

Shire Responses in Red

There are 3 main items in question:

1. The application of Cash in lieu policies / Requirements under TPS 2 for car parking
2. Compliance of car parking provision with parking strategies and Local Structure Plans
3. Public consultation requirements

1. The enquiry uses several examples to illustrate where cash in lieu was required but not implemented or followed up on. The claim is that by not following this up the Shire has left Rate Payers 'out of pocket'. Three developments are referred to: L3 #837 South Western Highway, Lot 3 # 821 South Western Highway and 4 Clifton Street. The only development that contained a condition referring to Cash in Lieu was L3 # 837 South Western Highway. 62 Bays were required as per TPS 2, however only 48 were provided, the unconstructed bays were to be provided through the Cash in Lieu payment. The reason this was never followed up on was because the Shire never implemented a Cash in Lieu policy. A Draft policy was put together in 2013 in response to initial enquiries about the matter but wasn't endorsed by Council, while there is a draft Council report the report doesn't appear on any of the Council meeting minutes.

Lot 3 # 821 South Western Highway was required to provide 32.41 bays, however the development was approved with only 30 bays, no mention in the approval was made to Cash in Lieu.

Lot 4 Clifton Street was required to provide 20 bays (inclusive of 2 disabled bays) and 2 parallel bays on the road verge. The parking requirements were included in a condition of approval and have been met.

2. The second item raised questions the compliance of 2 recent applications against the Shires parking strategies for Byford Town Centre and the Local Structure plan. One of the applications (Lot 5 Abernethy Road) is being determined by a JDAP and isn't wholly within the Shires responsibility in decision making. The second (Lots 5, 7 and 51 South Western Highway) does not comply with the Byford Town Centre LSP or Parking Strategy, it provides more parking than is required under these documents. The parking provision does, however comply with the requirements of TPS 2. The potential issue with this is that while the LSP and TPS set minimums, the strategy sets maximums. The maximums are put in place to prevent over supply of parking and discourage greater modal share towards walking, cycling and taking public transport.

3. The Final item related to public consultation / advertisement of the proposed supermarket at Lots 5, 7 and 51 South Western Highway. The proposal was not advertised, however there is no requirement as the land use is Permissible under TPS 2.

We have a parcel containing the relevant approvals, strategies and other documents associated with the Enquiry if you wish to see or include all the detail. I will give Kirsty the whole parcel for perusal if you wish.

SUBMISSION

SERPENTINE Jarrahdale SHIRE COUNCIL.

PETITION 96

My name is Steven Lenz I am the owner of Byford Village Shopping Centre, Byford IGA and IGA Plus Liquor. I have been a part of Byford rate paying community since 2002 and I wish to request a formal judicial enquiry into the serious misconduct of the Shire of Serpentine Jarrahdale for the following reasons:

- 1) Council has approved a number of commercial developments which has left the ratepayers of Byford seriously out of pocket, for example Lot 3 number 837 South West Highway Byford was approved in 2004 as a showroom development. The development was approved with a reduced amount of car parking bays from the required at 62 down to 48 under the "cash in lieu" scheme, where the developer pays the Council the value of the shortfall in cash. The value of the shortfall in this case is \$652,395.00, these funds were never received by council or followed not showrooms, which require a different parking ratio. An "FOI" request was issued to the council and no satisfactory response was given. The misconduct also applies to the more recent developments of 821 South West Highway Byford and 4 Clifton Street Byford again for cash in lieu payments. There are another two other developments Lot up on.

This development also currently does not comply with its original approval as the tenancies are shops 5 Abernethy Road and Lot 5, 7 and 51 Southwest Highway Byford which The Byford Bowling Club which was approved but, not submitted for public comment by council, these do not comply with parking strategies or the Byford Town Centre Structure Plan and are currently with WAPC & JDAP. Please refer to Annexe "A".

The Byford and Districts Country Club Relocation Project followed diligently all due process and adhered to all statutory requirements, public comment was invited where ever required. This excellent project, unfortunately, had become the fill with air project to individuals with agendas and axes to grind which made the process arduous and often seemingly impossible to bring to fruition.

The shires procedure with regard to the BDCC relocation consisted of the following council decisions

1. [OCM015/08/13](#) - Proposed Lease – Byford and Districts Country Club (Inc) and the Shire of Serpentine Jarrahdale (SJ975) - The Allocation of

OCM015/08/13 COUNCIL DECISION

Moved Cr Moore, seconded Cr Piipponen

That Council seek the approval from the Minister of Lands to lease part of Reserve 10164 to the Byford and Districts Country Club for the purpose of constructing a bowling green and associated club facilities for a period of twenty years with an option of a further twenty years.

