2005. This BSP provided the framework within which the urban development of Byford could be progressed.

Initiation of an amendment to include the Byford Development Contribution Plan (DCP) within the Town Planning Scheme No. 2 (TPS 2) occurred in 2005. This initiation allowed the Western Australian Planning Commission (WAPC) to place on subdivision approvals the obligation to pay a DCP contribution. This obligation was secured through an Interim Development Deed that required developers to provide security in the form of cash, bank guarantee or security over land.

The Development Contribution Plan (DCP), required to facilitate development within the BSP area, was gazetted on 20 January 2014. The gazettal of Amendment 168 that inserted the Byford DCP into TPS 2 as Appendix 16A caused the DCP to become operable. It also established the area known as DCA1 over which the DCP would operate.

Following the gazettal of the DCP, the Council was required to adopt a DCP Report (and cost apportionment schedule) within 90 days (State Planning Policy 3.6 s.6.3.10). In anticipation of the gazettal of the DCP, Council adopted the DCP Report No. 1 on 9 December 2013 (OCM09/12/13) after advertising.

The DCP Report and the associated cost apportionment schedule includes the calculation base of the cost contribution for each owner in accordance with the methodology shown in the DCP. The DCP Report is a dynamic document to maintain the currency of the cost apportionment and contribution liability. The DCP Report does not form part of the TPS2, but once adopted by Council, is required to be reviewed at least annually as stated in the introduction. The previous reviews took place as indicated below:

- DCP Report No.1 enabled the contribution liability for each development to be calculated as at 21 January 2014.
- DCP Report No.2 enabled the contribution liability for each development to be calculated as at 30 June 2014.
- DCP Report No.3 enabled the contribution liability for each development to be calculated as at 30 June 2015. DCP Report No.3 was endorsed by Council for final adoption and has been in operation since June 2016.

The Byford Traditional Infrastructure Development Contribution Plan Report No.4 was adopted for the purpose of public advertising in May 2017. The results of the advertising are discussed further in the report.

## Relevant Previous Decisions of Council

SCM003/05/17 – Council endorsed the Byford Traditional Infrastructure Development Contribution Plan Report No.4 for the purpose of public advertising and requires the Byford Development Contribution Plan Report No.5 to be a full five-year review.

## Community / Stakeholder Consultation

The Byford DCP Report No.4 was advertised for a period of 30 days, commencing on 19 May 2017, and closing on 19 June 2017. The submissions received are discussed below *with the submitters text put in italics*. It is noted that no submission sought to materially change the intent of the draft report.



1. *Amend wording of section 2.8 Cost Review Reconciliation to read as follows: Total of 733 lots as at 28 February 2017 up from 687 lots at 30 June 2015.*

Officer comment

Currently the wording reads “clearance of 733 lots from 1 July 2015 to 28 February 2017”. Shire Officers have reviewed the wording contained under section 2.8 Cost Review Reconciliation, and amended it accordingly.

2. *Clarification requested on the inclusion of how government grants are to be applied.*

Officer comment

Shire Officers advised the submitter of the provision contained within the report that reads: “Grants or other external funding shall be deducted from any recoup or credit to the account of the developer.” As there are only two projects to which the grants are currently applied being Thomas Road and Abernethy Road, and these have already been considered, Officers do not recommend any further changes regarding this.

3. a) *Priority and timing of provisions of infrastructure and land acquisition. Currently all funds have been allocated towards the construction of Abernethy Road. Redgum Brook Estate is in its final stage, comprising the creation of a balance portion of POS and Road widening for Thomas Road. A significant credit will be owed to Thomas Road Developments Ltd, following the ceding of the Thomas Road widening and development of the POS site. At the completion of the final stage of the Redgum Brook Estate, the Company will be wound up and it would be unreasonable and administratively costly for the company to delay that action for an extended period due to the Shire’s inability to pay for the land acquisition. Thomas Road Developments Ltd needs certainty that the DCP monies will be available for payment at the DP clearance stage. To obtain assurance, the item should be added to the priority list.*

Officer Comment

Section 4 – Priority and Timing of Provisions of the Byford DCP Report No.4 identifies the principles utilized to guide the identification of priorities for the provision of infrastructure and land acquisition. The principles are as follows:

- i) *Ensuring a constant turnover of funds – by managing the cash flow of the DCP, the Shire can optimise the use of funds between land acquisition and civil works and recoupment of developer pre-funding.*
- ii) *Prioritising the purchase of land identified for public purposes that encompasses all of, or a substantial portion of, one landholding – such landholdings are essentially “quarantined” from subdivision and/or development and would be difficult to sell to a private buyer.*
- iii) *Constructing infrastructure on an “as needs” basis to facilitate development – This is especially apparent in the context of road upgrades.*
- iv) *Undertaking works and land acquisition in areas of fragmented ownership – this assists in the successful and coordinated development of these areas. In areas of consolidated ownership, most infrastructure and land is provided by the developer as offsets to cost contributions.*



Currently within DCP Report No.4, Abernethy Road and Thomas Road design have been prioritized in this order. At the date of the *reconciliation* of the Byford DCP Report No.4, being 28 February 2017, the contract for Abernethy road had not yet been awarded and as such this project is not reconciled in this report.

