



## **Metro South-West Joint Development Assessment Panel Minutes**

**Meeting Date and Time:** 2 August 2019, 10:00am  
**Meeting Number:** MSWJDAP/188  
**Meeting Venue:** City of Fremantle  
70 Parry Street  
Fremantle

### **Attendance**

#### **DAP Members**

Mr Tony Arias (Presiding Member)  
Ms Lee O'Donohue (Deputy Presiding Member)  
Mr Andrew Macliver (Specialist Member)  
Cr Andrew Sullivan (Local Government Member, City of Fremantle)  
Cr Rachel Pemberton (Local Government Member, City of Fremantle)

#### **Officers in attendance**

Mr Nathan Blumenthal (City of Fremantle)  
Ms Julia Kingsbury (City of Fremantle)  
Mr Alan Kelsall (City of Fremantle)

#### **Minute Secretary**

Ms Kayla Goodchild (City of Fremantle)

#### **Applicants and Submitters**

Ms Renee Gerloff  
Ms Alex Retallick  
Mr Sean Fairfoul (Rowe Group)  
Mr Ben Carter (Pinnacle Planning)  
Mr Marc Beattie (element)  
Mr Mark Aronson (MAARCH\* Architects)

#### **Members of the Public / Media**

Nil

### **1. Declaration of Opening**

The Presiding Member declared the meeting open at 10:03am on 2 August 2019 and acknowledged the traditional owners and paid respects 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**

Cr Jon Strachan (Local Government Member, City of Fremantle)

## **3. Members on Leave of Absence**

Nil

## **4. Noting of Minutes**

DAP members noted that signed minutes of previous meetings are available on the [DAP website](#).

## **5. Declaration of Due Consideration**

All members declared that they had duly considered the documents.

## **6. Disclosure of Interests**

In accordance with section 2.4.9 of the DAP Code of Conduct 2017, DAP Member, Cr Andrew Sullivan, declared that he has met with the applicant and some affected owners on several occasions over the last couple of years and attended, as an observer, the Planning Services Committee of the Fremantle Council in relation to the application at item 10.1. However, under section 2.1.2 of the DAP Code of Conduct 2017, Cr Sullivan acknowledged that he is not bound by any previous decision or resolution of the local government and undertakes to exercise independent judgment in relation to any DAP application before him, which will be considered on its planning merits.

In accordance with section 6.2 and 6.3 of the DAP Standing Orders 2017, the Presiding Member determined that the member listed above, who had disclosed an impartiality interest, was 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 Member, Mr Tony Arias, declared that he 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 Arias acknowledged that he is not bound by any confidential discussions that occurred as part of the mediation process and undertakes to exercise independent judgment in relation to any DAP applications before him, which will be considered on its planning merits.

## **7. Deputations and Presentations**

7.1 Ms Renee Gerloff addressed the DAP against the application at Item 10.1.



- 7.2 Ms Alex Retallick addressed the DAP against the application at Item 10.1.
- 7.3 Mr Sean Fairfoul (Rowe Group) addressed the DAP against the application at Item 10.1 and responded to questions from the panel.
- 7.4 Mr Ben Carter (Pinnacle Planning) addressed the DAP in support of the application at Item 10.1 and responded to questions from the panel.
- 7.5 Mr Marc Beattie (element) addressed the DAP in support of the application at Item 10.1 and responded to questions from the panel.
- 7.6 Mr Mark Aronson (MAARCH\* Architects) addressed the DAP in support of the application at Item 10.1 and responded to questions from the panel.
- 7.7 Ms Julia Kingsbury (City of Fremantle) addressed the DAP in relation to the application at Item 10.1 and responded to questions from the panel.

## PROCEDURAL MOTION

**Moved by:** Mr Tony Arias

**Seconded by:** Cr Andrew Sullivan

That the Metro South-West JDAP consider legal advice received from representatives of the Department of Planning, Lands and Heritage and that such advice is discussed behind closed doors, in accordance with section 5.10.2g of the DAP Standing Orders 2017.