CARRIED 5/0

Council Note: Council changed the Officer Recommendation in Item OCM015/08/13 by adding the words “with an option of a further twenty years” to provide the Country Club with some security as to Council’s future intentions.

the lands of the old rifle range and associated statutory process's to have the land vested in the shire from the state culminating in a lease

2. [OCM044/09/13](#) - **Community Sport and Recreation Facilities Fund Submission (SJ1346)** – Acknowledge that two submissions for Community Sport and Recreation Facilities Fund (CSRFF) and prioritise them as follows Serpentine Skate Park (Priority 1) & BDCC (Priority 2) for

| Priority | Project | Estimated Project Cost | CSRFF Amount | Level of Support |
|----------|--|------------------------|--------------|--|
| 1st | Jarrahdale Skate Park | \$330,000 | \$110,000 | High (well planned and needed by municipality) |
| 2nd | Byford and Districts Country Club Relocation | \$1,318,792 | \$483,557 | High (well planned and needed by municipality) |

CARRIED 6/0

Council Note: In response to advice from the Director Corporate and Community Council changed the 2nd Priority figures for estimated project cost and CSRFF amount to reflect a slight

the Annual Grants September 2013 round were received and endorse the submission of the grant applications:

3. [OCM093/11/13](#) - **Late Item - Councillor Request of which notice has been given –Byford and Districts Country Club Relocation (SJ1346)** –

That Council:

- 1 Consider allocating \$440,000 in the 2014/15 Budget towards the construction of the new Byford and Districts Country Club facility that is planned to be constructed on Lot 2857, South Western Highway, Byford.

- 2 Recognise the importance of this strategic project and support the Byford and Districts Country Club and co-partners in relocating the facility to Lot 2857, South Western Highway, Byford.

OCM093/11/13

COUNCIL DECISION:

Moved Cr Kirkpatrick, seconded Cr Urban

That Item OCM093/11/13 be deferred to the Ordinary Council Meeting scheduled to be held on Monday 10 February 2014 in order for the Chief Executive Officer to seek clarification on legal advice received in relation to Councillors' declarations of interest.

CARRIED 6/0

Council Note: Council changed the Officer's Recommendation in Item OCM093/11/13 by deferring the item to the first meeting in February 2014, pending a full briefing to Councillors at a Councillor Information Day and clarification of legal advice on Councillors' declarations of interest

- 4 [OCM178/05/14](#) - Proposed Lease – The Byford and Districts Country Club (Inc) and the Shire of Serpentine Jarrahdale (SJ975) –

That Council authorise the Chief Executive Officer and Shire President to sign the lease as per attachment IN14/1081 with the Byford and Districts Country Club on Reserve 10164 for a period of twenty years with an option to renew for a further twenty years.

OCM178/05/14

COUNCIL DECISION / New Motion:

Moved Cr Kirkpatrick, seconded Cr Piipponen

That Council defers Item OCM178/05/14 for four weeks to:

1. Seek clarification on the effects of regular sub-letting arrangements of the premises on the lease.
2. Undertake further investigation on the permanent access to the lease area and the impact on the amenity as a result of creating the access.

CARRIED BY ABSOLUTE MAJORITY 5/0

Council Note: The Officers Recommendation was amended to allow time to clarify arrangements on the lease and investigate on the access of the lease area and the impact of the access.

- 5 [OCM193/06/14](#) - Proposed Lease – The Byford and Districts Country Club (Inc) and the Shire of Serpentine Jarrahdale (SJ975) – Seeking approval after deferral of Lease to BDCC.

It is therefore recommended that Council endorse the lease and authorise the Shire President and CEO to sign the lease document.

OCM193/06/14

COUNCIL DECISION / Officer Recommendation:

Moved Cr Urban, seconded Cr Kirkpatrick

That Council authorise the Chief Executive Officer and Shire President to sign the lease as per attachment OCM193.1/06/14 with the Byford and Districts Country Club on Reserve 10164 for a period of twenty years with an option to renew for a further twenty years.