Should enough funds be available within the DCP after Abernethy Road then as Thomas Road is the second priority and in accordance with the Principles above it would be foreseeable that the credit owed to Thomas Road Developments Ltd. for the land for Thomas road and the POS would form part of the next priority.

*b) San Simeon Boulevard is an important district distributor road, linking into the new Byford Town Centre. Consideration should be given to prioritizing funding for the construction of this road, if not in DCP No.4, in DCP No.5.*

Officer Comment

This submission is noted and in principle officers agree that San Simeon Boulevard is an important road and that it should be considered as a high priority in DCP No. 5.

*c) The Shire has allocated \$60,000 for a review of the Byford District Water Management Plan as a DCP administration cost item. This amount should be increased by approximately \$20,000 to include costs already incurred in relation to this matter. In June 2016, GHD prepared a report on the Oaklands and Thomas Road drain for review by DoW. The report concluded the proposed flows at the Thomas Road and Malarkey Road culverts were reduced to less than 1/3<sup>rd</sup> of the flows of the existing District Water Management Plan (DWMP). DoW confirmed its acceptance of the report for the Redgum Brook Local Water Management Strategy (LWMS). GHD have prepared a revised report to suit a wider audience. The reduced flows will have a significant cost benefit for the drainage infrastructure within the Byford Structure Plan area, particularly the size of culvert structures under Thomas Road, San Simeon Boulevard / Malarkey Rod, as well as down-stream at Kardan Boulevard. We request that the additional amount of GHD's costs of \$16,390 incl. GST, be added to the administrative costs of the DCP.*

Officer comment

The costs incurred in relation to District Water Management Plan (DWMP) review, outlined in the submission was costs incurred by the developer to review the flood modelling in support of the LWMS for the Redgum Brook Estate. This was not work commissioned by the Shire as part of a review for the whole Byford District Structure Plan area. As such Officers do not support the request for a refund to a developer for consultancy work not undertaken on behalf of the Shire.

4. *a) It is understood from DCP Report No.4 that there has been a significant reduction in the Main Roads WA (MRWA) grant available for Thomas Road since DCP Report No.3, equating to a reduction from \$13,604,000 to \$8,222,348. DCP Report No.4 proposes to pass on this shortfall in funding to the DCP, therefore bringing the validity and equity of this infrastructure item into question.*

*It is not the role or purpose of DCPs to include infrastructure items such as 'Other Regional Roads' and note that the inclusion of 'Regional' infrastructure items such as Thomas Road*





*is also brought into question in light of the recently released draft State Planning Policy 3.6 Development Contributions for Infrastructure (SPP 3.6) and accompanying draft Guidelines.*

Officer comment

Noted the amendments to the Road construction costs were made based on the costings received from the quantity-surveying consultants. The grant was adjusted on a percentage basis which is typical of road grants associated with such upgrades. It is however noted that this has resulted in the net contribution of the DCP increasing from around \$2.6 million to \$5 million. Whilst savings elsewhere in the DCP has significantly reduced the overall costs of the DCP, Thomas Road is a road where the contribution for developers have increased.

It should be noted that the Shire is in negotiations with MRWA to hand over Thomas Road to them. If this does occur Thomas Road will be removed from the DCP and this will be reconciled at that stage. It should however further be noted that currently Thomas Road is constructed to a 'local road' standard and that the contributions collected towards Thomas Road is required mainly for the intersection treatment upgrades for four major intersections. Even if Main Roads takes over the ownership of the road, such contributions are likely to still be required. Therefore it is considered necessary for Thomas Road to remain as an infrastructure item within the Byford DCP, however it is acknowledged that the contributions amounts should be reviewed in more detail as part of DCP 5 in light of the likely intersection treatments required.

*b) DCP Report No.4 states that the total cost for the remaining section of Abernethy Road has decreased from \$18,830,750 to \$18,827,708 and the DCP proportionate share has decreased from \$13,416,910 to \$13,414,742. Abernethy Road value of completed works has increased from \$2,333,005 to \$2,913,532.*

*Despite the reduction in total costs and DCP proportionate share (whilst noting the value of completed works has increased), the overall total cost has also increased from \$21,163,755 to \$21,741,240. The proportionate reduction is inconsistent with the cost reduction for other roads. Given the Abernethy Road tender has been awarded since the finalisation of DCP Report No. 3, the DCP costs should now reflect the awarded Abernethy Road works and associated Preliminaries. This should be confirmed by the Shire and the DCP rate modified accordingly, if required.*

Officer Comment

Noted, the total cost for Abernethy road was included based on modified estimates from the consultants. As DCP Report 4 only takes into account all transactions up to 28 February 2017, Abernethy Road actual contracted costs will only be updated in the DCP Report No. 5. However, officers have amended the table to reflect the total cost which was included in DCP 3 being \$21,163,755. The table and per lot contributions will be updated accordingly.