**The Procedural Motion was put and CARRIED UNANIMOUSLY.**

*The meeting was closed at 11.22am.*

*The meeting was reopened at 11.39am.*

## 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: No. 193 (Lot 1) South Terrace, South Fremantle  
Development Description: Three, Two Storey Grouped Dwellings and Change of Use to Educational Establishment  
Applicant: Pinnacle Planning  
Owner: John Mocilac and Annette Eckert  
Responsible Authority: City of Fremantle  
DAP File No: DAP/18/01446



## REPORT RECOMMENDATION

**Moved by:** Cr Rachel Pemberton

**Seconded by:** Cr Andrew Sullivan

That the Metro South-West Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 3 of 2019, resolves to:

**Reconsider** its decision dated 14 December 2018 and **refuse** DAP Application reference DAP/18/01446 (City of Fremantle reference DAP002/18) and amended plans A1 – A18, A20 – A24 and the Survey Plan in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the City of Fremantle Local Planning Scheme No.4, for the following reasons:

### Reasons

1. The increase in density does not facilitate the built heritage conservation of the place, nor does it enhance or preserve the heritage values of the area and is not supported under clause 12 of the Deemed provisions.
2. The proposal is inconsistent with the minimum and average site area requirements of clause 5.1.1 of the Residential Design Codes and would be contrary to orderly and proper planning.
3. The proposal would be detrimental to the residential amenity of the area under clause 67 of Planning and Development (Local Planning Scheme) Regulations 2015 by reasons of being detrimental to the amenity of adjoining properties, being detrimental to the internal amenity of the units, and the reduction in open space.

### The Report Recommendation was put and LOST (2/3).

For: Mr Tony Arias  
Cr Rachel Pemberton

Against: Cr Andrew Sullivan  
Mr Andrew Macliver  
Ms Lee O'Donohue

## ALTERNATE MOTION

**Moved by:** Mr Andrew Macliver

**Seconded by:** Ms Lee O'Donohue

That the Metro South-West Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 3 of 2019, resolves to:

**Reconsider** its decision dated 20 December 2018 and **approve** DAP Application reference DAP/18/01446 and amended plans A1-A18, A20-A24 and the survey plan in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the City of Fremantle Local Planning Scheme No. 4, subject to the following conditions:



**Conditions:**

1. This approval relates only to the development as indicated on the approved plans dated 18 July 2019. It does not relate to any other development on this lot and must substantially commence within 4 years from the date of the decision letter. If the subject development is not substantially commenced within a 4 year period, the approval shall lapse and be of no further effect.
2. Notwithstanding condition 1 above, the visitor bay parallel to Louisa Street does not form part of this approval and is to be deleted from the plans prior to the issue of a building permit.
3. All storm water discharge shall be contained and disposed of on site or otherwise approved by the City of Fremantle.
4. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or significant fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of City of Fremantle.
5. Prior to occupation of the development, the proposed conservation works, detailed in the Heritage Report/Statement dated 29 May 2019, prepared by Element (Ref 18-474) are to completed to the satisfaction of the City of Fremantle.
6. Prior to the issue of a Building Permit, final details of the external materials, colours and finishes of the proposed development, including a physical sample board or materials is to be submitted and approved to the satisfaction of the City of Fremantle.
7. Prior to the issue of a Building Permit, a detailed landscaping plan, including information relating to species selection, reticulation, details of existing vegetation to be retained, and treatment of landscaped surfaces (i.e. mulch, lawn, synthetic grass etc), shall be submitted to and approved by the City of Fremantle.
8. Prior to issue of a building permit of the development hereby approved, the owner is to submit a waste management plan for approval detailing the storage and management of the waste generated by the development to be implemented and maintained for the life of the development to the satisfaction of the City of Fremantle.
9. Prior to the issue of a Building Permit or Demolition Permit, a Construction Management Plan shall be submitted to the satisfaction of the City of Fremantle addressing the following matters:
  - a) Use of City car parking bays for construction related activities;
  - b) Measures to minimise potential impacts on the use of the Right of Way;
  - b) Protection of infrastructure and street trees within the road reserve;
  - c) Security fencing around construction sites;
  - d) Gantries;
  - e) Access to site by construction vehicles;
  - f) Contact details;
  - g) Site offices;
  - h) Noise - Construction work and deliveries;
  - i) Sand drift and dust management;