CARRIED BY ABSOLUTE MAJORITY 6/0

- 6 [OCM021/08/14](#) - Multi Purpose Sporting and Community Facility – Lot 2857 (Reserve 10164) South Western Highway, Byford (P05193/01) – Approval of Development Application asking that Council grant approval for a Multi-Purpose Sporting and Community Facility
- 7 [OCM105/12/14](#) - Request for Tender RFT03/14 Forward Works for Proposed Community Centre, Lot 2857 South Western Highway, Byford (SJ1715) – Curnow Group Pty Ltd has been assessed as being able to meet the requirements of the contract and it is recommended that they be awarded the contract.

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| OCM105/12/14 | COUNCIL DECISION / Officer Recommendation: |
| Moved Cr Kirkpatrick, seconded Cr Wilson | |
| That Council award the Contract to Curnow Group Pty Ltd to undertake the forward works at Lot 2857 South Western Highway, Byford. | |
| CARRIED ABSOLUTE MAJORITY 6/0 | |
| Moved Cr Wilson, seconded Cr Piipponen | |
| That Council grant approval for a Multi Purpose Sporting and Community Facility at Lot 2857 (Reserve 10164) South Western Highway, Byford subject to the following conditions: <i>(17 conditions - see minutes)</i> | |
| CARRIED 5/1 | |
| <i>Council Note: Condition 15 was removed as Council considered that a</i> | |
| OCM061/04/15 | COUNCIL DECISION / Officer Recommendation: |
| Moved Cr Wilson, seconded Cr Kirkpatrick | |
| That Council | |
| <ol style="list-style-type: none"> 1. Decline all of the submitted offers based on the original Scope of Works for RFT01/2015 as detailed in attachment OCM061.1/04/15. 2. Agree to revise the project scope for RFT01/2015 to ensure that the available funding for the project is not exceeded. 3. Agree to re-tender RFT01/2015 in accordance with Local Government (Functions and General) Regulations 1996 Part 4, once a revised design brief is prepared. | |
| CARRIED 6/0 | |

- 8 [OCM061/04/15](#) - Byford & Districts Country Club – Tender for Building Works - RFT 01/2015 (SJ1766) – The purpose of this report is to seek Council’s decision to not accept any of the tenders received for RFT01/2015, due to all offers being greater than the approved budget. Council is also asked to consider re-tendering the proposed works with a revised design brief.

- 9 [OCM095/06/15](#) - Proposed Supermarket – Lot 5, 7 and 51 (No.843, 849 & 857) South Western Highway, Byford (P05177/01) – to consider the development application for a Shop on Lots 5, 7
- 10 [OCM247/11/15](#) Lot 5, 7 and 51 (No. 843, 849 & 857) South Western Highway, Byford - Proposed Supermarket (P05177/01) to consider an amended development application (incorporating a minor road widening) for a Shop on Lots 5, 7 and 51 (No. 843, 849 & 857) South Western Highway,

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|---|--|
| <p>OCM247/11/15</p> <p>Moved Cr Ellis, seconded Cr Gossage</p> <p>That Council approves the amended application (incorporating the required road widening) from the Rowe Group Planning Design Delivery on behalf of the landowner Byford and Districts Country Club, to develop a Shop at Lots 5, 7 and 51 (No. 843, 849 & 857) South Western Highway, Byford subject to the following conditions: <i>(20 conditions - see minutes)</i></p> <p style="text-align: right;">CARRIED 6/0</p> | <p>COUNCIL DECISION / Officer Recommendation:</p> |
| <p>Moved Cr Wilson, seconded Cr Moore</p> <p>That Council:</p> <ol style="list-style-type: none"> 1 Approves the application from Hindley and Associates on behalf of the landowner Byford and Districts Country Club, to develop a Shop at Lots 5, 7 and 51 (No.843, 849 & 857) South Western Highway, Byford subject to the following conditions: <i>(26 conditions - see minutes)</i> 2 Forward the application to the Department of Planning for consideration noting Council’s approval and conditions for the development <p style="text-align: right;">CARRIED 6/0</p> <p>Council Note: Condition (1)(c) amended to tidy up the condition allowing either the monetary contribution of the physical provision of art, as per the current policy. Condition (1)(e)(ii) amended to reduce parking requirement by one bay, in terms of the required parking amounts the development is required to provide 151 bays as such the loss of one bay has no implication. Condition (1)(e)(iii) amended to reflect Applicant’s deputation request.</p> | |

Byford.