*c) DCP Reports No. 3 and No. 4 notes the following changes to land acquisition areas from the areas documented in DCP Report No. 2: /3*

- *Thomas Road: total land area to be acquired has increased from 12,350m<sup>2</sup> in DCP Report No. 2 to 20,451m<sup>2</sup> in DCP Reports No. 3 and No. 4.*
- *Abernethy Road: total land area to be acquired has increased from 26,499m<sup>2</sup> in DCP Report No. 2 to 31,124m<sup>2</sup> in DCP Reports No. 3 and No. 4.*





- *Kardan Boulevard: the total area to be acquired has increased from 4,569m<sup>2</sup> in DCP Report No. 2 to 11,098m<sup>2</sup> in DCP Reports No. 3 and No. 4.*
- *San Simeon: the total area to be acquired has decreased from 21,920m<sup>2</sup> in DCP Report No. 2 to 18,352m<sup>2</sup> in DCP Reports No. 3 and No. 4.*
- *Doley Road: the total area to be acquired has decreased from 20,014m<sup>2</sup> in DCP Report No. 2 to 17,491m<sup>2</sup> in DCP Reports No. 3 and No. 4.*

*It is not made clear within the DCP how land to be acquired has either increased or decreased and the methodology / calculation to support these changes. It is requested that the Shire confirm why these land acquisition areas have changed and modify the DCP rates accordingly, if required.*

Officer Comment

The updated m<sup>2</sup> reflects the land for each road as included in the final deposited plans and detailed design drawings. . Due to the relatively significant increased areas it is recommended that this be considered in more detail as part of the DCP 5 review.

*d) Kardan Boulevard: majority of works have been completed. Shire to clarify what works remain outstanding and confirm reduction in costs as a result. Shire is to confirm that any reduction in costs (including remaining costs) for roads is as a result of application of reduced rates. The DCP rate should be modified accordingly, if required.*

Officer Comment

As stated in the DCP Report No.4 on page 11, the construction of Kardan Boulevard is complete except for the upgrade of a significant culvert. This is reflected in the future costs column of table 2.6 of the DCP Report No.4.

*e) Anomalies*

- *Table 2.6 (Kardan Boulevard): the table states that the value of completed works is \$5,315,444 as opposed to \$4,958,683 stated in the text. Report to be updated to reflect costs stated in Table 2.6.*
- *Table 2.9 (Doley Road): the table states that the value of completed works is \$3,003,952 as opposed to \$2,873,283 stated in the text. Report to be updated to reflect costs stated in Table 2.9.*
- *Table 2.9 (Warrington Road): the table states that the value of completed works is \$761,367 as opposed to \$716,367 stated in the text. Report to be updated to reflect costs stated in Table 2.9.*
- *Table 3.4 (Contribution Rate per Lot By Cost Item): total remaining cost of \$85,267,543 stated in the text not included in table. Table 3.4 to be updated to reflect costs stated in text.*

Officer comment

The anomalies are noted, it appears that whilst the table was updated the text within the document was not updated in the advertised version. Officers have now updated the text to reflect changes in rates contained within the table.



5. *a) The reduced POS Land figure (Precinct D, The Brook at Byford, reduced from 5.5545ha to 5.1067ha) is noted and it is acknowledged that this represents revisions to the Stage 2 POS design. However, we take issue with the total POS figure used and note that this excludes the POS/conservation area within Stage 2 of The Brook at Byford. The rationale for the inclusion of this POS area has been outlined during the consultation process prior to the preparation of this report and it is acknowledged that the Shire has provided correspondence outlining their position. Nonetheless, it is felt that this position creates an inequitable outcome that under represents the quantum of useable POS provided by within The Brook at Byford Estate.*

Officer comment

Section 2.4.2 of the DCP Report states that land identified as having ‘conservation value’ is excluded in the DCP, citing ‘Bush Forever sites’ by way of a non-exhaustive example. The land identified in the submission is considered to fall within this exclusion and is therefore not included in the total POS figure. It should be noted that conservation areas are deducted from net developable land and therefore does not attract a contribution, nor is it contributed towards. Therefore, Officers recommend that this exclusion should continue in DCP to ensure all land owners which have developed land with conservation land on it are dealt with in a fair and equitable manner.

