



Southern JDAP Development Assessment Panel Minutes

Meeting Date and Time: 20 August 2019; 10.00 AM
Meeting Number: SJDAP/47
Meeting Venue: Department of Planning, Lands and Heritage
140 William Street
Perth

Attendance

DAP Members

Mr Robert Fenn (Presiding Member)
Mr Vernon Butterly (A/Deputy Presiding Member)
Ms Shelley Shepherd (Specialist Member)
Mayor Grant Henley (Local Government Member, City of Busselton) – *via teleconference*
Cr John McCallum (Local Government Member, City of Busselton) – *via teleconference*

Officers in attendance

Ms Lee Reddell (City of Busselton) – *via teleconference*
Mr Paul Needham (City of Busselton) – *via teleconference*

Minute Secretary

Ms Ashlee Kelly (DAP Secretariat)

Applicants and Submitters

Mr Alex McGlue (Lavan)
Mr Paul McQueen (Lavan)
Mr Paul Kotsoglo (Planning Solutions)
Mr Ross Underwood (Planning Solutions)
Mr Chris Aberly (Deep End Services)
Mr Larry Guise (Across Planning)
Ms Isabella Mosole (SPB Australia)
Mr Allan Erceg (Review)

Members of the Public / Media

There was 1 member of the public in attendance.



1. Declaration of Opening

The Presiding Member declared the meeting open at 10.00am on 20 August 2019 and acknowledged the traditional owners and payed 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

Mr Geoffrey Klem (Deputy 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

In accordance with section 2.4.10 of the DAP Code of Conduct 2017, DAP Presiding Member, Mr Robert Fenn, 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 Robert Fenn 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 Mr Paul Kotsoglo (Planning Solutions) addressed the DAP in support the application at Item 10.1 and responded to questions from the panel.
- 7.2 Mr Chris Abery (Deep End Services) addressed the DAP in support of the application at Item 10.1 and responded to questions from the panel.
- 7.3 Mr Paul McQueen (Lavan) addressed the DAP in support of the application at Item 10.1 and responded to questions from the panel.
- 7.4 Mr Larry Guise (Across Planning) addressed the DAP against the application at Item 10.1 and responded to questions from the panel.
- 7.5 Mr Paul Kotsoglo (Planning Solutions) responded and replied to Mr Larry Guise presentation.
- 7.6 Mr Paul Needham (City of Busselton) addressed the DAP in relation to the application at Item 10.1 and responded to questions from the panel.

8. Form 1 – Responsible Authority Reports – DAP Application

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 182 (86) West Street, West Busselton
Development Description: Market (Busselton Marketplace)
Applicant: Mr Ross Underwood, Planning Solutions
Owner: Realview Holdings Pty Ltd and West Street Nominees Pty Ltd
Responsible Authority: City of Busselton
DAP File No: DAP/18/01519

REPORT RECOMMENDATION

Moved by: Mayor Grant Henley

Seconded by: Cr John McCallum

That the Southern Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 38/2019 resolves to:

Reconsider its decision dated 29 January 2019 and **refuse** DAP Application reference DAP/18/01519 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 provisions of Clauses 3.2, 4.8, 4.10, 4.21, 4.22, 4.23, 5.3 and Schedule 3 of the City of Busselton Local Planning Scheme No.21, for the following reasons:



1. The proposal does not comply with the objectives of the Service Commercial zone, as follows:
 - a. The nature of the business does not require good vehicular access and/or a large site;
 - b. The proposed use would be appropriate in, and could conveniently be accommodated in the Centre zones;
 - c. The proposal is likely to have a detrimental impact on surrounding commercial centres and does not pay due regard to the strategic importance, or need to maintain the commercial primacy of the Regional Centre and Centre zones;
 - d. The proposal is likely to contribute to the spread of centres.

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

For: Mayor Grant Henley
Cr John McCallum

Against: Mr Robert Fenn
Mr Vernon Butterly
Ms Shelley Shepherd

ALTERNATE MOTION

Moved by: Mr Robert Fenn

Seconded by: Mr Vernon Butterly

That the Southern Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 38/2019, resolves to:

Reconsider its decision dated 29 January 2019 and **approve** DAP Application reference DAP/18/01519 and accompanying plans (Location Plan A001 Rev C, Floor Plan A.200 Rev J, Management Statement dated 5 July 2019 & Bushfire Management Plan dated 16 January 2019) 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 development of a Market on Lot 182 West Street, Busselton, subject to the following conditions:

General Conditions:

1. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.
2. The development hereby approved shall be undertaken in accordance with the signed and stamped, approved Development Plans (enclosed), by the Southern JDAP, 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 of Busselton and have been approved in writing:
 - 3.1 A detailed plan which shows natural ground levels, finished ground levels and finished floor levels;
 - 3.2 An updated Elevation Plan which reflects the endorsed Floor Plan, Revision J dated 5 July 2019;
 - 3.3 A schedule of the final materials, finishes and colours, the schedule shall include details of the type of materials proposed to be used, including their colour and texture;
 - 3.4 Satisfactory arrangements shall be made with the City to provide public art works within the development. 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"). Where the value of on- site works is less than 1% of the ECD, a payment sufficient to bring the total contribution to 1% of the ECD is required;
 - 3.5 Details of signage, including but not limited to the design, materials and levels of illumination;
 - 3.6 Details of the proposed bicycle parking facilities, including the location, design and materials to be used in their construction;
 - 3.7 Details of the rear service area, including but not limited to details of loading area, bin store, external lighting;
 - 3.8 A Construction Management Plan;
 - 3.9 A Landscape Plan which includes the drain to the rear of the site;
 - 3.10 A Waste Management Plan; and
 - 3.11 Development compliance with the Bushfire Management Plan.

Prior to Occupation/Use of Development Conditions:

4. The development hereby approved shall not be occupied, or used, until all plans, details or works required by Condition(s) 2 and 3 have been implemented and,
 - 4.1 All stalls hereby approved shall have the removable partitions installed and their perimeter line marked on the ground to the number and sizes shown on the approved plans and not exceed (in aggregate) a total area of 1450m².



On-going Conditions:

5. The works undertaken to satisfy Conditions 2, 3 and 4 and the following conditions shall be subsequently maintained for the life of the development:
6. The development shall only be open to the public during the following hours and days:
 - Thursday – 7.00am to 6.00pm
 - Friday – 7.00am to 9.00pm
 - Saturday – 7.00am to 9.00pm
 - Sunday – 7.00am to 6.00pm
 - Monday, Tuesday or Wednesday where that day falls on a WA Public Holiday or WA State School Holiday (as generally indicated by the Department of Education as being applicable for State schools in WA) – 7.00am to 6.00pm
7. A register of all stall holders shall be kept by the Market operator, to provide sufficient information for the City to be satisfied that all stallholders are bona fide independent stallholders, both with respect to the Market operators and from other stallholders, and shall be provided to the City of Busselton on request;
8. No alcohol is permitted to be sold for consumption on the premises prior to 10am on any day, and is only permitted from Stalls 01-04 and the food court as shown on the floor plan hereby approved;
9. With the exception of tastings permitted under a Producers Liquor Licence, the sale of alcohol for consumption on the premises shall be ancillary to a meal only.
10. The development shall at all times comply with the Management Statement prepared by Planning Solutions dated 5 July 2019, each stall shall have its own point of sale, and goods shall only be sold and offered for sale from a stall and the same stall in which the goods are being offered for sale. Where there is a conflict between the Management Statement and the conditions of this approval, the conditions of this approval shall prevail.
11. Landscaping and reticulation shall be implemented in accordance with the approved Landscape Plan and shall thereafter be maintained to the satisfaction of the City of Busselton. Unless otherwise first agreed in writing, any trees or plants which, within a period of five years from first planting, are removed, die or, as 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.
12. The Bushfire Management Plan be implemented in perpetuity.

Advice Notes

1. If the applicant and/or owner are aggrieved by this decision, there may be 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 being made by the Southern JDAP.



2. With respect to the Percentage for Art contribution, applicants are encouraged to review the *Percent for Art Policy Step by Step Guide for Developers* which can be viewed on the City of Busselton's website at www.busselton.wa.gov.au and liaise with the City's Cultural Planning Officer at the earliest possible opportunity.
3. The Construction Management Plan shall detail, as a minimum, how provision is to be made on site for the parking and turning of construction workers' vehicles, the siting of site offices, employee and sub-contractor parking, dust management, the areas to be used for the storage of building materials, plant, excavated materials and temporary site buildings, the management of building waste, ablution facilities, operating hours, traffic management and complaints management.
4. The Landscape Plan should indicate the location and type of reticulation to be installed; and the location and type of paving to be installed. The Plan should also include a plant schedule nominating species, planting distances, numbers, planting sizes, together with the anticipated height of each plant at maturity.
5. The Waste Management Plan shall include specifications of the methods, facilities and management measures to be put in place for the storage, collection and disposal/collection of waste and rubbish generated by the development.
6. 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*.
7. 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 Alternate Motion was put and CARRIED UNANIMOUSLY.

REASON: A Market is a discretionary land use on the site and the revised development application, the management statement provided by the applicant and the conditions of approval provide the necessary safeguards to ensure it will remain a market land use capable of being policed by the City of Busselton.

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 11.20am.