



## Minutes of the Southern Joint Development Assessment Panel

**Meeting Date and Time:** 28 February 2018; 9:00am  
**Meeting Number:** SJDAP/32  
**Meeting Venue:** Department of Planning, Lands and Heritage  
140 William Street  
Perth

### Attendance

#### DAP Members

Ms Jacky Jurmann (A/Presiding Member)  
Ms Kanella Hope (A/Deputy Presiding Member) – *via teleconference*  
Ms Shelley Shepherd (Specialist Member) – *via teleconference*  
Cr Peter McCleery (Local Government Member, Shire of Capel) – *via teleconference*  
Cr Brian Hearne (Local Government Member, Shire of Capel) – *via teleconference*

#### Officers in attendance

Ms Suzanne Occhipinti (Shire of Capel) – *via teleconference*  
Mr Kim Muste (Shire of Capel) – *via teleconference*

#### Minute Secretary

Ms Michelle Tan (Department of Planning, Lands and Heritage)

#### Applicants and Submitters

Mr Nic Preston (Hodge Collard Preston Architects)  
Mr Vernon Butterly (Veris Australia Pty Ltd)  
Mr Yong Lee Zoe (Capel Meadows Pty Ltd)  
Mr Max Ma (Capel Meadows Pty Ltd)

#### Members of the Public / Media

Nil

### 1. Declaration of Opening

The A/Presiding Member, Ms Jacky Jurmann declared the meeting open at 9:00am on 28 February 2018 and acknowledged the past and present traditional owners and custodians of the land on which the meeting was being held.

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

**Ms Jacky Jurmann**  
A/Presiding Member, Southern JDAP



The A/Presiding Member advised that the meeting is being audio recorded in accordance with Section 5.16 of the Standing Orders 2017; No Recording of Meeting, 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 A/Presiding Member granted permission for the minute taker to record proceedings for the purpose of the minutes only.

## 2. Apologies

Mr Eugene Koltasz (Presiding Member)

## 3. Members on Leave of Absence

Nil

## 4. Noting of Minutes

Minutes of the Southern JDAP meeting No. 31 held on 21 February 2018 were noted by DAP members.

## 5. Declaration of Due Consideration

All members declared that they had duly considered the documents.

## 6. Disclosure of Interests

Nil

## 7. Deputations and Presentations

7.1 Mr Nic Preston (Hodge Collard Preston Architects) addressed the DAP in support of the application at Item 8.1.

7.2 Mr Vernon Butterly (Veris Australia Pty Ltd) addressed the DAP in support of the application at Item 8.1. Mr Butterly answered questions from the panel.

## 8. Form 1 – Responsible Authority Reports – DAP Applications

- 8.1
- |                        |                                                          |
|------------------------|----------------------------------------------------------|
| Property Location:     | Lot 3 Capel Tutunup Rd Ludlow (L3 DP79676)               |
| Application Details:   | Use and Development of a 12 bedroom Residential Building |
| Applicant:             | Veris Australia Pty Ltd                                  |
| Owner:                 | Capel Meadows Pty Ltd                                    |
| Responsible Authority: | Shire of Capel                                           |
| DAP File No:           | DAP/17/01327                                             |

**Ms Jacky Jurmann**  
A/Presiding Member, Southern JDAP



## REPORT RECOMMENDATION

**Moved by:** Nil

**Seconded by:** Nil

That the Southern Joint Development Assessment Panel resolves to:

**Refuse** DAP Application reference no. DAP/17/01327 and accompanying plans provided at Attachments 2 and 3 in accordance with Clause 68(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the *Shire of Capel Town Planning Scheme No. 7* and the *Greater Bunbury Region Scheme*, for the following reasons:

1) Clause 67 - Matters to be considered by local government of the *Planning and Development (Local Planning Schemes) Regulations 2015* outlines the matters that local government is to have due regard to when considering a development application. It is considered that the proposal does not satisfy the following matters:

*(b) the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving;*

Approval of this development would be inconsistent with the orderly and proper planning of the locality as it would result in a significant scale sensitive land use and development that is in conflict with nearby existing and future mining operations.

*(c) any approved State planning policy;*

The proposal is not consistent with the following State Planning Policies:

- i) The objectives of SPP 2.0 - Environment and Natural Resources, in that:
  - i. The use and development proposed has the potential to limit mineral exploration and extraction on and near the subject site, as this may cause amenity impacts to the occupants of the proposed building, if approved.
- ii) The objectives of SPP 2.5 - Rural Planning, particularly:
  - ii. Section 5.9 Basic raw materials outside the Perth and Peel planning regions, and
  - iii. Section 5.12.1 Avoiding land use conflict;  
as the proposal has the potential to limit mining and mineral extraction operations in the area currently, and potentially on the subject land in the future.

