



Regional Joint Development Assessment Panel Minutes

Meeting Date and Time: Thursday, 10 March 2022; 1pm
Meeting Number: RJDAP/48
Meeting Venue: City of Busselton Council Chambers
2 Southern Drive, Busselton and Electronic Means

This DAP meeting was conducted both in person and through electronic means (Live stream on YouTube).

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Attendance

DAP Members

Ms Francesca Lefante (Presiding Member)
Mr Gene Koltasz (A/Deputy Presiding Member)
Mr John Taylor (A/Third Specialist Member)
Mayor Grant Henley (Local Government Member, City of Busselton)
Cr Paul Carter (Local Government Member, City of Busselton)

Officers in attendance

Mr Andrew Watts (City of Busselton)
Ms Lee Reddell (City of Busselton)

Minute Secretary

Ms Bethany Baker (City of Busselton)
Ms Cheryl Toovey (City of Busselton)

Applicants and Submitters

Mr Trent Will (Taylor Burrell Barnett)
Ms Leisha Aberle (DMG Architecture)

Members of the Public / Media

There were 68 members of the public in attendance; which included 38 public in the gallery and 30 members of the public attending via Livestream on Youtube.

1. Opening of Meeting, Welcome and Acknowledgement

The Presiding Member declared the meeting open at 1:03pm on 10 March 2022 and acknowledged the traditional owners and paid respect to Elders past and present of the land on which the meeting was being held.

Due to the conflict of interest of the Presiding Member and the unavailability of the Deputy Presiding Member, Ms Francesca Lefante has been appointed as Presiding Member for this meeting in accordance with regulation 27(3A) of the *Planning and Development (Development Assessment Panel) Regulations 2011*.

The 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 Presiding Member advised that the meeting is being audio recorded 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 Presiding Member granted permission for the minute taker to record proceedings for the purpose of the minutes only.

2. Apologies

Mr Paul Kotsoglo (Presiding Member)
Ms Kanella Hope (Deputy Presiding Member)
Mr Justin Page (Third Specialist 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

The Presiding Member noted that an addendum to the agenda was published to include details of a DAP direction for further information and responsible authority response in relation to Item 8.1, received on 3 March 2022 and response to an alternate recommendation received 10 March 2022.

All members declared that they had duly considered the documents.

6. Disclosure of Interests

DAP Member, Mr Paul Kotsoglo, declared an Impartiality Interest in item 8.1. Mr Kotsoglo is the Managing Director of Planning Solutions. They are the applicant of a current SAT application that he regards as having similar issues.

In accordance with section 6.2 and 6.3 of the DAP Standing Orders 2020, the Deputy Presiding Member, Ms Kanella Hope determined on 18 January 2022 that the member listed above, who had disclosed an Impartiality Interest, was not permitted to participate in the discussion and voting on the item.

DAP Member, Mr Justin Page, declared an Impartiality Interest in Item 8.1. Mr Page's employer (Element) acts on behalf of various landowner/tenants in Dunsborough Town Centre. At the RJDAP meeting held on 10 January 2022, consultants from Element objected on behalf of Lot 1 Dunn Bay Road to the proposed building height, scale/bulk (and other design aspects) of the neighbouring development which was ultimately refused by RJDAP. As this application involves similar planning issues Mr Page is of the view that for the integrity of the RJDAP he shouldn't participate in the decision making of this application.



In accordance with section 6.2 and 6.3 of the DAP Standing Orders 2020, the Presiding Member, Ms Francesca Lefante determined on 2 March 2022 that the member listed above, who had disclosed an Impartiality Interest, was not permitted to participate in the discussion and voting on the item.