- j) Waste management;
- k) Dewatering management plan;
- l) Traffic management; and
- m) Works affecting pedestrian areas.

The approved Demolition and Construction Management Plan shall be adhered to throughout the demolition of the existing building on site and construction of the new development.

10. Prior to the occupation of the development, the approved landscaping shall be completed in accordance with the approved plans or any approved modifications thereto to the satisfaction of the City of Fremantle. All landscaped areas are to be maintained on an ongoing basis for the life of the development, to the satisfaction of the City of Fremantle.
11. Prior to the occupation of the development hereby approved, vehicle crossovers shall be constructed in either paving block, concrete, or bitumen and thereafter maintained to the satisfaction of the City of Fremantle.
12. Prior to the occupation of the development hereby approved, any redundant crossovers and kerbs shall be removed and the verge reinstated at the expense of the applicant and to the satisfaction of the City of Fremantle.
13. Prior to occupation of the development hereby approved, the car parking and loading area(s), and vehicle access and circulation areas shown on the approved site plan, including the provision of disabled car parking, shall be constructed, drained, and line marked and provided in accordance with Clause 4.7.1(a) of the City of Fremantle Local Planning Scheme No.4, to the satisfaction of the City of Fremantle. All car parking, and vehicle access and circulation areas shall be maintained and available for car parking/loading, and vehicle access and circulation on an ongoing basis to the satisfaction of the City of Fremantle.
14. Prior to occupation of the development hereby approved, the boundary walls located on the southern and western boundaries shall be of a clean finish in any of the following materials:
  - coloured sand render,
  - face brick,
  - painted surface,and be thereafter maintained to the satisfaction of the City of Fremantle.
15. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

**Advice Notes:**

- i. All works within the road reserve require separate approval from the City's Infrastructure and Project Delivery Directorate. New crossover(s) shall comply with the City's standard for standard crossovers, which are available on the City of Fremantle's web site. Prior to commencing construction of the crossover(s), the developer is to contact the Engineering Project Officer on 9432 9999 to arrange an inspection or alternatively via [ibs@fremantle.wa.gov.au](mailto:ibs@fremantle.wa.gov.au).



- ii. Local Planning Policy 1.10 Construction Sites can be found on the City's web site via <http://www.fremantle.wa.gov.au/development/policies> A copy of the City's Construction and Demolition Management Plan Proforma which needs to be submitted with building and demolition permits can be accessed via: <https://www.fremantle.wa.gov.au/sites/default/files/Construction%20and%20Demolition%20Management%20Plan%20Proforma.pdf>. The Infrastructure Engineering department can be contacted via [ibs@fremantle.wa.gov.au](mailto:ibs@fremantle.wa.gov.au) or 9432 9999.
- iii. It is recommended that the applicant liaise with the adjoining property owner (s) regarding the possible retention or replacement of the existing dividing fence along the common lot boundary. Please refer to the Dividing Fences Act 1961 for the rights and responsibilities of land owners regarding dividing fences. Information is available at the following website: [http://buildingcommission.wa.gov.au/bid/Dividing\\_Fences.aspx](http://buildingcommission.wa.gov.au/bid/Dividing_Fences.aspx).
- iv. In regards to the Waste Management Plan (WMP), the proposed plan specifies the use of 140L general waste and recycling bins for the commercial education centre. The City does not provide commercial services using 140L receptacles. A minimum of 240L sized receptacle will be required if using the City for the commercial waste and recycling service. The WMP should be amended accordingly.