Reproposed Byford Bowling Club Relocation:

The Byford Bowling Club is situated in the centre of Byford on prime retail land Lot number 5, 7 & 51 South West Highway Byford. It is a private club "members only". Residing on the same land is the Byford District Country Club, Byford Car Club as well as the Byford Pool Club. It is common knowledge that the land was gifted by the Abernethy family in 1951 to the Byford Bowling Club on the proviso that is never be sold; it is a successful club in a strong financial position. Please refer to Annexe "B"

The land described above is the property of The Byford and Districts Country Club Inc ("BDCC"). The land is not and has never been the property of the Byford Bowling Club.

The BDCC is an incorporated sporting and social club, if it is to be described as a "members only" private club then you would include every Bowling, Football, Soccer

and Cricket etc Club as being a “members only” private club. The purpose of the club as stated in the constitution properly explains its purpose

“The Objects of the Club shall be:

- (i) To encourage sporting activity and to promote and hold and participate in, all kinds of competition, tournaments and matches, and to offer, give and contribute towards prizes, medals and awards.*
- (ii) To establish, maintain and conduct a Club of a social, cultural, educational and recreational character and for the purpose of providing accommodation for members of the Club and their guests upon Club premises.”*

The BDCC was formed when a public meeting was called in the Old Byford Hall in 1957 by Peter Kargotich, Andy McFail. P Kargotich, A McFail, S Hutchinson and RG Brown were elected as the first office bearers of the club. The First block of land was purchased at a public auction for approximately four hundred pounds, this block extended from Pitman Street to what is now called A Green. The other block of land on which B Green is situated was purchased from the Caledonian Club at a later date.

The first stage of the building and the land was built through voluntary labour relying on financial support from several guarantors. When the club was financially able to repay the guarantors a considerable number refused the reimbursement.

It is categorically incorrect to suggest the land was gifted by the Abernethy Family. Further, to suggest that the land was gifted on some fictitious proviso fails to understand that the Byford Bowling Club was formed in 1982, 25 years AFTER the BDCC land was purchased.

Mr Lenz claims the BDCC was in a strong financial position this is fundamentally incorrect. The BDCC on 16 July 2013 held an emergency Special Management Committee Meeting to urgently discuss its dire financial situation. The new treasurer working with Rob Gibb completed a financial analysis for the purposes of completing the Department of Sport and Recreation (“DSR”) Funding Application. Rob Gibb delivered a report stating the dire position of the club

see excerpt below from minutes of that meeting

“The main points of Robs review

- The likely P&L of the club for 2013/2014 was a loss of -\$42,340.00;*
- The DSR application required the previous 3 years audited P&L and the current years projected P&L;*
- The Bars Gross Profit has reduced from 61% in 2010 to 58% in 2012, which was likely due to no review of bar pricing;*
- The P&L was significantly impacted by the increase of wages;*
- Whilst turnover on Tuesdays and Thursdays was high it was a very low profit event due to the high cost of the Skimpy barmaids.*
- The kitchen, which should be a significant profit centre was in fact just above breakeven;*
- If the BDCC continued on its current path it was likely to be insolvent before the end of 2013/2014 year;*
- The DSR application would not succeed unless an urgent review of BDCC business practices was implemented and*
- A structured plan to see the BDCC survived to the time of relocation.”*

As a result of this meeting John Erren was appointed Business Manager and voluntarily ran the club with the help of a number of volunteers for 18 months. This allowed the removal of significant wage costs and allowed the club to become solvent once more and turn a small profit. The BDCC has been run in survival mode in the past 2 + years to ensure it survived to realise its relocation.

- On the 28th May 2013 a special meeting was held by the Byford Districts Country Club for the purpose of relocating. The relocation presentation was made by Mr Tony Simpson MLP, in which he misled the bowlers on a number of issues. He led the bowling members to believe they were in a poor financial position which was not the case.

This was a general meeting was held by the Management Committee of the BDCC for the members and was attended by an array of members of the club not just bowlers who only form perhaps 20% of the clubs membership. The information delivered was detailed and in writing and presented by a number of speakers including Mr Tony Simpson, I categorically refute the assertion people were misled or misinformed at this meeting.