*(e) any policy of the Commission;*

The use proposed is inconsistent with the objectives of the Greater Bunbury Region Scheme, in that it is located within the Strategic Minerals and Basic Raw Materials Resource Policy area, and

- i) is of a type and scale that has the potential to result in mineral resources and basic raw materials of State or regional significance being sterilised, and



- ii) would result in the establishment of sensitive land uses on land within, adjacent to or in close proximity to the policy areas, of a type and scale which would potentially prejudice current or future mining of mineral resources or extraction of basic raw materials.

*(g) any local planning policy for the Scheme area;*

The use proposed is inconsistent with the objectives of Local Planning Policy 6.6, particularly:

- i) Part 3.2 Industry and Mining; and
- ii) Part 3.7 Basic Raw Material.

The use and development proposed has not been demonstrated by the applicant as being necessary to sustain and enhance agriculture on this lot, and does not provide any agricultural benefit that might neutralise or outweigh the potential negative impacts to mining activities or the economy that may result.

The proposal is incompatible with the mining lease and future mining activities on the subject land, as it may result in health, amenity, economic and infrastructure impacts to and from the proposed development.

*(m) the compatibility of the development with its setting including 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;*

Approval of this development would result in an incompatible relationship with nearby land, as it would result in a sensitive land use in and surrounded by current and future mining areas. The proposal has the potential to result in adverse impacts to the occupiers and guests of the residential building, and/or restrict the operation of mining activities currently in the area, and in future potentially on the subject land.

*(r) the suitability of the land for the development taking into account the possible risk to human health or safety;*

The proposal would place a sensitive land use within close proximity to nearby mining operations and potentially be subject to significant noise and dust emissions. As a result, there is a strong potential for land use conflicts. This would be inconsistent with State Planning Policy 1 State Planning Framework, State Planning Policy 2.0 Environment and Natural Resources, State Planning Policy 2.5 Rural Land Use Planning, the South West Planning and Infrastructure Framework, and the State Planning Strategy Framework 2050.

*(y) any submissions received on the application;*

Two agencies objected the proposal, being the Department of Primary Industries and Regional Development (DPIRD), and Department of Mines, Industry Regulation and Safety (DMIRS), The Department of Planning, Lands and Heritage (DPLH) is deemed to object to the proposal, as the department's in-principle support was conditional on the responses from DPIRD and DMIRS.

**The Report Recommendation lapsed for want of a mover and a seconder.**

**Ms Jacky Jurmann**  
A/Presiding Member, Southern JDAP



## ALTERNATE MOTION

**Moved by:** Cr Brian Hearne

**Seconded by:** Cr Peter McCleery

That the Southern Joint Development Assessment Panel resolves to:

**Approve** DAP Application reference no. DAP/17/01327 and accompanying plans provided at Attachments 2 and 3 in accordance with Clause 68(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the *Shire of Capel Town Planning Scheme No. 7* and the *Greater Bunbury Region Scheme*, subject to the following conditions:

### General Conditions:

- 1) All development must be in accordance with the Approved Development Plan(s) with the exception of any amendment required in accordance with any condition of this approval.
- 2) The occupancy of the approved building is restricted to a land manager and their family, and invited guests only. No part of the building is permitted to be:
  - a) let, rented or hired out for commercial gain, or
  - b) used for any business other than the management of pastoral activities on the subject lot unless otherwise exempt.
- 3) All waste from the approved building must be collected regularly to avoid nuisance caused by vermin or odour, to the satisfaction of the Shire of Capel.

### Prior to Commencement of Development Conditions:

- 4) Prior to the lodgement of a Building Permit, the owner/applicant must submit to and have approved by Council, an amended Bushfire Management Plan that is generally consistent with the plan submitted for the lot with the application (Xero Fire Bushfire Management Plan revision BMP1.3, reference XB17015, dated 23 August 2017), but modified to comply with the matters detailed in the attached correspondence from DFES (DFES ref: D03847, dated 10 January 2018). Once approved, the Bushfire Management Plan will form part of this permit.
- 5) Prior to the lodgement of a Building Permit Application, a detailed schedule of colours and materials shall be submitted for approval by the Shire of Capel, and the development must be finished and maintained thereafter in accordance with approved plan/schedule.
- 6) Prior to the lodgement of a Building Permit Application, a landscaping plan must be submitted to, and approved by, the Shire of Capel. The landscape plan must address the following:
  - a) The plan must show a vegetation screen at least 20m deep, which comprises plant species indigenous to the local catchment area and a range of storeys (lower, middle and upper), to provide an effective visual and nuisance buffer in the following locations:
    - i) Immediately north of the proposed carpark along the full length of the carpark area, and
    - ii) Along the existing windbreak/vegetation line that lies approximately 60m east of the proposed building, for a length of at least 150m, and