#### **AMENDING MOTION 1**

**Moved by:** Cr Rachel Pemberton

**Seconded by:** Nil

That Unit 1 be removed, as referenced on the amended plans A2, A6-A8, A16 and A18.

**The Amending Motion LAPSED for want of a seconder.**

#### **AMENDING MOTION 2**

**Moved by:** Cr Andrew Sullivan

**Seconded by:** Mr Andrew Macliver

That Condition 2 be deleted and remaining Conditions be renumbered accordingly.

**The Amending Motion was put and LOST (2/3).**

For: Cr Andrew Sullivan  
Mr Andrew Macliver

Against: Mr Tony Arias  
Ms Lee O'Donohue  
Cr Rachel Pemberton



### AMENDING MOTION 3

**Moved by:** Cr Rachel Pemberton

**Seconded by:** Ms Lee O'Donohue

That a new Advice Note v be added to read as follows:

*The City strongly encourages deep planting zones that should be uncovered, contain a retained or planted tree to Council's specification, have a minimum dimension of 3.0m and at least 50% is to be provided on the rear 50% of the site.*

**REASON:** The proposed Advice Note is commonly applied to applications as an advice to applicants to encourage substantial planting and trees within developments.

**The Amending Motion was put and CARRIED UNANIMOUSLY.**

### ALTERNATE MOTION (AS AMENDED)

That the Metro South-West Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 3 of 2019, resolves to:

**Reconsider** its decision dated 20 December 2018 and **approve** DAP Application reference DAP/18/01446 and amended plans A1-A18, A20-A24 and the survey plan in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the City of Fremantle Local Planning Scheme No. 4, subject to the following conditions:

#### Conditions:

1. This approval relates only to the development as indicated on the approved plans dated 18 July 2019. It does not relate to any other development on this lot and must substantially commence within 4 years from the date of the decision letter. If the subject development is not substantially commenced within a 4 year period, the approval shall lapse and be of no further effect.
2. Notwithstanding condition 1 above, the visitor bay parallel to Louisa Street does not form part of this approval and is to be deleted from the plans prior to the issue of a building permit.
3. All storm water discharge shall be contained and disposed of on site or otherwise approved by the City of Fremantle.
4. The works hereby approved shall be undertaken in a manner which does not irreparably damage any original or significant fabric of the building. Should the works subsequently be removed, any damage shall be rectified to the satisfaction of City of Fremantle.
5. Prior to occupation of the development, the proposed conservation works, detailed in the Heritage Report/Statement dated 29 May 2019, prepared by Element (Ref 18-474) are to completed to the satisfaction of the City of Fremantle.





6. Prior to the issue of a Building Permit, final details of the external materials, colours and finishes of the proposed development, including a physical sample board or materials is to be submitted and approved to the satisfaction of the City of Fremantle.
7. Prior to the issue of a Building Permit, a detailed landscaping plan, including information relating to species selection, reticulation, details of existing vegetation to be retained, and treatment of landscaped surfaces (i.e. mulch, lawn, synthetic grass etc), shall be submitted to and approved by the City of Fremantle.
8. Prior to issue of a building permit of the development hereby approved, the owner is to submit a waste management plan for approval detailing the storage and management of the waste generated by the development to be implemented and maintained for the life of the development to the satisfaction of the City of Fremantle.
9. Prior to the issue of a Building Permit or Demolition Permit, a Construction Management Plan shall be submitted to the satisfaction of the City of Fremantle addressing the following matters:
  - a) Use of City car parking bays for construction related activities;
  - b) Measures to minimise potential impacts on the use of the Right of Way;
  - b) Protection of infrastructure and street trees within the road reserve;
  - c) Security fencing around construction sites;
  - d) Gantries;
  - e) Access to site by construction vehicles;
  - f) Contact details;
  - g) Site offices;
  - h) Noise - Construction work and deliveries;
  - i) Sand drift and dust management;
  - j) Waste management;
  - k) Dewatering management plan;
  - l) Traffic management; and
  - m) Works affecting pedestrian areas.

