



Serpentine  
Jarrahdale Shire

**SPECIAL COUNCIL MEETING MINUTES**

**FRIDAY, 3<sup>RD</sup> JUNE 2011**

**TABLE OF CONTENTS**

1. **ATTENDANCES & APOLOGIES (including Leave of Absence):** ..... 3

2. **PUBLIC QUESTION TIME:** ..... 3

3. **PUBLIC STATEMENT TIME:** ..... 3

4. **PETITIONS & DEPUTATIONS:** ..... 4

5. **PRESIDENT’S REPORT:** ..... 4

6. **DECLARATION OF COUNCILLORS AND OFFICERS INTEREST:** ..... 4

7. **RECEIPTS OF MINUTES OR REPORTS AND CONSIDERATION FOR RECOMMENDATIONS:**..... 5

SCM005/06/11 BYFORD TOWN CENTRE LOCAL STRUCTURE PLAN – DETERMINATION AS TO WHETHER THE PROPOSED WESTERN AUSTRALIAN PLANNING COMMISSION MODIFICATIONS ARE SUBSTANTIAL ..... 5

9. **URGENT BUSINESS:** ..... 12

10. **COUNCILLOR QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN:**..... 12

11. **CLOSURE:** ..... 12

- NOTE:**
- a) **The Council Committee Minutes Item numbers may be out of sequence. Please refer to Section 10 of the Agenda – Information Report - Committee Decisions Under Delegated Authority for these items.**
  - b) **Declaration of Councillors and Officers Interest is made at the time the item is discussed.**

MINUTES OF THE SPECIAL COUNCIL MEETING HELD IN THE COUNCIL CHAMBERS, 6 PATERSON STREET, MUNDIJONG ON FRIDAY 3 JUNE 2011. THE PRESIDING MEMBER DECLARED THE MEETING OPEN AT 5.00PM AND WELCOMED COUNCILLORS, STAFF AND THE MEMBERS OF THE GALLERY.

**1. ATTENDANCES & APOLOGIES (including Leave of Absence):**

IN ATTENDANCE:

**COUNCILLORS:** S Twine .....Presiding Member  
 M Harris  
 C Buttfield  
 C Randall  
 T Hoyer  
 B Brown  
 A Lowry  
 A Ellis

**OFFICERS:** Ms J Abbiss .....Chief Executive Officer  
 Mr B Gleeson ..... Director Development Services  
 Mr R Gorbunow ..... Director Engineering  
 Mr D van der Linde..... Executive Manager Strategic Planning  
 Mrs S Van Aswegen..... Organisational Development Secondment  
 Ms P Kursar ..... Minute Secretary

**APOLOGIES:** Councillor M Geurds  
 Councillor K Petersen  
 Mr A Hart ..... Director Corporate Services  
 Mrs C McKee Acting Director Strategic Community Planning

**OBSERVER:** Erin Noble

Members of the public – 3  
 Members of the press – 0

**2. PUBLIC QUESTION TIME:**

Nil

**3. PUBLIC STATEMENT TIME:**

Paul Gangemi – PO Box 108, Armadale

My name is Paul Gangemi and I represent myself and my brother Nino Gangemi. We have lived, worked and contributed to the community in the Shire for most of our lives.

We are the owners of Lot 15 Abernethy Road, which is located within the Byford Town Centre Structure Plan area and we have owned this land for more than 40 years. We have been endeavouring to develop a shopping centre on Lot 15 for more than 10 years as your Council records would show.

As most of you would be aware, we have made a series of submissions and presentations to officers on the draft Town Centre Structure Plan since it was first advertised for public comment 18 months ago. The purpose of these submissions was to alert Council and the Western Australian Planning Commission of our

objections to the Town Centre Structure Plan, primarily because of its inconsistency with the Byford Structure Plan and more specifically because of the removal of the Town Centre Commercial zoning from our Lot 15 and replacement with mainly residential and open space and just a narrow band of commercial fronting Abernethy Road. We believe this to be totally unreasonable and without justification.

We have consistently maintained that the Draft Town Centre Structure Plan is seriously flawed, particularly in relation to proposed railway station location, stormwater drainage and fill requirements, traffic circulation and access, road/rail crossings, land assembly and an under-provision in the assumed retail floor space requirement for Byford.

We understand Department of Planning had identified certain issues with the draft Town Centre structure Plan and recommended a number of changes to the previously advertised plan.

The major landowners, let alone the general public have not had any opportunity to review the proposed modification to the Town Centre Structure Plan. To be fair to all owners including the general public, it would be entirely appropriate to re-advertise the structure plan to provide everyone with an opportunity to review the proposals and provide comments on the proposed modification.

