



Regional Joint Development Assessment Panel Minutes

Meeting Date and Time: Thursday, 3 February 2022; 9:30am
Meeting Number: RJDAP/44
Meeting Venue: Electronic Means

This DAP meeting was conducted by electronic means (Zoom) open to the public rather than requiring attendance in person

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Attendance

DAP Members

Ms Kanella Hope (A/Presiding Member)
Ms Lee O'Donohue (A/Deputy Presiding Member)
Mr Justin Page (Third Specialist Member)
Cr Julia Meldrum (Local Government Member, Shire of Augusta-Margaret River)
Cr David Binks (Local Government Member, Shire of Augusta-Margaret River)

Officers in attendance

Ms Angela Satre (Shire of Augusta-Margaret River)
Ms Harriet Park (Shire of Augusta-Margaret River)

Minute Secretary

Ms Adele McMahon (DAP Secretariat)
Ms Sam Hansen (DAP Secretariat)

Applicants and Submitters

Mr Tayne Evershed (Planning Solutions)

Members of the Public / Media

Nil

1. Opening of Meeting, Welcome and Acknowledgement

The A/Presiding Member declared the meeting open at 9:32am on 3 February 2022 and acknowledged the traditional owners and paid respect to Elders past and present of the land on which the meeting was being held.

The A/Presiding Member announced the meeting would be run in accordance with the DAP Standing Orders 2020 under the *Planning and Development (Development Assessment Panels) Regulations 2011*.

1.1 Announcements by Presiding Member

The A/Presiding Member advised that in accordance with Section 5.16 of the DAP Standing Orders 2020 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.

This meeting was convened via electronic means (Zoom). Members were reminded to announce their name and title prior to speaking.



2. Apologies

Mr Paul Kotsoglo (Presiding Member)

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

DAP Member, Mr Paul Kotsoglo, declared a Pecuniary Interest in item 9.1. Mr Kotsoglo is the Managing Director of Planning Solutions, the applicant for this application

In accordance with section 6.2 and 6.3 of the DAP Standing Orders 2020, the A/Presiding Member determined that the member listed above, who had disclosed a Pecuniary Interest, was not permitted to participate in the discussion and voting on the item.

7. Deputations and Presentations

7.1 Mr Tayne Evershed (Planning Solutions) addressed the DAP against the recommendation for the application at Item 9.1 and responded to questions from the panel.

7.2 Ms Angela Satre (Shire of Augusta-Margaret River) addressed the DAP in relation to the application at Item 9.1 and responded to questions from the panel.

8. Form 1 – Responsible Authority Reports – DAP Applications

Nil



9. Form 2 – Responsible Authority Reports – DAP Amendment or Cancellation of Approval

9.1 Lot 2953 (168) Clews Road and Strata Lot 1 (261A) Fifty One Road, Cowaramup

Development Description: Proposed Winery, Restaurant and Cellar Door, and Special Events
Proposed Amendments: Deletion of Condition 6 of originally approved Form 1 application (DAP Ref: 21/0194)
Applicant: Planning Solutions
Owner: HAT Southwest Investments Pty Ltd
Responsible Authority: Shire of Augusta-Margaret River
DAP File No: DAP/21/01945

REPORT RECOMMENDATION

The A/Presiding Member declared that the Report Recommendation be separated into two (2) parts in accordance with Section 5.5.3 of the DAP Standing Orders 2020.

SEQUENTIAL MOTION 1

Moved by: Ms Lee O'Donohue

Seconded by: Cr Julia Meldrum

That the Regional Joint Development Assessment Panel resolves to:

1. **Accept** that the DAP Application reference DAP/21/01945 as detailed on the DAP Form 2 dated 30 November 2021 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;

The Sequential Motion Recommendation was put and CARRIED UNANIMOUSLY.

REASON: The Panel was satisfied that reconsideration of condition 6 was suitable as a Form 2 matter. Amendment or otherwise of condition 6, relating specifically to a public art obligation, would not substantially change or adjust the original approval.

SEQUENTIAL MOTION 2

Moved by: Cr Julia Meldrum

Seconded by: Cr David Binks

2. **Approve** DAP Application reference DAP/21/01945 and accompanying plans in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the Shire of Augusta Margaret River Local Planning Scheme No. 1 subject to the following conditions:



Amended Condition

6. Prior to issue of a building permit for the development, the proponent shall make a contribution toward public art in accordance with the Shire's *Corporate and Community Services Policy 15 Public Art Policy* based on the cost of the development, excluding works associated with the development of the winery.

New Advice Notes

1. All other conditions and requirements detailed on the previous approval (DAP Ref: DAP/21/01945) dated 4 June 2021 shall remain unless altered by this application.