7. Deputations and Presentations

- 7.1** Mr Brad Russell-Lane addressed the DAP against the recommendation for the application at Item 8.1.
- 7.2** Mr Mark Webster addressed the DAP against the recommendation for the application at Item 8.1.
- 7.3** Ms Sue Riccelli addressed the DAP against the recommendation for the application at Item 8.1.
- 7.4** Ms Kate Cox addressed the DAP against the recommendation for the application at Item 8.1.
- 7.5** Mr Tony Sharpe addressed the DAP against the recommendation for the application at Item 8.1.
- 7.6** Ms Leisha Aberle (DMG Architecture) addressed the DAP in support of the recommendation for the application at Item 8.1 and responded to questions from the panel.
- 7.7** Mr Trent Will (Taylor Burrell Barnett) addressed the DAP in support of the recommendation for the application at Item 8.1 and responded to questions from the panel.
- 7.8** Ms Lee Reddell (City of Busselton) addressed the DAP in relation to the application at Item 8.1 and responded to questions from the panel.
- 7.9** The panel noted written submissions received from Ms Anne Gobby and Ms Cecily Hancock.

8. Form 1 – Responsible Authority Reports – DAP Applications

8.1 Lot 400 (No.24) Dunn Bay Road Dunsborough

Development Description:	Mixed Use Development (Restaurant/Cafe & 25 Multiple Dwellings)
Applicant:	Frandoco Pty Ltd
Owner:	Taylor Burrell Barnett
Responsible Authority:	City of Busselton
DAP File No:	DAP/21/02120



REPORT RECOMMENDATION

Moved by: Nil

Seconded by: Nil

That the Regional JDAP resolves to:

1. **Approve** DAP Application reference DAP/21/02120 and accompanying plans (SK1.01, A1.02, A2.02, A2.03, A2.04, A2.05, A2.06, A2.07, A3.01, A6.01 and A7.01 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 Busselton Local Planning Scheme No. 21*, subject to the following conditions:

GENERAL CONDITIONS:

1. The development hereby approved shall be substantially commenced within four years from the date of this decision letter.
2. The development hereby approved shall be undertaken in accordance with the signed and stamped, Approved Development Plans, and except as may be modified by the following conditions.

PRIOR TO COMMENCEMENT OF ANY WORKS CONDITIONS

3. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City and have been approved in writing –
 - 3.1 Details of stormwater management to ensure stormwater runoff is retained for use and/or infiltration within the lot at a rate of 1m³ of storage per 40m² of Impervious Surfaces to accommodate a 5 Year ARI rainfall event.
 - 3.2 A Noise Management Plan which shall include an Acoustic Report which demonstrates that all mechanical services associated with the proposed development, and any other noise source, including noise emanating from Licensed Premises, will comply with the *Environmental Protection (Noise) Regulations 1997* and that the proposed development will be constructed to comply with the requirements of Part F5 of the National Construction Code (NCC).
 - 3.3 Lighting Plan which shall include provision of lighting for all awnings, parking areas, footpaths and areas accessible to the public and be consistent with the requirements of Australian Standard AS 4282—2019, *Control of the obtrusive effects of outdoor lighting*.
 - 3.4 Car Parking Management Plan, which shall demonstrate that sufficient parking will be made available and managed between residents, visitors to residential premises, customers and staff of commercial premises and loading area for vehicles servicing the commercial premises.



- 3.5 An Accessibility Plan which shall demonstrate those apartments that are designed to provide for disability access and details of how accessibility is to be achieved.
- 3.6 A schedule of the final materials, finishes and colours, which shall be generally consistent with the approved plans. The schedule shall include details of the type of materials proposed to be used, including their colour and texture.
- 3.7 Details of the treatment of the external surface of the boundary wall abutting the adjoining lot to the north east, such as to provide a suitable aesthetic appearance. Details should include materials to be used, textures and colours.
- 3.8 A Signage Plan which shall identify the location of signage to provide reasonable opportunity for recognition of businesses and residences within the development. The Signage Plan should include but not be limited to the location, design, materials and levels of illumination (where applicable) of any proposed signage. No signage is permitted above the ground floor façade of the building.
- 3.9 Detailed plans of the modifications to street verges, vehicle crossing points, roadside drainage, street furniture, footpaths, lighting and servicing infrastructure to provide vehicular and pedestrian access to the site.
- 3.10 A final Landscaping Plan (LP). The LP shall include the following:
 - a. the location, number, size and species of proposed trees and shrubs, including calculations for the landscaping area;
 - b. any lawns to be established;
 - c. any existing trees to be retained;
 - d. those areas to be reticulated or irrigated;
 - e. final alignment of the pedestrian footpath;
 - f. be based on water sensitive urban design principles;
 - g. be based on Designing Out Crime principles; and
 - h. verge treatments, including hard and soft landscaping treatments.
- 3.11 A Construction Management Plan (CMP). The CMP shall address the following:
 - a. all forward works for the site;
 - b. public safety and amenity;
 - c. site security;
 - d. contact details of essential site personnel, construction period and operating hours;
 - e. community information, consultation and complaints management Plan;
 - f. traffic, access and parking management;
 - g. delivery of materials and equipment to the site;
 - h. storage of materials and equipment on the site;
 - i. waste management;
 - j. sanitary facilities;
 - k. dust management during the construction process;



