



Metro East Joint Development Assessment Panel Minutes

Meeting Date and Time: 20 March 2020, 10:00 AM
Meeting Number: MEJDAP/233
Meeting Venue: City of Swan
Council Chambers, Midland Town Hall,
312 Great Eastern Highway, Midland

Attendance

DAP Members

Mr Ian Birch (Presiding Member)
Ms Kym Petani (Deputy Presiding Member)
Mr Peter McNab (Specialist Member)
Mr Kevin Bailey (Local Government Member, City of Swan)
Mr Rod Henderson (Local Government Member, City of Swan)

Officers in attendance

Mr Philip Russell (City of Swan)

Minute Secretary

Ms Telia Reilly (City of Swan)

Applicants and Submitters

Mr Paul McQueen (Lavan)
Mr Sean Fairfoul (Rowe Group)
Mr Carl Aloï (Aloï Holdings Pty Ltd)
Mr Gordon Tucker (Stratton Shopping Centre)
Mr Marcus Brown (telephone) (CDM Smith)
Mr Justin Ganly (Deep End Services)
Ms Belinda Moharich (Moharich and More)
Mr Luke Saraceni (Saraceni Properties Pty Ltd)
Mr Cameron Leckey (CLE Town Planning + Design)
Mr Stuart McKnight (Macroplan)

Members of the Public / Media

Joe Stefenelli

1. Declaration of Opening

The Presiding Member declared the meeting open at 10.04am on 20 March 2020 and acknowledged the traditional owners and paid respect to Elders past and present of the land on which the meeting was being held.



The Presiding Member announced the meeting would be run in accordance with the DAP Standing Orders 2017 under the *Planning and Development (Development Assessment Panels) Regulations 2011*.

The Presiding Member advised that in accordance with Section 5.16 of the DAP Standing Orders 2017 which states 'A person must not use any electronic, visual or audio recording device or instrument to record the proceedings of the DAP meeting unless the Presiding Member has given permission to do so.', the meeting would not be recorded.

2. Apologies

Nil

3. Members on Leave of Absence

Nil

4. Noting of Minutes

Signed minutes of previous meetings are available on the [DAP website](#).

5. Declarations of Due Consideration

All members declared that they had duly considered the documents.

6. Disclosure of Interests

DAP Member, Ms Kym Petani, declared an impartial interest in item 10.1. GHD has been engaged by the City of Swan to undertake a detailed design of safety barrier at Millhouse Rd/West Swan Road, a pavement assessment within City of Swan, a traffic and road safety assessment for three intersections, a bridge inspection, the preparation of documentation for infrastructure requirements associated with Midland Oval redesign and the refurbishment of the City of Swan's Operation Building. Ms Petani is an employee and shareholder in GHD.

DAP Member, Cr Rod Henderson, declared an impartiality interest in item 10.1. On 3 March 2020 Cr Henderson received an email from Mr Aloï in his capacity as a Swan Valley ward councillor. The email was a forward from Mr Peter Simpson of PTS Planning and had an attachment from Moharich & More Planning + Environment Law addressed to the City of Swan lawyers McLeod Barristers and Solicitors. Email was forwarded to City of Swan.

In accordance with section 6.2 and 6.3 of the DAP Standing Orders 2017, the Presiding Member determined that the members listed above, who have disclosed an impartiality interest, are permitted to participate in the discussion and voting on the item.

In accordance with section 2.4.10 of the DAP Code of Conduct 2017, DAP Members, Mr Ian Birch and Ms Kym Petani, declared that they participated in a State Administrative Tribunal process in relation to the application at item 10.1. However, under section 2.1.3 of the DAP Code of Conduct 2017, Mr Ian Birch and Ms Kym Petani acknowledged that they are not bound by any confidential discussions that occurred as part of the mediation



process and undertake to exercise independent judgment in relation to any DAP applications before them, which will be considered on its planning merits.