- which screens both the carpark and proposed building when viewed from the east and south east.
- b) Detail the location, species and size of vegetation to be removed.
  - c) Detail the exact species, location, number and size at maturity of proposed plants to be planted. A key or legend detailing proposed species type grouped under the subheadings of tree, shrub and ground cover is required.
  - d) Detail the reticulation of landscaped areas including the source of the water supply.
- 7) Prior to the lodgement of the Building Permit Application, the owner/applicant must provide Council with an amended BAL assessment prepared by an accredited and experienced BAL assessor, which demonstrates that the additional vegetation planting required by any condition of this Development Approval does not increase the BAL rating submitted with the application.
  - 8) Prior to the lodgement of the Building Permit Application, a detailed Engineering design plan of the stormwater disposal system shall be submitted for approval of the Shire of Capel, and thereafter implemented in accordance with the approved plan to the satisfaction of the Shire of Capel.
  - 9) Prior to the lodgement of the Building Permit Application, a detailed Engineering design for the car parking, maneuvering areas and drainage thereof being submitted for approval of the Shire of Capel, and thereafter implemented in accordance with the approved design to the satisfaction of the Shire of Capel.

**Prior to Occupation/Use of Development Conditions:**

- 10) Prior to occupation, a notification pursuant to Section 70A of the Transfer of Land Act 1893 must be registered against the title to the subject land and a copy provided to Council. The notification must advise the owners and successors in title that:
  - a) the land is within the 'Strategic Minerals and Basic Raw Materials Resource' policy area, and may be impacted by mining activity on or near the subject land, and/or restricted by that policy, and
  - b) the land is within the 'Priority Agricultural Land' policy area, and may be impacted by farming activities on or near the subject land, and/or restricted by that policy.
- 11) Prior to Occupation, vehicle parking, manoeuvring and circulation areas shall be suitably constructed, sealed, drained, kerbed, marked and signed (including loading and parking provided for the exclusive use of people with a disability) and thereafter maintained to the specification and satisfaction of the Shire of Capel.
- 12) Prior to occupation, the landscaped area(s) must be planted, established and reticulated in accordance with the endorsed landscape plan(s). These areas must be maintained as landscaped areas at all times and to the satisfaction of the Shire of Capel. Before the development is occupied, the landscaped area(s) must be planted, established and reticulated in accordance with the endorsed landscape plan(s). These areas must be maintained as landscaped areas at all times and to the satisfaction of the Shire of Capel.



- 13) Prior to occupation, the owner/applicant must provide an onsite waste storage and collection area that is graded, drained and screened from public view.
- 14) Prior to occupation, the proposed development must be have access to a sufficient supply of potable water that is of the quality specified under the *Australian Drinking Water Quality Guidelines 2004*, and be in accordance with the draft Department of Health *Country Sewerage Policy*. The potable water supply must be additional to any water supply identified in the approved Bushfire Management Plan.
- 15) Prior to occupation, the proposed development must be connected to an approved onsite waste water system. Approval from the Department of Health is required for any on-site waste water treatment process.
- 16) Prior to occupation, a mosquito management plan must be submitted to and approved by the Shire of Capel, and implemented thereafter to the satisfaction and specification of the Shire of Capel.

**Advice Notes:**

- 1) This planning consent is confined to the authority of the Shire of Capel Town Planning Scheme No.7 and any delegation pursuant to the GBRS (delete if not applicable) under the Planning and Development Act 2005. This decision does not remove the obligation of the applicant and/or property owner to ensure that all other required local government approvals are obtained, all other applicable state and federal legislation is complied with, and any restrictions, easements and encumbrances are adhered to, nor does it infer that other necessary approvals are forthcoming as an outcome of this planning consent.
- 2) The applicant will need to comply with the following requirements of other legislation:
  - a) The issue of a Building Permit and compliance with the Building Code of Australia.
  - b) Environmental Health requirements, including an application for a lodging house and a septic system;
  - c) Native Vegetation clearing permits that may be required by the Department of Water and Environmental Regulation (DWER).
  - d) Approval may be required by the Department of Health to install and use a waste water system.
- 3) It is strongly recommended that early consultation be undertaken with Shire Officers in relation to condition compliance if delays in the issue of a Building Permit are to be avoided. For your assistance the Building Department may be contacted on (08) 9727 0222.