The approved Demolition and Construction Management Plan shall be adhered to throughout the demolition of the existing building on site and construction of the new development.

10. Prior to the occupation of the development, the approved landscaping shall be completed in accordance with the approved plans or any approved modifications thereto to the satisfaction of the City of Fremantle. All landscaped areas are to be maintained on an ongoing basis for the life of the development, to the satisfaction of the City of Fremantle.
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12. Prior to the occupation of the development hereby approved, any redundant crossovers and kerbs shall be removed and the verge reinstated at the expense of the applicant and to the satisfaction of the City of Fremantle.
13. Prior to occupation of the development hereby approved, the car parking and loading area(s), and vehicle access and circulation areas shown on the approved



site plan, including the provision of disabled car parking, shall be constructed, drained, and line marked and provided in accordance with Clause 4.7.1(a) of the City of Fremantle Local Planning Scheme No.4, to the satisfaction of the City of Fremantle. All car parking, and vehicle access and circulation areas shall be maintained and available for car parking/loading, and vehicle access and circulation on an ongoing basis to the satisfaction of the City of Fremantle.

14. Prior to occupation of the development hereby approved, the boundary walls located on the southern and western boundaries shall be of a clean finish in any of the following materials:
  - coloured sand render,
  - face brick,
  - painted surface,and be thereafter maintained to the satisfaction of the City of Fremantle.
15. Where any of the preceding conditions has a time limitation for compliance, if any condition is not met by the time requirement within that condition, then the obligation to comply with the requirements of any such condition (other than the time limitation for compliance specified in that condition), continues whilst the approved development continues.

#### **Advice Notes:**

- i. All works within the road reserve require separate approval from the City's Infrastructure and Project Delivery Directorate. New crossover(s) shall comply with the City's standard for standard crossovers, which are available on the City of Fremantle's web site. Prior to commencing construction of the crossover(s), the developer is to contact the Engineering Project Officer on 9432 9999 to arrange an inspection or alternatively via [ibs@fremantle.wa.gov.au](mailto:ibs@fremantle.wa.gov.au).
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- iii. It is recommended that the applicant liaise with the adjoining property owner (s) regarding the possible retention or replacement of the existing dividing fence along the common lot boundary. Please refer to the Dividing Fences Act 1961 for the rights and responsibilities of land owners regarding dividing fences. Information is available at the following website: [http://buildingcommission.wa.gov.au/bid/Dividing\\_Fences.aspx](http://buildingcommission.wa.gov.au/bid/Dividing_Fences.aspx).
- iv. In regards to the Waste Management Plan (WMP), the proposed plan specifies the use of 140L general waste and recycling bins for the commercial education centre. The City does not provide commercial services using 140L receptacles. A minimum of 240L sized receptacle will be required if using the City for the commercial waste and recycling service. The WMP should be amended accordingly.



- v. The City strongly encourages deep planting zones that should be uncovered, contain a retained or planted tree to Council's specification, have a minimum dimension of 3.0m and at least 50% is to be provided on the rear 50% of the site.

**The Alternate Motion (as amended) was put and CARRIED (3/2).**

For: Ms Lee O'Donohue  
Mr Andrew Macliver  
Cr Andrew Sullivan

Against: Mr Tony Arias  
Cr Rachel Pemberton

**REASON:** That the application of Clause 12 of the Deemed Provisions in seeking variation to the density provisions is considered appropriate, as the variation is minor and the proposals enhance the heritage values of the site. The proposal is considered to be an appropriate outcome for the site and a respectful complement to the heritage building.

The Presiding Member noted the following State Administrative Tribunal Application -

Current Applications		
LG Name	Property Location	Application Description
City of Rockingham	Lot 301 (2-6) Council Avenue, Rockingham	Proposed health studio, restaurant, showrooms and convenience store

**11. General Business / Meeting Close**

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 12:16pm.