AMENDING MOTION

Moved by: Cr David Binks

Seconded by: NIL

That Amended Condition No. 6 be amended to read as follows:

Prior to issue of a building permit for the development, the proponent shall make a contribution toward public art in accordance with the Shire's Corporate and Community Services Policy 15 Public Art Policy based on the cost of the development, ~~excluding works associated with the development of the winery.~~ by either:

- a) payment to the Shire of a cash-in-lieu amount equal to the sum of the 1% contribution amount. This must be paid to the Shire prior to the date specified in an invoice issued by the Shire, or prior to the issuance of a building permit for the approved development, whichever occurs first; or*
- b) provision of Public Art on-site to a minimum value of the 1% contribution amount. The following is required for the provision of Public Art on-site:*
 - (i) The landowner or applicant on behalf of the landowner must seek approval from the Shire for a specific Public Art work including the artist proposed to undertake the work to the satisfaction of the Shire in accordance with Corporate and Community Services 15 Public Art (CSSP15). The Shire may apply further conditions in regard to the proposed Public Art;*
 - (ii) No part of the approved development may be occupied or used until the Public Art has been installed in accordance with the approval granted by the Shire; and*
- c) the approved Public Art must be maintained in compliance with the approval granted by the Shire and any conditions thereof, to the satisfaction of the Shire."*

The Amending Motion LAPSED for want of a Seconder



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

For: Cr Julia Meldrum
Cr David Binks

Against: Ms Kanella Hope
Ms Lee O'Donohue
Mr Justin Page

ALTERNATE SEQUENTIAL MOTION 2

Moved by: Ms Lee O'Donohue

Seconded by: Mr Justin Page

2. **Approve** DAP Application reference DAP/21/01945 and accompanying plans in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the Shire of Augusta Margaret River Local Planning Scheme No. 1 subject to the following conditions:

Amended Condition

1. To delete Condition 6

All other conditions and requirements detailed on the previous approval dated 4 June 2021 shall remain unless altered by this application.

The Alternate Sequential Motion was put and CARRIED (3/2).

For: Ms Kanella Hope
Ms Lee O'Donohue
Mr Justin Page

Against: Cr Julia Meldrum
Cr David Binks

REASON: The Panel agreed with the Shire that the Council Policy CCSP15 could be given consideration under Clause 67(2)(zb). Despite this, the Panel did not agree (by majority vote) with the Shire that the proposed amended condition 6 as set out in the RAR was sufficiently justified or based on reasonable planning certainty, need and nexus.

The Shire's desire for public art and the high quality and scale of the development was not disputed. However, the Shires rationale for the condition is a policy position. This position lacks implementation criteria and planning rationale, criteria and planning rationale that is typically found in a Local Planning Policy or a Development Contribution Scheme.



ALTERNATE RECOMMENDATION

That the Regional Joint Development Assessment Panel resolves to:

1. **Accept** that the DAP Application reference DAP/21/01945 as detailed on the DAP Form 2 dated 30 November 2021 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;
2. **Approve** DAP Application reference DAP/21/01945 and accompanying plans in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the Shire of Augusta Margaret River Local Planning Scheme No. 1 subject to the following conditions:

Amended Condition

1. To delete Condition 6

All other conditions and requirements detailed on the previous approval dated 4 June 2021 shall remain unless altered by this application.

The Alternate Recommendation was put and CARRIED (3/2).

For: Ms Kanella Hope
Ms Lee O'Donohue
Mr Justin Page

Against: Cr Julia Meldrum
Cr David Binks

REASON: The Panel agreed with the Shire that the Council Policy CCSP15 could be given consideration under Clause 67(2)(zb). Despite this, the Panel did not agree (by majority vote) with the Shire that the proposed amended condition 6 as set out in the RAR was sufficiently justified or based on reasonable planning certainty, need and nexus.

The Shire's desire for public art and the high quality and scale of the development was not disputed. However, the Shires rationale for the condition is a policy position. This position lacks implementation criteria and planning rationale, criteria and planning rationale that is typically found in a Local Planning Policy or a Development Contribution Scheme. The Panel determined that the deletion of Condition No. 6, would not adversely undermine the planning outcomes of the Panel's original development approval decision and subsequently removal of Condition No. 6 is considered reasonable under proper and orderly planning.



10. State Administrative Tribunal Applications and Supreme Court Appeals

The A/Presiding Member noted the following SAT Applications -

| Current SAT Applications | | | | |
|----------------------------|-------------------|---|--|-----------------|
| File No. & SAT DR No. | LG Name | Property Location | Application Description | Date Lodged |
| DP/14/00039 DR 65/2020 | Shire of York | Lots 4869 (2256), 5931, 9926 (2948) and 26934 Great Southern Highway, St Ronans | Construction and Use of Allawuna Farm for the purposes of a Class II Landfill | 28 July 2020 |
| DAP/21/02063 DR241/2021 | Shire of Dardanup | Lot 2 Banksia Road, Crooked Brook | Cleanaway Dardanup Landfill Facility | 5 November 2021 |
| DAP/21/02102 DR11/2022 | City of Busselton | Lot 108 (No.57) Dunn Bay Road & Lot 109 (No. 6) Cyrilleen Way, Dunsborough | Mixed Use Development (Office, Shops, Restaurant/Cafe, Liquor Store – Small & 42 Multiple Dwellings) | 13 January 2022 |

11. General Business

The A/Presiding Member announced that in accordance with Section 7.3 of the DAP Standing Orders 2020 only the A/Presiding Member may publicly comment on the operations or determinations of a DAP and other DAP members should not be approached to make comment.

12. Meeting Closure

There being no further business, the A/Presiding Member declared the meeting closed at 10:54am.