**Comment**

The DCP Report No.4 is necessary to bring to account the development of 4,601 lots created since the Byford DCP becoming operable upon the gazettal on 21 February 2014. DCP Report No. 3 was approved on 9 June 2016, and provided development information up to 30 June 2015. It is therefore necessary to complete DCP Report No.4 to bring development information up to 28 February 2017.

At each DCP Report review, all factors contributing to the calculation of the per lot contribution amount must be reviewed. The significant factors reviewed in this report are:

1. Remaining estimated lot yield;
2. Land yet to be acquired;
3. Works outstanding;
4. Main Roads WA grants;
5. Water Monitoring;
6. Future administration costs; and
7. Net surplus/deficit of the DCP account.

As part of the review process, the Shire appointed Aurecon, a WALGA preferred supplier, to manage the preparation of land valuations for residential and non-residential land value rates. They also approached a quantity surveyor to review the cost estimates for remaining infrastructure items within the DCP. The outcomes of the investigations are contained within the attachment. All the tables have been updated to reflect the current circumstances as on 28 February 2017.

The advertising process was discussed under point 4 of this report. The submissions received do not materially impact on the outcomes of the review as discussed there and as detailed in the **Schedule of Submissions attachment SCM005.1/07/17.**



### Conclusion

The Byford Traditional Infrastructure Contribution Plan Report No.4 has been updated to account for changes during the preceding financial period as required by TPS2 and the Byford DCP. The DPC Report No.4 has now been publicly advertised. The outcomes of this advertising received through the submissions were considered and updates made to the report as outlined above. Officers recommend that Council adopt the Byford DCP Report No.4.

### **Attachments**

- [SCM005.1/07/17](#) – Schedule of Submissions (E17/4524)
- [SCM005.2/07/17](#) - Byford Traditional Infrastructure DCP Report No.4 (E17/2762)

### **Alignment with our Strategic Community Plan**

Objective 1.1	Strong Leadership
Key Action 1.1.2	Facilitate cooperation between the Shire and its stakeholders while also considering community values.

### **Statutory Environment**

- *Planning and Development Act 2005*
- Shire of Serpentine Jarrahdale Town Planning Scheme No.2
- State Planning Policy 3.6 – Development Contributions for Infrastructure

### **Financial Implications**

The operation of the DCP presents a major administrative responsibility for the Shire. While the DCP is self-funded, the Shire has an implicit obligation to efficiently and effectively manage the revenues and works. The remaining lots to be developed are reliant on the DCP to provide the necessary hard infrastructure. In particular, the timely provision of roads, drainage and open space development is critical as most developers rely on these district level improvements.

**Voting Requirements**          Simple Majority

### **SCM005/07/17          COUNCIL DECISION / Officer Recommendation**

**Moved Cr Hawkins, seconded Cr Piipponen**

**That Council:**

- 1. Notes the Schedule of Submissions and endorses the Officer comments contained in attachment *SCM005.1/07/17*.**
- 2. Adopts the Byford Traditional Infrastructure Development Contribution Plan Report No.4 contained in *SCM005.2/07/17*.**

**CARRIED UNANIMOUSLY 8/0**



<b>SCM006/07/17 - Shire of Serpentine Jarrahdale Formal Comment on Third Party Appeal Rights (SJ198)</b>	
Author:	Deon van der Linde – Executive Manager Strategic Planning
Senior Officer/s:	Andre Schonfeldt – Director Planning
Date of Report:	June 2017
Disclosure of Officers Interest:	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>

### Introduction

The aim of the report is for Council to consider the Western Australian Local Government Association's (WALGA) discussion paper on Third party appeal rights and to form a policy position. Officers recommend that Council supports limited Third party appeal rights within a specific and defined framework as detailed in this report.

### Background

In December 2016 the WALGA State Council resolved to undertake research on Third party appeals around Australia and to further consult with members regarding the current policy position. A discussion paper which provides background on the development of WALGA's current policy position and a review of the arguments both for and against Third party appeals, was presented for noting at the WALGA May 2017 State Council meeting. It is included in this item as Attachment **SCM006.1/07/17** – WALGA Discussion Paper on Third Party Appeal Rights (the Discussion Paper).

The main points raised in the Discussion Paper are summarised below:

The State's position on Third Party Appeal Rights is that the Government does not currently have any plans to introduce Third party appeal rights in Western Australia. It does not believe that the introduction of Third party appeal rights in Western Australia is consistent with current attempts to simplify and streamline the planning approvals process. The *Planning and Development Act 2005* requires public consultation in relation to the planning framework established in local and regional areas, with public consultation mandated for local and region planning scheme amendments, as well as State Planning Policies, local planning policies and structure plans. As such, the Government believes that the current planning process provides sufficient opportunity for the local community to have a say in what happens in their neighbourhoods.