**Ms Jacky Jurmann**  
A/Presiding Member, Southern JDAP



- 4) The clearing of native vegetation in Western Australia requires a Clearing Permit under the Environmental Protection Act 1986 unless the clearing is for an exempt purpose. Proponents are advised to contact the Department of Water and Environmental Regulation on (08) 9725 4300 for further advice in this regard.
- 5) The clearing of native vegetation within the Shire of Capel may result in impacts upon threatened species that are protected under the Commonwealth Environment Protection & Biodiversity Conservation Act 1999. Proponents are advised to contact the Department of Environment and Energy (Federal) on 1800 803 772 for further advice regarding their obligations under the Act.
- 6) An application to construct or install an apparatus for the treatment of sewage and the disposal of effluent and liquid wastes must be submitted for the approval of the Shire of Capel, in accordance with the Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974.
- 7) Site specific testing will be required to determine the applicable type of effluent disposal and treatment device needed. The testing shall include soil permeability, soil absorption and depth of clay material, depth of sand and soil phosphorus retention index (PRI). An application to Construct or Install an Apparatus for the Treatment of Sewerage shall be included with all Building Permit applications. The Geotechnical Report should qualify the use if onsite effluent disposal in accordance with AS 1547.
- 8) The property is not connected to scheme water and will require a water supply service to the satisfaction of the Health Services staff and will require regular water monitoring to ensure compliance with the Australian Drinking Water Guidelines No 6. A minimum supply shall be the equivalent of a 92,000 litre rainwater tank, in addition to a 50,000L water tank for fire fighting purposes.
- 9) The proposed development may result in increased rates levied for the site. Further information regarding this matter can be obtained from the Shires Rates Department.
- 10) All food preparation areas are to comply with the provisions of the Food Act 2008 and related code, regulations and guidelines. Details available for download from: [http://ww2.health.wa.gov.au/Articles/F\\_I/Food-regulation-in-WA](http://ww2.health.wa.gov.au/Articles/F_I/Food-regulation-in-WA).

#### **AMENDING MOTION**

**Moved by:** Ms Jacky Jurmann

**Seconded by:** Ms Shelley Shepherd

To amend Conditions 4 to 9 by rewording "Prior to the lodgement of a Building Permit Application" to read as "Prior to the commencement of works".

**REASON: The planning conditions cannot relate to third party legislation.**

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

**Ms Jacky Jurmann**  
A/Presiding Member, Southern JDAP





## **ALTERNATE MOTION (AS AMENDED)**

That the Southern Joint Development Assessment Panel resolves to:

**Approve** DAP Application reference no. DAP/17/01327 and accompanying plans provided at Attachments 2 and 3 in accordance with Clause 68(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the *Shire of Capel Town Planning Scheme No. 7* and the *Greater Bunbury Region Scheme*, subject to the following conditions:

### **General Conditions:**

- 1) All development must be in accordance with the Approved Development Plan(s) with the exception of any amendment required in accordance with any condition of this approval.
- 2) The occupancy of the approved building is restricted to a land manager and their family, and invited guests only. No part of the building is permitted to be:
  - a) let, rented or hired out for commercial gain, or
  - b) used for any business other than the management of pastoral activities on the subject lot unless otherwise exempt.
- 3) All waste from the approved building must be collected regularly to avoid nuisance caused by vermin or odour, to the satisfaction of the Shire of Capel.

### **Prior to Commencement of Development Conditions:**

- 4) Prior to the commencement of works, the owner/applicant must submit to and have approved by Council, an amended Bushfire Management Plan that is generally consistent with the plan submitted for the lot with the application (Xero Fire Bushfire Management Plan revision BMP1.3, reference XB17015, dated 23 August 2017), but modified to comply with the matters detailed in the attached correspondence from DFES (DFES ref: D03847, dated 10 January 2018). Once approved, the Bushfire Management Plan will form part of this permit.
- 5) Prior to the commencement of works, a detailed schedule of colours and materials shall be submitted for approval by the Shire of Capel, and the development must be finished and maintained thereafter in accordance with approved plan/schedule.
- 6) Prior to the commencement of works, a landscaping plan must be submitted to, and approved by, the Shire of Capel. The landscape plan must address the following:
  - a) The plan must show a vegetation screen at least 20m deep, which comprises plant species indigenous to the local catchment area and a range of storeys (lower, middle and upper), to provide an effective visual and nuisance buffer in the following locations:
    - i) Immediately north of the proposed carpark along the full length of the carpark area, and
    - ii) Along the existing windbreak/vegetation line that lies approximately 60m east of the proposed building, for a length of at least 150m, and which screens both the carpark and proposed building when viewed from the east and south east.