We have been owners and rate payers in the Shire of Serpentine Jarrahdale for a long time and we do feel particularly aggrieved by the process that has occurred which has resulted in the value of our land holding being reduced by two thirds, through the proposed relocation of the Town Centre to the north of Abernethy Road to the benefit of others who have only relatively recently acquired land in the area.

We just want a fair go and strongly urge the Council to re-advertise the modified Town Centre Structure Plan.

**4. PETITIONS & DEPUTATIONS:**

Nil

**5. PRESIDENT'S REPORT:**

Nil

**6. DECLARATION OF COUNCILLORS AND OFFICERS INTEREST:**

Nil

## 7. RECEIPTS OF MINUTES OR REPORTS AND CONSIDERATION FOR RECOMMENDATIONS:

SCM005/06/11	BYFORD TOWN CENTRE LOCAL STRUCTURE PLAN – DETERMINATION AS TO WHETHER THE PROPOSED WESTERN AUSTRALIAN PLANNING COMMISSION MODIFICATIONS ARE SUBSTANTIAL	
Proponent:	Serpentine Jarrahdale Shire	In Brief  The Western Australian Planning Commission (WAPC) has reviewed the Local Structure Plan for the Byford Town Centre, Byford and proposed a range of modifications to the map and text of the document.  The purpose of this item is to determine if the modifications are substantial, and thus whether to advertise the proposed modifications, as required by the Shire's Town Planning Scheme No.2 .
Owner:	Various land owners	
Author:	Deon van der Linde– Executive Manager	
Senior Officer:	Carole McKee– Acting Director Strategic and Community Planning	
Date of Report	3 June 2011	
Previously	SD056/12/10 SCM25/03/10 OCM26/10/09 SCM02/09/06 OCM05/08/06	
Disclosure of Interest	No officer involved in the preparation of this report is required to declare an interest in accordance with the provisions of the Local Government Act	
<b>Delegation</b>	<b>Council</b>	

### Background

The proposed Byford Town Centre Local Structure Plan (LSP) has been advertised twice for public comment previously. Council then adopted the LSP subject to modifications on 9 June 2010. Since then, the WAPC has reviewed the LSP to determine whether to approve the LSP with or without further modifications. The WAPC has now advised that modifications are desirable to the LSP map and to the text of the document and has formally forwarded these modifications to Council for a determination.

***A copy of the proposed modifications to the Byford Town Centre Local Structure Plan as requested by the WAPC is with attachment marked [SCM005.1/06/11](#).***

### Sustainability Statement

#### ***Effect on Environment:***

A. The modifications to the LSP have an impact on the following aspects of the environment of the Town centre seen as important in the Council approved LSP:

- the built environment - “mainstreet” development with active shop frontage, new infrastructure and a good urban design outcome.
- the natural environment - the natural waterways and enhancing the quality of the natural areas.
- the community environment - community areas that attempt to draw the community to the public areas

B. The modifications also impact on best practice in many of the aspects of urban design.

In terms of biodiversity, the previous LSP was rigorous in terms of protection of indigenous flora and fauna where at all possible and through the enhancement of existing natural features, attempts to create linkages to biodiversity/environmental corridors. The LSP attempts to minimise site disturbance through cut and fill management but it was accepted that the overall area may require significant changes to enable it to function as a Town centre.

The LSP tries to minimise car use by involving as many different transportation types to access the centre as possible and setting guidelines for public transport.

The modifications focus on urban water management and water quality. A Local Water Management Strategy (LWMS) was drafted as part of the LSP. The LWMS addresses issues such as stormwater and waterways management, water management in construction, water sensitive urban design, maximum infiltration of water on site, and water saving devices. The modifications have attempted to retain these aspects while looking at improving the overall drainage over the site.

**Resource Implications:** The LSP attempted to minimise resource use compared to traditional development approaches by utilising best practice in terms of storm water management and solar passive design. Passive solar design was facilitated by eg facing the building north is encouraged and so reduces the impact of the prevailing winds. A water sensitive urban design approach indicated a number of possibilities for stormwater tanks, swales and increased infiltration. The modifications have attempted to continue to strengthen these aspects.

**Use of Local, renewable or recycled Resources:** The modifications do not specifically mention the use of locally or regionally available or produced resources but any management plans would encourage this.

**Economic Viability:** The modifications seek to enhance the economic viability in terms of direct costs and life cycle costs.