7. Deputations and Presentations

- 7.1 Mr Sean Fairfoul (Rowe Group) addressed the DAP against the application at Item 10.1.
- 7.2 Mr Gordon Tucker Centre Manager Stratton Park Shopping Centre), on behalf Mr Carl Aloï (Aloï Holdings Pty Ltd), addressed the DAP against the application at Item 10.1.
- 7.3 Mr Marcus Brown (telephone) (CDM Smith) addressed the DAP against the application at Item 10.1 and responded to questions from the panel.
- 7.4 Mr Justin Ganly (Deep End Services) addressed the DAP against the application at Item 10.1.
- 7.5 Ms Belinda Moharich (Moharich and More) addressed the DAP against the application at Item 10.1.
- 7.6 Mr Cameron Leckey (CLE Town Planning + Design) addressed the DAP in support of the application at Item 10.1.
- 7.7 Mr Stuart McKnight (Macroplan) addressed the DAP in support of the application at Item 10.1.
- 7.8 Mr Paul McQueen (Lavan) addressed the DAP in support of the application at Item 10.1.
- 7.9 Mr Luke Saraceni (Saraceni Properties Pty Ltd) addressed the DAP in support of the application at Item 10.1.

At the completion of their presentations, presenters responded to questions from the panel.

- 7.10 Mr Philip Russell (City of Swan) answered questions from the panel.

PROCEDURAL MOTION

Moved: Mr Peter McNab

Seconded: Cr Kevin Bailey

That the meeting be adjourned for a period of 15 minutes to allow members to have a refreshment break.

The Procedural Motion was put and CARRIED UNANIMOUSLY

The meeting was adjourned at 11.10am.

The meeting was reconvened at 11.24am.

8. Form 1 – Responsible Authority Reports – DAP Applications

Nil



9. Form 2 – Responsible Authority Reports – Amending or cancelling DAP development approval

Nil

10. Appeals to the State Administrative Tribunal

10.1	Property Location:	Lot 357 (227) Morrison Road, Midvale
	Development Description:	Neighbourhood Centre (Shop, Consulting Rooms, Recreation – Private, Fast Food Outlet, Convenience Store)
	Applicant:	Lavan
	Owner:	John Nominees Pty Ltd, Shanklin Holdings Pty Ltd, Shalstone Investments Pty Ltd
	Responsible Authority:	City of Swan
	DAP File No:	DAP/16/01007

REPORT RECOMMENDATION

Moved: Cr Kevin Bailey

Seconded: Mr Ian Birch

That the Metro-east Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 388 of 2016 resolves to:

Reconsider its decision dated 8 May 2017 and **approve** DAP Application reference DAP/16/1007 and accompanying plans DA01 P1, DA02 P4, DA02 P15, DA04 P4, DA05 P4, DA06 P3, DA07 P3, DA08 P3, DA09 P1, DA10 P1, DA11 P1, in accordance with Clause 68 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of Clause 10.3 of the City of Swan Local Planning Scheme No.17 subject to the following conditions:

Conditions

1. This approval is for a "Shop", "Consulting Rooms", "Recreation – Private", "Fast Food Outlet" and "Convenience Store" as defined in the City of Swan Local Planning Scheme No. 17 and the subject land may not be used for any other use without the prior approval of the local authority.
2. In order to comply with the City of Swan Provision of Public Art Policy POL-LP-1.10, the owner(s) or applicant on behalf of the owner(s) shall within 28 days of the grant of this approval elect to either;
 - (a) pay to the City the sum of \$130,000, which equates to 1% of the Construction Cost of the development, in lieu of providing on-site Public Art (**option 1**); or
 - (b) seek approval from the City for an artist to provide Public Art on the development site to a minimum value of \$130,000 (**option 2**).

If the elected option is Option 1, then the cash-in-lieu amount must be paid to the City on the earlier of the date specified in an invoice issued by the City, or prior to the issuance of the building permit for the development the subject of the approval.