- l. stormwater and sediment control; and
 - m. any other matter deemed relevant by the City.
- 3.12 Details of the proposed bicycle parking for the restaurant/cafe premises, designed in accordance with the Australian Standard for Parking facilities – Bicycle parking (AS2890.3-2015) and shall accommodate a minimum of 8 bicycles. The details shall include, as a minimum, the location, design and materials to be used in their construction.
- 3.13 Arrangements to provide public art works within the development site. This entails compliance with the Percent for Art provisions of the City's Development Contribution Policy via appropriate works up to a minimum value of 1% of the Estimated Cost of Development ("ECD").
- 4. The development hereby approved, or any works required to implement the development, shall not commence until the following contributions have been paid to the City:
 - 4.1 A contribution of \$82,375.00 towards community facilities in the Dunsborough and Quindalup precinct.
 - 4.2 A contribution of \$28,009.00 towards Road Network Upgrading in the Dunsborough precinct.
 - 4.3 A contribution of \$66,240.36 as cash-in-lieu of 6 parking bays not provided on-site.

PRIOR TO OCCUPATION/USE OF THE DEVELOPMENT CONDITIONS

- 5. The development hereby approved shall not be occupied, or used, until all plans, details or works required by Conditions 2, 3 & 4 have been implemented; and the following conditions have been complied with to the satisfaction of the City –
 - 5.1. Crossovers are located and constructed to the City's specifications.
 - 5.2. All vehicle parking, access ways, footpaths and external lighting shall be constructed to a minimum standard in accordance with the Australian Standard for Parking Facilities - Off-Street Car Parking (AS 2890.1) and shall be developed in the form and layout depicted on the approved plans to the satisfaction of the City.
 - 5.3. Accessible car parking and access shall be provided and designed in accordance with the Australian Standard for Parking Facilities - Off-Street Car Parking for people with disabilities (AS 2890.6).
 - 5.4. Portions of the Seymour Boulevard and Chieftain Crescent road reserves being widened to the extent necessary to include proposed pedestrian footpaths. The landowner shall transfer the land required to the Crown free of cost for the purpose of road widening.



ONGOING CONDITIONS

6. The works and other measures undertaken to satisfy Conditions 2, 3 & 5 shall be subsequently maintained for the life of the development and the following conditions must be complied with, to the satisfaction of the City –
 - 6.1. No roller doors or screens are permitted to be installed to the frontages of the ground floor commercial tenancy.
 - 6.2. All glazing to the ground floor commercial tenancy is to be clear, non-tinted glazing and shall not be subsequently obscured by alternative window treatments, signage or internal shelves.
 - 6.3. All services and service related hardware, including antennae, satellite dishes and air conditioning units, being suitably located away from public view and/or screened.
 - 6.4. Clothes drying shall not occur on open balconies at any time unless behind purpose built screening approved as part of the development.