The modifications continue to place great emphasis on minimising external costs such as pollution from transport or car dependence, prevention of removal of biodiversity (flora and/or fauna), land and waterway pollution and reduction in quality of life of residents (noise, pollution). The development of town centres usually necessitate increase in resource use eg energy and water consumption but the plan addresses this through the water sensitive urban design principles and passive solar orientation. The Shire has indicated its willingness to ensure a good outcome and has indicated that although there will be costs (both monetary and non monetary) that the community or council will incur as a result of this proposal, these costs are necessary to get the desired outcome.

The modifications have addressed the issues of the maintenance of the extensive drainage swales and public spaces. The modifications will probably not reduce future costs for Council as it does require initial costs to make the proposal work and will also result in continued maintenance of the drainage swales, piped areas and culverts.

**Economic Benefits:** The Town Centre will provide significant economic benefits to the community which will include employment generation (through the retail and other commercial activities that will be drawn to the area), increase the local resource base (through the business activities that will result) and will help to diversify the Shire's economic base as the Byford town centre will be the district centre for the foreseeable future.

The Town Centre will be the catalyst for employment creation, may assist with tourism through making the area more enticing to tourism operators and should provide local resource possibilities by being the new active and vibrant district centre for Serpentine Jarrahdale.

**Social – Quality of Life:** The Town Centre improves the quality of life for the community through being sensitive to the various community values and principles that are held dear to the community. The modifications further address these issues.

Planning/Subdivisions: The modifications still provide for the use of unrestricted solar access, public open space that enhances the special qualities that the community desires, has good design for crime prevention, retains as much of the existing vegetation as possible, provides good access to services such as the local shops and public facilities through public transport.

Assets: Provision has been made for quality roads and lighting for safety. Water sensitive urban design is one of the most critical components of the design and attention has been given to the provision of pedestrian footpaths, trails and cycleways.

Finance: The modifications have to some extent tried to address equitable cost structures to all landowners, the Shire and the community but this will have to be addressed in full during developer contribution deliberations.

Council activities: The modifications have indicated a focus on place-making and as such seek to create a vibrant town centre that allows communities to be involved and will attempt to create mechanisms to provide for events and training.

**Social and Environmental Responsibility:** The Town centre should have dwellings orientated to overlook the public open space and streetscape thus increasing passive surveillance and providing a built form that contributes to the urban landscape rather than working against it. Dwellings will be designed and oriented to provide for a high level of passive solar access. There are significant portions of the property being set aside for open space retaining existing vegetation thus positively contributing to a sense of place. The proposed modifications seek to incorporate principles of water sensitive urban design through the sound principles of the LWMS.

The modifications are still designed to be socially and environmentally responsible through building up the community and enabling full participation in its implementation. They create opportunities for the community to participate through the open days and attempts to provide opportunities for all sectors of the community to gain access to and participate in the creation of the space but also in the activities that should be created within the town centre.

The Commission have attempted to foster partnerships with landowners and with the various developers to get the outcome that will make the town centre the centre of community activity.

**Social Diversity:** The modifications attempt to advantage all social groups by providing facilities and housing types for all the social groups in the community and provides for diversity in our community through different housing types, housing densities, public facilities and the like.

**Statutory Environment:**

Shire of Serpentine Jarrahdale Town Planning Scheme No 2. In accordance with Clause 5.18.3.14 of Town Planning Scheme No 2, Council is required to determine whether the modifications proposed are substantial and require further advertising

**Policy/Work Procedure Implications:**

The LSP is consistent with Liveable Neighbourhoods, the Shire's current local planning policies and the previous LSP has been approved by Council.

**Financial Implications:**

If Council resolves that the modifications warrant further advertising this will result in expenses to cover the advertising and consultant costs to respond to the submissions received. Provision has been made in the budget to cover these expenses. There may however be further consultant costs if development applications are received, they are refused and the matter is taken to the State Administrative Tribunal due to delays resulting from the re-advertising.