- b) Detail the location, species and size of vegetation to be removed.
  - c) Detail the exact species, location, number and size at maturity of proposed plants to be planted. A key or legend detailing proposed species type grouped under the subheadings of tree, shrub and ground cover is required.
  - d) Detail the reticulation of landscaped areas including the source of the water supply.
- 7) Prior to the commencement of works, the owner/applicant must provide Council with an amended BAL assessment prepared by an accredited and experienced BAL assessor, which demonstrates that the additional vegetation planting required by any condition of this Development Approval does not increase the BAL rating submitted with the application.
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**Prior to Occupation/Use of Development Conditions:**

- 10) Prior to occupation, a notification pursuant to Section 70A of the Transfer of Land Act 1893 must be registered against the title to the subject land and a copy provided to Council. The notification must advise the owners and successors in title that:
  - a) the land is within the 'Strategic Minerals and Basic Raw Materials Resource' policy area, and may be impacted by mining activity on or near the subject land, and/or restricted by that policy, and
  - b) the land is within the 'Priority Agricultural Land' policy area, and may be impacted by farming activities on or near the subject land, and/or restricted by that policy.
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**Advice Notes:**

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- 2) The applicant will need to comply with the following requirements of other legislation:
  - a) The issue of a Building Permit and compliance with the Building Code of Australia.
  - b) Environmental Health requirements, including an application for a lodging house and a septic system;
  - c) Native Vegetation clearing permits that may be required by the Department of Water and Environmental Regulation (DWER).
  - d) Approval may be required by the Department of Health to install and use a waste water system.
- 3) It is strongly recommended that early consultation be undertaken with Shire Officers in relation to condition compliance if delays in the issue of a Building Permit are to be avoided. For your assistance the Building Department may be contacted on (08) 9727 0222.
- 4) The clearing of native vegetation in Western Australia requires a Clearing Permit under the Environmental Protection Act 1986 unless the clearing is for an exempt purpose. Proponents are advised to contact the Department of Water and Environmental Regulation on (08) 9725 4300 for further advice in this regard.
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- 6) An application to construct or install an apparatus for the treatment of sewage and the disposal of effluent and liquid wastes must be submitted for the approval of the Shire of Capel, in accordance with the Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974.
- 7) Site specific testing will be required to determine the applicable type of effluent disposal and treatment device needed. The testing shall include soil permeability, soil absorption and depth of clay material, depth of sand and soil phosphorus retention index (PRI). An application to Construct or Install an Apparatus for the Treatment of Sewerage shall be included with all Building Permit applications. The Geotechnical Report should qualify the use if onsite effluent disposal in accordance with AS 1547.
- 8) The property is not connected to scheme water and will require a water supply service to the satisfaction of the Health Services staff and will require regular water monitoring to ensure compliance with the Australian Drinking Water Guidelines No 6. A minimum supply shall be the equivalent of a 92,000 litre rainwater tank, in addition to a 50,000L water tank for fire fighting purposes.
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- 10) All food preparation areas are to comply with the provisions of the Food Act 2008 and related code, regulations and guidelines. Details available for download from: [http://ww2.health.wa.gov.au/Articles/F\\_I/Food-regulation-in-WA](http://ww2.health.wa.gov.au/Articles/F_I/Food-regulation-in-WA).

**REASON: The proposed development of a residential building will enable the continuation of agricultural activities on the farm as a whole and is unlikely to detrimentally impact the mining potential of the locality.**

**The Alternate Motion (as amended) was put and CARRIED UNANIMOUSLY.**

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

Nil

**10. Appeals to the State Administrative Tribunal**

Nil

**11. General Business / Meeting Close**

The A/Presiding Member reminded the meeting that in accordance with Section 7.3 of DAP Standing Order 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 A/Presiding Member declared the meeting closed at 9:30am.

**Ms Jacky Jurmann**  
A/Presiding Member, Southern JDAP