The discussion paper does indicate that the Third party appeals process has distinct advantages that include:

- Legitimate interest – Neighbouring landowners, occupiers and members of the community often have a legitimate interest in whether development occurs.
- Improved participation and decision-making –Third party appeals would have the potential to increase avenues for public engagement with planning, and may deliver better planning decisions as an empowered public.
- Improved consultation – Third party appeal rights may encourage developers to deal with the local community in a more engaging manner and places pressure to concede or improve design elements where appropriate and reasonable to do so.
- Improved transparency – Applicant appeals are a means by which decision-making can be checked and provide property owners a recourse to an independent review body as a safeguard against inconsistent decisions.



The discussion paper also highlights a number of concerns regarding Third party appeal rights:

- a. Legitimate interest and Third party appeals – Third Party Appeal Rights, if not clearly defined, may allow individuals to take part in planning decisions in which they have no direct interest.
- b. Loss of representation – The Third party appeals process shifts decision making for development applications away from Local Government and therefore away from the locally elected representation.
- c. Current planning processes provide opportunities to participate – Proactive public engagement, participation and collaboration in policy formation and strategic planning is preferable as these processes focus on higher order engagement, which leads to better policy and greater certainty in the process and outcome.
- d. Not representative of the broader community – Fears that the majority of people lodging Third party appeals come from a well-organised, well-connected and well-resourced segment of the community, which raises the question of how representative these objections are of the wider community's views.
- e. Impact on the decision making process – Third Party Appeal Rights will lead to increased cost and delays, and the possibility of Third party appeals being lodged because of vexatious or commercial interests, not because of genuine planning matters.
- f. Failure to determine/Deemed Refusal – Applications which receive the highest number of objections are also the applications which are most likely to be appealed, and are also most likely to be the applications which Council fails to determine.
- g. Turning planning into a 'numbers game' – Third party appeals may lead members of the community to believe that the number of objections in and of itself is a way of engaging in the planning process and prevent developments they do not support.

#### **Relevant Previous Decisions of Council**

There is no recent Council decision relating to this application/issue.

#### **Community / Stakeholder Consultation**

WALGA has requested the Local Government planning community and Elected Members to provide feedback in regards to the discussion paper. The comments sought are based around:

- Would the Shire of Serpentine Jarrahdale be in favour of the introduction of some form of Third Party Appeal Rights in Western Australia? Why or Why not?
- Is the Shire of Serpentine Jarrahdale likely to support some form of Third Party Appeal Rights?
- Any other comments relating to Third Party Appeal Rights.

The matter has raised a lot of interest and therefore at the request of its members WALGA has extended the deadline for comments and feedback from the original date of 31 May to 14 July 2017.

#### **Comment**

The result of decisions on contentious planning applications is that one or more affected parties will disagree with the decision and want it overturned. The State Administrative Tribunal has the mandate to adjudicate an alternative outcome between a decision maker and an applicant. This process has been proven to be successful and provides an outcome that reconsiders the facts and provides a review of the decision made by the decision-maker. The SAT process is able to consider both the process and merits of an application allowing a full review of the decision requested by the applicant.



This process is not available to a third party, or a stakeholder that is not the applicant. A third party may through the judicial system appeal whether or not the planning application process was duly followed, but cannot get an independent review of the merits of an application. A Third party appeal process would allow for a secondary review by an independent body on the merits of an application.

The matters associated with Third party appeals were workshopped with elected members on 29 May 2017 at a Policy Concept Forum. During the workshop, Councillors identified issues and aspects of the Discussion Paper on which Council would like to provide comment. Councillors also expressed concern that local government decisions on local matters (that affect local communities) are often overturned by State agencies such as the Western Australian Planning Commission (WAPC) and Joint Development Assessment Panels (JDAP), and that in these instances the Shire has no ability to appeal such matters.

Such instances, causes elected members and the community to believe that current planning processes take local decision making away from the local community, in favour of State planning rationale that may not reflect the local ambitions or realities. In some instances this could also lead to local governments having to deal with reduced levels of amenity, or to pick up the costs of infrastructure where conditions on development is removed by the JDAP or WAPC.

The workshop also considered the following potential impacts on local government decisions if Third party appeal rights were implemented:

- a. Slowing down the process - Third party appeals will certainly add to the timeframe for approvals. Therefore, any Third party appeals process should set and adhere to strict timeframes to ensure the process is not held up any longer than required. Officers therefore recommend that this timeframe does not exceed the statutory timeframe for dealing with such an application in the first instance. Therefore if the development application was advertised and requires to be dealt with, within 90 days, then the total third party appeal process should not extend longer than an additional 90 days. This would mean that if the timeframes are adhered to, the total application timeframe would not exceed 180 days.
- b. Additional costs and workloads - Any Third party appeals process will add additional costs to the development process. This cost will affect decision makers and potentially also the applicants and the appellants. In defending decisions made by local governments, officers will need to prepare and consider additional information and in some cases consultants may be required to assist with the appeal. Council also expressed concern that workloads of officers would be increased, which adds additional costs to ratepayers. The counter to these arguments is that Council and delegated reports should generally include all the relevant planning rationale, arguments and the basis for the relevant recommendations or decisions. Therefore the decision making instrument should contain enough information to enable the Tribunal to adjudicate the Third party appeal without requiring too much additional information. This would also have the knock on effect where applications lodged would need to include all the relevant information in order for officers to be able to properly assess the application, and to ensure that the decision being made is fully informed on the potential impacts and planning matters associated with it.