- Mr Simpson said that the rates on the property could go up to as high as \$130,000 a year (scare tactics). As the neighbouring property is zoned as a shopping centre the same size land rates are only \$30,000 a year. • Mr Simpson presented an estimation of costs for the new bowling club which was \$2,450,000.00 including grants from Lottery West leaving the Bowling Club with \$400,000 In the bank Completely misleading, as the costs are closer to the \$5 million

This entire dot point is free of any factual information, there was no plan for building a new bowling club but an entire community facility the sale of the land was \$2.3m and expected significant grants suggested a building could be built to the value of up to \$4.5m. The club was successful in being granted amounts from varying funders to bring the project to \$5.1m

- At the meeting a number of bowlers expressed their concerns that the land was gifted on the proviso that it never be sold, this point was ignored by Mr Simpson and the relocation committee Further investigation at Landgate revealed that the accompanying documents to the titles had been destroyed with no explanation given

This statement has no basis of fact, there is no recollection from many attendees of any questioning in regard to land gifting and provisos. The significant reaction from members to this assertion is laughter as it is preposterous. Had it been expressed at the meeting it would not have been ignored it would have been strongly rebuffed. Any Landgate search will show a detailed trail of the movement of the lands of the BDCC there are no mysterious documents missing or destroyed by landgate. In fact in 1999 a portion of the land was sold which dispels this proviso myth

- DSA grant application which includes a letter of support from Tony Simpson was made on the basis that both planning permission and a lease were in place when this was clearly not true

Please see link below for the actual DSR Application

<http://www.sjshire.wa.gov.au/assets/Uploads/OCM/OCM044.1.09.13.pdf>

- This site that has been chosen by the relocation committee has high levels of contamination is being reviewed for clarification by the Department of Environment

A report was made by a community member known to have strong issue with the relocation of the BDCC, that the Old Riffle Range site had asbestos contamination. This site had been traversed by many people over many many years and was known to be a clean site. The site has a Men of the Trees memorial garden and houses the Byford Scouts and would soon be joined by the BDCC. On examination a small amount of asbestos was located on the site in "difficult to understand circumstances". As a result an investigation was instigated by the relevant authority and an site contamination analysis was required to be completed after an almost \$10,000 report was submitted the site was proclaimed to be contamination free. A casual observer could be forgiven for thinking this all seemed somewhat unusual, people were heard to question how this well-trodden piece of land could have gone for so many years without the asbestos having been discovered.

Conflicts of Interest relating to the relocation of Byford Bowling Club

Stephen White Member of the District Country Club, owner of the above mentioned neighbouring property 867 South West Highway Byford and holds a lease over a portion of the Bowling Club and IS also a member of the re location committee

Tony Simpson patron of the Bowling Club

John Kirkpatrick Councillor - Shire of Serpentine Jarrahdale, presenting at the Bowling Club

John Erren - President of the Byford District Country Club and Shire Councillor

Ballots for sale of the Byford District Country Club, were incorrectly given to members to vote, but full information was not disclosed on other offers and members were only given a "Yes" or "No" option to vote

A comprehensive 4 page report was mailed to every member of the club detailing the decision of the Management Committee. The members were asked to ratify the management committees decision by way of ballot.

The management committee concluded due to significant analysis chose to support the sale of the land to Skywise Nominees (Farmer Jacks) over Lenz offer 1 and offer 2. Original Offer from Skywise \$2.3m and Lenz \$2m. Lenz became aware his offer was significantly low and after the expressions of interest period ended submitted a 2nd offer of \$2.4m.

The offer was considered to have no real substance, aside from a greater dollar value. It also delivered, what was considered, an unreasonably lengthy period for due diligence.

With only \$1,000.00 holding deposit (vs \$115,000.00 from Skywise), an open due diligence period of 9 months and settlement within 12 months of acceptance (vs 24 months from Skywise), this offer was considered risky and lacked merit when compared to its competing offer. Further, the due diligence period was viewed as a significant risk as it unreservedly released the buyer from the contract at any time for any reason during the due diligence period.

The committee's communication with the buyer from the outset had been by way of the buyer's solicitor. The committee received numerous letters and communications from the buyer and the buyer's solicitor which had a tone that was of a forceful nature

and that the buyer's offer is the only offer that the committee should accept. The committee agreed it would be good business to seek a formal legal position from a Barrister to minimise any possible legal threat. After considering all factors, the committee felt strongly that the small gain in sale price would quickly be depleted in legal fees as all negotiations would likely be through the buyer's solicitor.

Council have inappropriately put together a working group consisting of councillor's and local self-Interest business people for a parking strategy committee and have adopted strategies which have no professional Input, re traffic management consultants In order to mask previously Illegal shire approvals, which benefits developers and local businesses alike personally?

Concert tickets are being provided to Councillors from developers in the area namely LWP

Two Councillors were offered concert tickets from the developer and they declined the offer.

I am able to provide various documentation supporting my allegations I believe there are grounds for an full Judicial enquiry including tax audit

Yours faithfully

Steven Lenz