**Strategic Implications:**

This proposal relates to the following Focus Areas:-

Vision Category	Focus Area	Objective Summary	Objective
<b>NATURAL ENVIRONMENT</b>	<b>Landscape</b>	Safeguard	Restore and preserve the visual amenity of our landscapes.
			Maximise the preservation of existing trees and vegetation.
			Incorporate environmental protection in land use planning.
<b>BUILT ENVIRONMENT</b>	<b>Land Use Planning</b>	Urban Villages	Press for the provision of public transport and the density of development needed to give effect to transit orientated design.
			Ensure local structure plans have a range of attractions within a walkable distance of residential areas.
		Landscape	Provide a variety of affordable passive and active public open spaces that are well connected with a high level of amenity.
			Continue the development of low maintenance multiple use corridors to accommodate water quality and quantity outcomes and a diversity of community uses.
		Transport	Ensure future public transport needs and infrastructure is incorporated into the land use planning process within the Shire and region.
		General	Facilitate the development of a variety of well planned and connected activity centres and corridors.
			Ensure land use planning accommodates a diverse range of lifestyle and employment opportunities and activities.
<b>PEOPLE AND COMMUNITY</b>	<b>Relationships</b>	Celebrate	Actively engage, and value the contribution of all stakeholders in better decision making.
			Engage existing and new residents in sharing neighbourly and community values.
	<b>Places</b>	Vibrant	Create vibrant urban and rural villages.
		Innovative	Promote and encourage the development of affordable and appropriate lifelong living environments.
<b>OUR COUNCIL AT WORK</b>	<b>Leadership</b>	Leadership throughout the organisation	Elected members and staff have ownership and are accountable for decisions that are made.
			All decisions by staff and elected members are evidence based, open and transparent.
	Leadership through organisational culture		Elected members and staff live our values and lead by example.
			The organisational culture of elected members and staff is one of inspiration, inclusion and innovation.
			Elected members and staff operate in an environment of trust, respect, openness and transparency.
	The elected members and staff have a relationship		





Vision Category	Focus Area	Objective Summary	Objective
			of unity and work together to achieve goals.
			The conduct of elected members and staff will be professional and reflect positively on the Shire at all times.
		Society, community and environmental responsibility	The Shire is focussed on building relationships of respect with stakeholders.
	<b>Strategy and Planning</b>	Strategic Direction	Prepare effectively for future development.

**Community Consultation:**

The LSP has previously been advertised pursuant to Clause 5.18.3.5 of TPS 2. The LSP also went through a second round of public consultations as the changes to the original plan were deemed significant enough to warrant re-advertising. A third period of advertising may be deemed desirable if Council resolves that substantial changes to the LSP would result from the WAPC modifications. This advertising would only relate to these modifications.

**Comment:**

These proposed modifications were discussed with the Commission at the officer and consultant level on 18 May 2011 and were also presented to elected members at a briefing session on 31 May 2011 where officers of the WAPC outlined the rationale behind the proposed modifications.

At this point in time, Council is required to determine whether the modifications warrant further advertising. Section 5.18.3.14 of Town Planning Scheme 2 refers to this determination and is quoted below:

*“If the local government, following consultation with the Commission, is of the opinion that any modification to the Proposed Structure Plan is substantial, the local government may:*

*(a) re-advertise the Proposed Structure Plan; or*

*(b) require the Proponent to re-advertise the Propose Structure Plan*

*and, thereafter, the procedures set out in clause 5.18.3.5 onwards apply.”*

Two issues of relevance to the determination of whether or not the modifications are substantial in nature are drainage and traffic. A third aspect that needs to be considered is the legal definition of “substantial”.

Preliminary advice from Council’s consultants on the issues of drainage and traffic impacts is provided to guide Council as to whether the modifications are substantial. These consultants are those that drafted the original LSP.

**Multi use corridors (including drainage)**

The modification to the layout relocates the main multiple use corridor running east-west northwards, and the multi use corridor running north-south across the road to the east of San Simeon Road. The alteration allocates land set aside for the multi use corridors in a different configuration, with varying widths and potential implications for drainage and recreation uses. To determine those implications, Council has sought advice from its consultants, GHD subcontracting to Essential Environmental. A preliminary assessment of the modifications was undertaken to provide advice regarding whether the modifications are substantial and this advice is attached. The consultants are also to provide a full assessment of the

drainage modelling and the impact on maintenance and amenity. This more comprehensive report will be provided in an item to determine whether the modifications are acceptable to Council at a later date.

***A copy of this drainage advice from GHD (sub-contracting to Essential Environment) is with attachment marked [SCM005.2/06/11](#).***

#### Traffic and Transport

Layout remodelling is proposed, to provide a different reverse curve north south alignment for the central San Simeon Drive and consequently adjusted intersection treatments. Furthermore, traffic predictions have been revamped in the light of new data now available from regional traffic modelling from Main Roads WA in conjunction with the Shire. Council's LSP traffic consultants (GHD) have been asked to provide a response as to whether or not the revised modelling indicates that the changes are substantial and therefore warrant a re-advertising. A more comprehensive report will be included in an item to Council to determine whether the modifications are acceptable to Council at a later date.

***A copy of this traffic advice from GHD is with attachment marked [SCM005.3/06/11](#).***

#### Legal opinion

Advice has also been sought from McLeods regarding the meaning of "substantial" in this context and the legal implications for Council.