That being said, it is acknowledged that whilst the Planning and Development (Local Planning Scheme) Regulations 2015, requires very clear levels of information to accompany the application, the standard of information received by local governments in many cases leaves a lot to be desired. Whilst Third party appeals process shouldn't be the reason to solve this issue, it will certainly make it more clear to applicants that low standards of information could not be considered as appropriate. Shed applications submitted to local governments by "Moms and Dads" for assessment are generally very sketchy, but can be dealt with where there is experienced planning staff that understand the merits of the relevant planning application. If there is a possibility of a Third party appeals, the level of detail and sophistication of the





information in an applications will have to be increased to allow all parties to understand the merits based on the documentation alone. This may require additional time and effort to be spent up-front by applicants but will significantly improve all the stakeholders understanding of the aspects under consideration.

- c. Vindictive appeals – Councillors were also concerned about the potential for vindictive Third party appeals outlining that such appeals will not succeed in bringing a better planning or development outcome. This is also discussed under ‘Concerns regarding Third Party Appeals’ in the Discussion Paper. This concern would be particularly prevalent in local governments where there is a strong community division regarding development. If Third party appeal rights are considered, it must therefore have specific safeguards against vindictive appeals. One potential such safeguard is to allow the Tribunal to award costs against any party involved in the appeal process. Whilst the application fee for an appeal could therefore be low, should the Tribunal find that there was no clear concern regarding the application of merits in the decision, but that the appeals process was simply used to cause a delay, then the Tribunal should be empowered to award costs against the appellant. On the flip side should the Tribunal find that the decision maker did not correctly apply its mind in making the decision in relation to the planning merits; or that the applicant’s supporting information does not adequately address relevant planning concerns and as a result brings the merits of the application into question, then costs could be awarded against the applicant and/or the decision maker. In all instances it is recommended however that these costs be capped and that this be reflective of the timeframes proposed above.
- d. Open the floodgates for review - There was also a concern that a Third party appeals process would “open floodgates for review”. Council decisions would not have the binding power they currently have and every person that has any issue with a specific decision could potentially request a review. This could potentially see the Tribunal being the decision maker, which could again remove local decision making from elected members and the local community. Therefore, any Third party appeals process should ensure that the process focus on the merits in the pursuit of natural justice and not aim to overturn a decision by a decision maker based in its policy, or the application of those policies. The Tribunal generally takes the view that there is a presumption that policies should be applied, and that anyone seeking a variation should provide relevant and strong enough merits for this to occur. If this view continues this would mean that Council policies and its strategic planning framework will become more important into the future.
- e. Appeals against Delegated decisions – The inability for community members to appeal decisions made by officers under delegation has the potential of creating mistrust between officers and elected members. This may result in revoking delegations that in turn may significantly increase workloads of officers and Council by requiring minor development applications which would normally be dealt with administratively to be presented to Council. Third party appeals would allow relevant people to appeal such delegated decisions to the Tribunal. It is important to note that the same framework should apply, and therefore any increased timeframes or costs could potentially be worn by the appellant should it be found that there is no merits in the appeal.

The above discussions seems to indicate that Third party appeal rights may have a role to play to ensure natural justice, equity and to instil more trust in the planning process. It is however acknowledged that Third party appeals will impact on timeframes and costs of developments and may complicate the planning process if not properly managed. Therefore the improved governance should be weighed up against the increased cost for development. Ultimately the question would be whether or not Third Party Appeals will result in better planning and urban form outcomes.





In considering the balance of improved governance against current practices and costs the paragraphs that follow discuss the relationship between consultation and appeal, where Third party appeals should and should not be considered and a possible option for such an appeals process.

#### Consultation vs appeal

The Planning process requires a level of public consultation for every formal application that is considered. The Planning and Development Act 2005 requires public consultation in relation to the planning framework established in local and regional areas, with public consultation mandated for local and region planning scheme amendments, as well as State Planning Policies, local planning policies and structure plans. The current planning process therefore provides opportunity for the local community to have a say in the policies that apply within their neighbourhoods. The timeframes and manner of consultation varies depending on the nature of the application and the matters that need to be considered. The Shire is currently guided on this through the *Planning and Development Act 2005* and Local Planning Policy No.27.