If the elected option is Option 2:

- (a) the owner(s) or applicant on behalf of the owner(s) within a further 28 days following the election (or such longer period agreed by the City) must seek approval from the City for a specific Public Art work including the artist proposed to undertake the work. The City may apply further conditions regarding the proposed Public Art;
 - (b) no part of the development may be occupied or used unless the Public Art has been installed in accordance with an approval granted by the City;
 - (c) the Public Art approved must be maintained during the continuation of the development; and,
 - (d) prior to the lodgement of a building permit application a Notification pursuant to section 70A of the *Transfer of Land Act* must be lodged against the certificate of title to the land on which the development is to be carried out, to make the proprietors and prospective purchasers aware of the preceding condition.
3. Prior to the occupation of any building approved herein, engineering drawings and specifications are to be submitted and approved, and satisfactory arrangements made with the City of Swan for the landowner/ developer to undertake works in accordance with the approved engineering drawings and specifications to the full cost of upgrading Orchard Avenue to the standard of Neighbourhood Connector B for the portion abutting the subject lot, and inclusive of the construction of a left-out traffic management device at the intersection of Morrison Road, as generally depicted on the approved development plan DA03 P15.
4. Prior to the occupation of any building approved herein, the landowner/developer shall construct a footpath within the portion of the Orchard Avenue and Morrison Road reserves abutting the subject site in the location as generally depicted on the approved development plan DA03 P15 and built to the specifications of the City of Swan.
5. The land required for road widening associated with a planned roundabout at Orchard Avenue and Morrison Road, as indicatively depicted by the "proposed truncation line" shown dashed in red on the approved development plan DA03 P15, shall be transferred free of cost and without any payment of compensation to the City of Swan at the time of construction of the roundabout or an earlier date as specified by the City of Swan.
6. A minimum of 316 vehicle parking bays, inclusive of six (6) vehicle refuelling spaces, shall be provided in accordance with the approved site plan. Vehicle parking bays, access and circulation areas shall be clearly line-marked on the pavement and designed in accordance with the Australian Standard AS 2890.1 (as amended). Disabled bays are to comply with Australian Standard AS 2890.6 (as amended).
7. The parking area and pavement shown on the approved plan must have appropriate signs and line-marking installed to give clear direction to motorists in accordance with Australian Standards.



8. Vehicle parking, access, and circulation areas must be sealed, kerbed and drained in accordance with the approved plans, and maintained to the satisfaction of the City of Swan.
9. Vehicle access and egress for the site shall be restricted to that shown on the approved site plan, including no vehicle egress from the site to the Morrison Road reserve.
10. Prior to the lodgement of a Building Permit application, the landowner/ developer shall submit detailed design drawings and specifications for the northern-most proposed crossover on Orchard Avenue as depicted on approved development plan DA03 P15 to the City of Swan Statutory Planning department for approval. The drawings shall demonstrate that the crossover will be designed to allow vehicles 19 metres and longer to enter Orchard Avenue in the correct lane, and shall incorporate design treatments to reduce the perception of the width of the crossover to the City's satisfaction.
11. Existing vehicle crossover(s) not shown as part of the approved development on the approved plans shall be removed, and the kerb and verge reinstated with grass or landscaping to the satisfaction of the City of Swan.
12. All construction works within the road reserve including crossovers, drainage infrastructure, service adjustment, landscaping, and footpath placement or reinstatement, shall be built and maintained in accordance with the approved detailed design drawings and the City's specifications. Failure to do so may result in these works being removed and reinstated by the City at the landowner's expense.

At occupancy, the owner is responsible for the maintenance of the crossover, landscaping and reticulation in the verge.

13. Prior to the occupation of any building approved herein, the owner of Lot 357 Morrison Road, Midvale ("the subject Lot") shall grant to the City of Swan ("the City") an access easement ("the Easement") pursuant to Sections 195 and 196 of the *Land Administration Act 1997* in favour of the City and the public at large for the purpose of ensuring vehicular and pedestrian movement between the subject Lot and the abutting Lot 2 (No.231) Morrison Road, Midvale, and Morrison Road reserve. The Easement shall address the matter as to the location and extent of the rights of access on the subject Lot to achieve the stated purpose, and any limitation(s) on the Easement to the satisfaction of the City of Swan Statutory Planning department.
14. All stormwater produced from this property including subsoil drainage is to be collected and retained on-site with overflow to the local drainage system to the satisfaction of the City of Swan. No stormwater is to be discharged or channelled from the property into other land or reserves, including as a result of internal system failure, unless otherwise approved by the City.
15. Prior to the lodgement of a Building Permit application, a stormwater management plan shall be submitted to the City of Swan Statutory Planning department for approval. The stormwater management plan shall include the following:
 - (i) detailed stormwater drainage drawings that show perimeter kerb, cut-off drains or grading at crossovers, and the overland flow path in the event of internal system failure to prevent discharge into other land or reserves;