***A CONFIDENTIAL copy of the confidential legal advice from McLeods is with attachment marked [SCM005.4/06/11](#).***

Previous case law has established the following factors as being relevant in terms of determining whether a modification is significant or not:

- *Within the context of the structure plan as a whole, is the area of land (i.e. the hectareage or meterage) substantial in a relative sense?* No specific evidence is available regarding the details of the change in hectareage of the different land uses.
- *How different in function and designation is the proposed designation for the relevant land, relative to the designation that appeared for that land and the regional structure plan?* The function and designation of the land parcels does not seem fundamentally different from the LSP approved by Council. The relative positioning of the designations on the land has however changed.
- *What is the environmental nature of the land in question?* The environmental nature of the land does not seem to be a determining factor in this regard.
- *What amenity impact would be occasioned by the modification relative to the position under the original structure plan?* The multi use corridors have been reduced in width in some areas. Some of the roads such as the Mainstreet have also been reduced in width.
- *If the land is private land, how would it affect the value of the private land, or private land nearby?* The land is in private ownership and it is not known how the modification will affect the value of the land.
- *In an organic sense, in terms of dynamic use and functionalities, how much difference would the modification make to the public or a significant sector of the public?* The available Public Open Space has been reduced from 8.21 hectares (10.48%) to 7.92 hectares (10.11%), a reduction of 0.37%. In some areas the width

of the multi-use corridors has been reduced as indicated in the letter from the WAPC. This may affect the amenity of the use of the corridors although this is difficult to predict.

### Comment

At this juncture, Council needs to resolve whether the proposed changes are of a nature that could be described as substantial. If the decision is in the negative, no further advertising is required. Council can then consider the modifications and resolve accordingly.

If Council deems the WAPC modifications as substantial, it may advertise the proposals to the broader community for either 14, 21 or 42 days. It is noted that the draft LSP has already been advertised twice and that the proposal has already been in the public domain twice.

### Options

As a result of these changes, the prime consideration for Council at this point in time is to determine whether the proposed modifications are of a minor nature only and therefore do not require a third round of public consultation. If the modifications are considered substantial in their nature, requiring further input from the broader community, Council may resolve to advertise the modifications. This determination can only be made by a Council resolution and not at an officer level.

Council has two options as regards this matter, as follows.-

- (1) Council can resolve that modifications are of a substantial nature under section 5.18.3.14 of Town Planning Scheme No 2. and therefore may notify the modifications to the general public (a 14 day period is considered appropriate given the fact that the LSP has been advertised twice already for periods of 42 and 21 days respectively.), OR.-
- (2) Council can resolve that the modifications proposed are not substantial and hence advertising for public comment is not required under section 5.18.3.14 of Town Planning Scheme No 2.

Based on the advice received and having regard to the precautionary principle the officer recommendation is to advertise the modifications to the Byford Town Centre Local Structure Plan requested by the WAPC for a period of 14 days.

**Voting Requirements:** Simple Majority

### **SCM005/06/11 COUNCIL DECISION/OFFICER RECOMMENDED RESOLUTION**

**Moved Cr Brown, seconded Cr Hoyer  
That Council:**

- A. Notes the advice provided by the engineering consultants as regards the impacts of proposed Western Australian Planning Commission modifications to the Byford Town Centre Local Structure Plan in relation to the drainage and traffic impacts, as well as legal advice provided by McLeods as regards deeming modifications as “substantial”.**
- B. Pursuant to Clause 5.18.3.14 of Town Planning Scheme No. 2 resolve that in Council’s opinion the modifications proposed by Western Australian Planning Commission to the Byford Town Centre Local Structure Plan are substantial in their nature and therefore warrant public notification.**

- C. Determines that the modifications to the Byford Town Centre Local Structure Plan as requested by the Western Australian Planning Commission be advertised for a period of 14 days.**
  - D. Advises the Western Australian Planning Commission of the above accordingly.**
  - E. Continues to evaluate the proposed modifications and responds to the modifications to enable a response to be given to the Western Australian Planning Commission as close as possible to the 31 July 2011 deadline requested by the Commission.**
- CARRIED 8/0**

**8. MOTIONS OF WHICH NOTICE HAS BEEN GIVEN**  
Nil

**9. URGENT BUSINESS:**  
Nil

**10. COUNCILLOR QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN:**  
Nil

**11. CLOSURE:**

There being no further business, the meeting closed at 5.07pm.

I certify that these minutes were confirmed at the Ordinary Council Meeting held on 27 June 2011.

.....  
Presiding Member

.....  
Date