ADVICE TO APPLICANT

1. If the applicant and/or owner are aggrieved by this decision there is a right of review under the provisions of Part 14 of the *Planning and Development Act 2005*. A review must be lodged with the State Administrative Tribunal, and must be lodged within 28 days of the decision.
2. This Decision Notice grants Development Approval to the development the subject of this application. It cannot be construed as granting Development Approval for any other structure shown on the approved plans which was not specifically included in this application.
3. Please note it is the responsibility of the applicant / owner to ensure that, in relation to Condition 1, this Development Approval remains current and does not lapse. The City of Busselton does not send reminder notices in this regard. The term “substantially commenced” has the meaning given to it in the *Planning and Development (Local Planning Schemes) Regulations 2015* as amended from time to time.
4. In accordance with the provisions of the *Building Act 2011*, and *Building Regulations 2012*, an application for a building permit must be submitted to, and approval granted by the City, prior to the commencement of the development hereby permitted.
5. Prospective purchasers of multiple dwellings should be advised by the developer that use of a residence for the purposes of short stay accommodation will require City Development Approval for a change of use to ‘Holiday Home – Grouped/multiple dwelling’. Advice should be obtained from a suitable qualified person in respect to the ability of any multiple dwelling to comply with accessibility requirements of the *National Construction Code* that may apply to short stay accommodation.



6. Contribution fee/s are upgraded in line with the 'Local Government Cost Index' on 30 June each year. Prior to payment of contributions please contact the City's Planning Services in writing (city@busselton.wa.gov.au), quoting the relevant approval reference number to arrange for a request for payment for the current contribution fee/s. The contribution amount will be determined at the time payment is received and may therefore vary from the quoted figure in the condition of approval.
7. Unless otherwise first agreed in writing, any trees or plants in the approved landscaping plan which, within a period of five years from first planting, are removed, die or, are assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.
8. The payment towards community facilities in the Dunsborough precinct is required as a result of the City of Busselton Local Planning Scheme No. 21 - Development Contribution Special Control Area provisions and is calculated on the basis of \$3,295.00 for every additional accommodation unit approved in the Dunsborough & Quindalup precinct. The contribution will be retained within a separate fund to be used solely for the upgrading, improving and provision of the City's community facilities consistent with a Development Contribution Plan for the precinct.
9. The payments towards road upgrades are required in accordance with provisions of *Local Planning Policy 6.4 - Road, Footpath and Cycle Network Upgrading Contributions*. The contribution will be retained within a separate fund to be used solely for the upgrading, improving and provision of the City's Distributor Network consistent with a road and footpath upgrades plan for the precinct.
10. Applicants/developers are encouraged to review the *Percent for Art Policy Step by Step Guide for Developers* which can be viewed on the City's website at www.busselton.wa.gov.au and liaise with the City's Cultural Planning Officer at the earliest possible opportunity.
11. You are advised *Agonis flexuosa* (WA Peppermint Trees) provide key habitat for the "critically endangered" *Pseudocheirus occidentalis* (Western Ringtail Possum). The Western Ringtail Possum are awarded protection under the *Biodiversity Conservation Act 2016* and you may face penalties for taking or disturbing (including intentionally disturbing, trapping/relocating or causing harm/death) a Western Ringtail Possum. A Section 40 Ministerial authorisation to take or disturb threatened fauna under the *Biodiversity Conservation Act 2016* is to be obtained prior to clearing occurring. A fauna handler is required to be onsite prior to and during any clearing operations and is required to hold a Section 40 Ministerial Authorisation. The fauna handler is to provide a post clearing report to DBCA swlanduseplanning@dbca.wa.gov.au that includes the numbers of adult or juvenile western ringtail possums observed, taken or disturbed, any injuries or fatalities, and the location of the fauna after clearing has occurred.



12. The proponent shall refer to Department of Water and Environmental Regulation's acid sulfate soil guidelines for information to assist with the management of ground and/or groundwater disturbing works". Link:

<https://www.der.wa.gov.au/your-environment/acid-sulfate-soils/69-acidsulfatesoils-guidelines>
13. In accordance with the requirements of the *Local Government (Uniform Local Provisions) Regulations 1996*, you are hereby notified that any vehicle access from the land to a road or other public thoroughfare must be in accordance with the City's adopted Crossover Policy and Vehicle Crossovers Technical Specification.
14. Food handling, preparation and storage areas to be designed and constructed in accordance with the *Food Act 2008*, *Food Regulations 2009* and the *Australian and New Zealand Food Authority (ANZFA) Food Safety Standards*.
15. All public access areas (dining areas, etc) are to comply with the provisions of the *Health (Miscellaneous Provisions) Act 1911*, related regulations and guidelines and in particular Part VI – Public Buildings.