- (ii) geotechnical report (including soil profile), percolation test results for bio-retention swales, and full details of stormwater run-off to demonstrate the system has the capacity to retain runoff from a 1 year 1 hour storm event prior to discharge into the local drainage system; and,
 - (iii) ongoing maintenance actions to be undertaken by the landowner to ensure the function of the bio-filtration swales.
16. A gross pollutant trap must be incorporated as part of the internal drainage system to prevent any fluid other than uncontaminated stormwater from entering any stormwater drain.
17. Fuel dispenser areas and any other areas where petrol, other hydrocarbons or similar matter is likely to be stored and/or discharged shall be constructed in accordance with Water Corporation guidelines. In particular, fuel dispenser areas, work bays and wash-down areas shall be covered, paved and bunded/ graded to contain trap all waste, which will then pass through an approved petrol and oil separator before being disposed of on-site in a manner outlined in the Department of Water's *Water Quality Protection Note WQPN 68 (Mechanical equipment wash down)* dated September 2013.
18. All earthworks, finished pavement levels and associated stormwater drainage shall be designed and installed in accordance with the approved stormwater drainage drawings and the City's requirements.
19. No earthworks, footings and/or structures shall extend over any lot boundary.
20. The development shall be connected to the Water Corporation's sewer.
21. Refuse bin areas adequate to service the development and in compliance with the City of Swan Health Local Law 2002 (Part 4) shall be provided to the satisfaction of the City of Swan before the development is occupied or used.
22. Potentially unsightly areas (e.g refuse / storage yards) must be screened from view from any public street and/or surrounding development by an opaque wall of at least 1.8m or as otherwise approved.
23. No area(s) outside of the approved development buildings shall be used for the storage, display, or sale of any goods, products, materials, equipment or the like unless it is a designated area approved for such purpose.
24. Prior to the lodgement of a Building Permit application, a detailed landscape plan shall be submitted to the City of Swan Statutory Planning department for approval and shall detail:
- (i) existing trees to be retained within the abutting road reserve; and,
 - (ii) the location, species and extent of new trees and shrubs to be planted onsite and within the abutting road reserve where relevant.

The detailed landscape plan is to be generally consistent with the approved plans and stormwater drainage drawings.



25. No street tree on the verge is to be removed or relocated without the prior approval of the City of Swan. The cost of removal or relocation is to be paid by the owner prior to the lodgement of a Building Permit application.
26. All landscaping must be completed in accordance with the approved landscape plan **prior to the occupation of any building** and all landscaping shall be maintained onsite to the satisfaction of the City of Swan.
27. No wall, fence or landscaping greater than 0.75 metres in height measured from the natural ground level at the boundary, shall be constructed within 1.5 metres of a vehicular access way unless such wall, fence or landscaping is constructed with a 1.5 metre truncation.
28. External lighting shall comply with the requirements of Australian Standard 4282 – Control of Obtrusive Effects of Outdoor Lighting.
29. Illuminated signage shall be of a low level not exceeding 300cd/m², and shall not flash, pulsate or chase nor contain fluorescent, reflective or retro-reflective colours or materials.
30. A plan of all other advertising signage for the proposed development shall be submitted and approved by the City of Swan as a separate development application where required.
31. Any additional development, which is not in accordance with the application (the subject of this approval) or any condition of approval, will require further development approval.

AMENDING MOTION

Moved by: Ms Kym Petani

Seconded by: Mr Ian Birch

That Condition 5 be amended to read:

*The ~~Any~~ land required for road widening arising from **purposes, identified the in detailed engineering details drawings required by Condition 3**, associated with a planned roundabout at Orchard Avenue and Morrison Road, ~~as indicatively depicted by the "proposed truncation line" shown dashed in red on the approved development plan DA03 P15~~ shall be transferred free of cost and without any payment of compensation to the City of Swan at the time of construction of the roundabout or an earlier date as specified by the City of Swan.*

The Amending Motion was put and CARRIED UNANIMOUSLY.