If for instance a landowner is of the opinion that a proposed land use on a neighbouring property may affect his/her property, the consultation process allows him/her to put in a submission or objection to the application for consideration by the decision-maker. If the decision-maker approves the application after taking due consideration of the submission (perhaps by imposing a condition) then the submitter has no further recourse and has to abide by the decision. The only way that the objection can be progressed is through the judicial system and only if due process has not been followed. The merits cannot be disputed by someone other than the applicant, therefore the object may feel aggrieved that, in their opinion, the decision maker did not give adequate value to the merits of their concerns but in the current system will have to accept the decisions made by the current decision makers. If Third party appeals are allowed, then the objector would be able to appeal to the Tribunal to reconsider the decision and the relevant merits associated with this.

In some instances local governments are also requested to comment on planning applications determined by the JDAP or WAPC. This is particularly relevant with regards to major development applications, Structure Plans and Subdivisions. Whilst the relevant local government is neither the applicant nor the decision maker it does have the ability to make comment and suggest modifications or conditions based on local policies or conditions. However if the WAPC or JDAP does not support the local government, the local government has no option but to accept the decision made. This has in some instances seen local government policies being awarded less weight and as a result caused significant community concern and mistrust in the planning system. By allowing third party appeal rights to these applications as well, local governments could also consider appealing decisions made by the JDAP or WAPC.

#### When should Third party appeals be or not be allowed?

Planning at a strategic level by its very nature, provides strategic direction and outcomes that impact on a wide range of stakeholders and issues. Within the Planning framework strategic documents include the development of a shire wide scheme, a local planning strategy and local planning policies. From a state perspective this includes state and regional planning strategies, state planning policies and regional and development or improvement schemes. These strategic documents include consultation requirements that allow a range of inputs from various stakeholders and interest groups that are brought together to provide an overarching strategic direction or policy on a particular matter. Such plans or policies are usually progressive of nature and provide for the “greater good” of the inhabitants of a the state, the region such or a local government.

In the Shire of Serpentine Jarrahdale these strategic documents include the SJ2050 vision document, the Rural Strategy, the future Local Planning Strategy and Local Planning Scheme No. 3. It is not recommended that these documents should be subjected to Third party appeal rights, as allowing



Third party appeals against these strategic documents may jeopardise the overall “greater good” intent of such documents to pander to the interests of certain individuals.

However Third party appeals could be considered where there are statutory applications that have a local focus and impact on surrounding land owners or users.

- a. Scheme amendments – these applications generally have an impact on local residents with regard to current way of life as it involves new land uses being brought in close proximity to them.
- b. Structure plans – these applications can be submitted by third parties over land parcels not owned by them. In many instances infrastructure contributions are required and there is a interrelationship between the land uses both present and future.
- c. Subdivision conditions - conditions imposed or not on subdivision applications may have significant impacts on adjacent landowners. Where remedial action is required to address externalities to prevent light spillage or traffic aspects this may result in significant impost and cost to adjacent landowners.
- d. Joint Development Assessment Panels - including a situation where the Council adopted Responsible Authority Report is overturned – these are generally large development applications that affect local residents through amenity and other specific local impacts.
- e. Decisions of Development Applications approved by Council and Shire Officers - these applications have a specific local impact and may affect the neighbouring properties significantly through aspects such as dust, odour or traffic impacts.

#### Recommended Third party appeal rights process

Having regard for the discussions and comments above, Officers propose that a limited Third party appeals process be introduced by an amendment of the State Administrative Tribunal Act 2004. The amendment should provide for the following process and considerations in Third party appeals:

The Third party appeal process timeframes:

- a. The Third party appeal should be lodged within 21 days of the decision on a prescribed form with specific information requirements.
- b. A further 21 days should be given for the decision-maker, relevant agencies and applicants to respond to the request for review also in a prescribed manner.
- c. The Third party appeal should then be considered independently by the State Administrative Tribunal and a decision made within a further 21 days.
- d. The total timeframe for considering a Third party appeal by the Tribunal should not exceed the statutory timeframe allocated to the decision maker in the first instance in making the decision that is the subject of the appeal.

The following should be required for any Third party appeal:

- a. It should be able to review decisions on scheme amendments, structure plans, subdivisions, or development applications approved by any decision maker other than the Tribunal itself.
- b. The appellant has to be either an objector or submitter to the original decision making process.
- c. It should be paper-based in the first instance and should focus on the facts as presented in documentation provided in the Third party appeal application.



- d. It should exclude appeals that are based on vexatious or commercial interests, appeals made on non-genuine planning matters, appeals where an application meets 'deem-to-comply' requirements, and /or appeals where no discretion has been exercised.
- e. Provision should be made to enable costs to be awarded to any party involved in the appeal based on the relevant merits and the application of these by the relevant parties.