The Report Recommendation was not moved as the Alternate Motion below was moved and carried prior to this being tabled.

ALTERNATE MOTION

Moved by: Cr Paul Carter

Seconded by: Mayor Grant Henley

An administrative amendment was made to the preamble to reflect the correct plans to be refused.

With the agreement of the mover and seconder Reason 1 to be amended to read:

The application does not satisfy the following Element Objectives of SPP7.3, and the issues that arise from that assessment cannot reasonably be addressed via conditions of approval or provision of further information -

- *O2.2.1 (Building Height);*
- *O2.5.1 (Plot Ratio); and*
- *~~O2.7.2 (Building Separation);~~*

REASON: Alternate motion was moved without point 3.

Refuse DAP Application reference DAP/21/02102 and accompanying plans ((SK1.01, A1.02, A2.02, A2.03, SK2.04, SK2.05, SK2.06, SK2.07, A3.01, A6.01 and A7.01) 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 Busselton Local Planning Scheme No. 21, for the following reasons:



Reasons:

1. The application does not satisfy the following Element Objectives of SPP7.3, and the issues that arise from that assessment cannot reasonably be addressed via conditions of approval or provision of further information -

- O2.2.1 (Building Height);
- O2.5.1 (Plot Ratio).

As the height and bulk of the proposed development is considered to be excessive and inconsistent with the desired future scale and character of the local area and the immediate context of the site; and

2. The application does not satisfy the following matters identified at clause 67(2) of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, and the issues that arise from that assessment cannot reasonably be addressed via conditions of approval or provision of further information -

- (m) the compatibility of the development with its setting, including -
 - (i) the compatibility of the development with the desired future character of its setting; and
 - (ii) the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development; and
- n) the amenity of the locality including the following -
 - (ii) the character of the locality; As the height and bulk of the proposed development is considered to be excessive and inconsistent with the desired future scale and character of the local area and the immediate context of the site; and

3. The application is also not considered to have sufficiently satisfied the following matters identified at clause 67(2) of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, although the issues that arise from that assessment could potentially be addressed via conditions of approval or provision of further information -

- (s) the adequacy of -
 - ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;

As it is not clear that there is sufficient parking to meet the demands that will be generated by the commercial component of the development.



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

For: Mayor Grant Henley
Cr Paul Carter
Mr John Taylor

Against: Ms Francesca Lefante
Mr Gene Koltasz

REASON: The proposal is not considered to satisfy the planning framework, with the overall building height and bulk being inconsistent with the character and context, of the site and street interface.

Due consideration was given to a range of matters including the history of the site.

Panel members were of the view that the proposed design and street interface at ground level resulted in reduced street activation given the limited mix of commercial uses and blank wall along Seymour Boulevard which is significantly different from previous approvals, and does not satisfy the Scheme provisions.

The building height, scale and form in terms of Plot ratio is consider excessive and inconsistent with the immediate context of the site.

Due consideration and weight were given to the significant number of community submissions regarding the future desired character of the townsite in particular in relation to building height.

The majority of Panel Members were of the opinion that the proposal is not appropriate, does not meet Element Objectives of SPP7.3.

Accordingly, the panel did not support the exercise of discretion, and refused the proposal.

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

Nil



10. State Administrative Tribunal Applications and Supreme Court Appeals

The 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) Cyrillean Way, Dunsborough	Mixed Use Development (Office, Shops, Restaurant/Cafe, Liquor Store – Small & 42 Multiple Dwellings)	13 January 2022

11. General Business

The Presiding Member announced that in accordance with Section 7.3 of the DAP Standing Orders 2020 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.

12. Meeting Closure

There being no further business, the Presiding Member declared the meeting closed at 3:06pm.