REASON: To provide more certainty as to the requirement.

REPORT RECOMMENDATION (AS AMENDED)

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Reconsider its decision dated 8 May 2017 and **approve** DAP Application reference DAP/16/1007 and accompanying plans DA01 P1, DA02 P4, DA02 P15, DA04 P4, DA05 P4,

Mr Ian Birch
Presiding Member, Metro East JDAP



DA06 P3, DA07 P3, DA08 P3, DA09 P1, DA10 P1, DA11 P1, in accordance with Clause 68 of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of Clause 10.3 of the City of Swan Local Planning Scheme No.17 subject to the following conditions:

Conditions

1. This approval is for a "Shop", "Consulting Rooms", "Recreation – Private", "Fast Food Outlet" and "Convenience Store" as defined in the City of Swan Local Planning Scheme No. 17 and the subject land may not be used for any other use without the prior approval of the local authority.
2. In order to comply with the City of Swan Provision of Public Art Policy POL-LP-1.10, the owner(s) or applicant on behalf of the owner(s) shall within 28 days of the grant of this approval elect to either;
 - (a) pay to the City the sum of \$130,000, which equates to 1% of the Construction Cost of the development, in lieu of providing on-site Public Art (**option 1**); or
 - (b) seek approval from the City for an artist to provide Public Art on the development site to a minimum value of \$130,000 (**option 2**).

If the elected option is Option 1, then the cash-in-lieu amount must be paid to the City on the earlier of the date specified in an invoice issued by the City, or prior to the issuance of the building permit for the development the subject of the approval.

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3. Prior to the occupation of any building approved herein, engineering drawings and specifications are to be submitted and approved, and satisfactory arrangements made with the City of Swan for the landowner/ developer to undertake works in accordance with the approved engineering drawings and specifications to the full cost of upgrading Orchard Avenue to the standard of Neighbourhood Connector B for the portion abutting the subject lot, and inclusive of the construction of a left-out traffic management device at the intersection of Morrison Road, as generally depicted on the approved development plan DA03 P15.



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 - b. geotechnical report (including soil profile), percolation test results for bio-retention swales, and full details of stormwater run-off to demonstrate the system has the capacity to retain runoff from a 1 year 1 hour storm event prior to discharge into the local drainage system; and,
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31. Any additional development, which is not in accordance with the application (the subject of this approval) or any condition of approval, will require further development approval.



The Report Recommendation (as amended) was put and CARRIED (3/2).

For: Mr Ian Birch
Cr Kevin Bailey
Ms Kym Petani

Against: Mr Peter McNab
Cr Rod Henderson

REASON: In accordance with details contained in the Responsible Authority Report and Amending Motion.

Whilst acknowledging the opposing opinions in relation to retail sustainability within the local network, as it related to SPP 4.2 Activity Centres for Perth and Peel, having regard for supplementary information provided, the majority of panel members were satisfied that the impacts of the proposed neighbourhood centre were unlikely to result in a loss of service to the community and supported the views expressed in the RAR that, overall, the application satisfied the relevant statutory planning provisions related to the site.

The Presiding Member noted the following State Administrative Tribunal Applications

Current SAT Applications		
LG Name	Property Location	Application Description
City of Gosnells	Lot 11 Southern River Road, Southern River	Development of Shopping Centre
City of Kalamunda	Lot 200 (584) Kalamunda Road, High Wycombe	Proposed Storage and Hardstand Development
City of Armadale	Lot 9007 (76) Southampton Drive, Piara Waters	Lifestyle Village (Piara Waters Lifestyle Village)

11. General Business / Meeting Closure

The Presiding Member announced that in accordance with Section 7.3 of the DAP Standing Orders 2017 only the Presiding Member may publicly comment on the operations or determinations of a DAP and other DAP members should not be approached to make comment.

There being no further business, the Presiding Member declared the meeting closed at 12.19pm.