#### Options and Implications

- Option 1: Council can agree to the Officers recommendation that limited Third party appeal rights should be incorporated in the State Administrative Tribunal Act 2004. This will result in a change to the statutory framework, may increase costs and extend timeframes, however it will allow a more collaborative decision making process and contribute to better orderly and proper planning and ultimately to better development outcomes.
- Option 2: Council can reject the Officers recommendation and advise WALGA to retain its current position that Third party appeal rights are not supported by local governments.

#### Conclusion

The above discussions indicate that Third party appeal rights seem to have a role to play to ensure equity and community trust in the planning process. There are however concerns regarding Third party appeals that will impact on timeframes and costs of development. A limited Third party appeals process within a specific framework may provide a higher level of trust in Council and other planning decision-makers. Officers propose that the limited Third party appeals process be supported as recommendation to WALGA's Discussion Paper.

#### **Attachments**

- [SCM006.1/07/17](#) – WALGA Discussion Paper on Third Party Appeal Rights (IN17/12978)

#### **Alignment with our Strategic Community Plan**

Objective 1.1	Strong Leadership
Key Action 1.1.2	Facilitate cooperation between the Shire and its stakeholders while also considering community values.
Objective 1.4	Listening and Learning
Key Action 1.4.2	Use appropriate tools and methods to maximise opportunities for the community to access and participate in decisions made by Council.
Objective 6.1	Engaged Community
Key Action 6.1.2	Integrate a range of cultural values into our planning and management processes.

#### **Statutory Environment**

*Planning and Development Act 2005* - Unlike most of the other jurisdictions in Australia, Western Australia is unique in that no Third party appeal rights exist under the Planning and Development Act 2005.



*State Administrative Tribunal Act 2004* – The Act establishes a tribunal with jurisdiction under this and other Acts to review certain administrative decisions and deal with certain other matters, and for related purposes.

### **Financial Implications**

There are no direct short-term financial costs to Council. If Third party appeal rights are approved there may be a cost associated with defending decisions and also indirect development costs for time delays.

#### **COUNCIL DECISION**

Moved Cr Ellis, seconded Cr Piipponen

That all Standing Orders be suspended at 7.03pm in order to further discuss item SCM006/07/17.

**CARRIED UNANIMOUSLY 8/0**

#### **COUNCIL DECISION**

Moved Cr Piipponen, seconded Cr Ellis

That Standing Orders be reinstated at 7.42pm.

**CARRIED UNANIMOUSLY 8/0**

**Voting Requirements**      Simple Majority

#### **SCM006/07/17      COUNCIL DECISION / Officer Recommendation:**

Moved Cr Rich, seconded Cr Ellis

That Council:

1. Supports limited Third party appeal rights to be considered in the Western Australian planning framework for Scheme amendments, Structure plans, Subdivisions and Development Applications possibly through an amendment to the State Administrative Tribunal Act 2004. The amendment should provide for the following process and considerations in Third party appeals:

The Third party appeal process timeframes:

- a. The Third party appeal should be lodged within 21 days of the decision on a prescribed form with specific information requirements.
- b. A further 21 days should be given for the decision-maker, relevant agencies and applicants to respond to the request for review also in a prescribed manner.
- c. The Third party appeal should then be considered independently by the State Administrative Tribunal and a decision made within a further 21 days.
- d. The total timeframe for considering a Third party appeal by the Tribunal should not exceed the statutory timeframe allocated to the decision maker in the first instance in making the decision that is the subject of the appeal.



The following should be required for any Third party appeal:

- a. It should be able to review decisions on scheme amendments, structure plans, subdivisions, or development applications approved by any decision maker other than the Tribunal itself.
- b. The appellant has to be either an objector or submitter to the original decision making process.
- c. It should be paper-based in the first instance and should focus on the facts as presented in documentation provided in the Third party appeal application.
- d. It should exclude appeals that are based on vexatious or commercial interests, appeals made on non-genuine planning matters, appeals where an application meets 'deem-to-comply' requirements, and /or appeals where no discretion has been exercised.
- e. Provision should be made to enable costs to be awarded to any party involved in the appeal based on the relevant merits and the application of these by the relevant parties.

2. Requests the Chief Executive Officer to advise the Western Australian Local Government Association of the Shire's position regarding Third party appeal rights.

**CARRIED 7/1**

Administration Note: In clause a. above, with the approval of the mover and seconder, the word be was inserted for the clause to read 'It should be able to review decisions.....'. This was an administration error and did not change the intent of the motion.

## **7. Motions of which notice has been given:**

Nil

## **8. Urgent business:**

Nil

## **9. Closure:**

There being no further business the Presiding Member declared the meeting closed at 7.54pm.

I certify that these minutes were confirmed at the  
Ordinary Council Meeting held on 24 July 2017

.....  
Presiding Member

.....  
Date