



Regional Joint Development Assessment Panel Minutes

Meeting Date and Time: Wednesday, 29 June 2022; 9:00am
Meeting Number: RJDAP/59
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

Mr Ray Haeren (Presiding Member)
Mr Gene Koltasz (A/Deputy Presiding Member)
Mr Jason Hick (A/Third Specialist Member)
Cr Paul Carter (Local Government Member, City of Busselton)
Cr Phill Cronin (Local Government Member, City of Busselton)

Officers in attendance

Mr Andrew Watts (City of Busselton)
Mr Paul Needham (City of Busselton)

Minute Secretary

Ms Samantha Hansen (DAP Secretariat)
Ms Ashlee Kelly (DAP Secretariat)

Applicants and Submitters

Mr Paul Kotsoglo (Planning Solutions)
Mr Jonathan Cohen (Planning Solutions)
Mr Brendan Foley (Thomson Geer Lawyers)
Mr William Hames (Hames Sharley)
Mr Tim Boekhoorn (Hames Sharley)
Mr Vladimir Baltic (Transcore)
Mr Rob Connelly (Lloyd George Acoustics)
Mr Graeme Sly (Total Horticultural Services)
Mr Colin Lofts (DCSC)
Ms Kate Cox
Mr Jeff Forrest
Mr David Read (elementwa)
Mr Tony Sharp
Ms Sue Riccelli
Mr Mark Webster
Mr Peter Kyle
Mr Brad Russell-Lane

Members of the Public / Media

There were 13 members of the public in attendance.

1. Opening of Meeting, Welcome and Acknowledgement

The Presiding Member declared the meeting open at 9:01am on 29 June 2022 and acknowledged the traditional owners and paid respect to Elders past and present of the land on which the meeting was being held.

Mr Ray Haeren
Presiding Member, Regional JDAP



Due to the conflict of interest of the Presiding Member and the unavailability of the Deputy Presiding Member, Mr Ray Haeren 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 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)
Ms Kanella Hope (Deputy Presiding Member)
Mr Justin Page (Third Specialist Member)
Mayor Grant Henley (Local Government Member, City of Busselton)

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 8.1. Mr Kotsoglo is the Managing Director of Planning Solutions, the town planning consultancy engaged by the proprietor (DCSC Pty Ltd) to prepare the development application under consideration.

In accordance with section 6.2 and 6.3 of the DAP Standing Orders 2020, the Presiding Member, Mr Ray Haeren, 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 Ms Kate Cox addressed the DAP against the recommendation for the application at Item 10.1.
- 7.2 Mr Jeff Forrest addressed the DAP against the recommendation for the application at Item 10.1.
- 7.3 Mr David Read (elementwa) addressed the DAP against the recommendation for the application at Item 10.1 and responded to questions from the panel.
- 7.4 Mr Tony Sharp addressed the DAP against the recommendation for the application at Item 10.1.
- 7.5 Ms Sue Riccelli addressed the DAP against the recommendation for the application at Item 10.1.
- 7.6 Mr Mark Webster addressed the DAP against the recommendation for the application at Item 10.1.
- 7.7 Mr Peter Kyle addressed the DAP against the recommendation for the application at Item 10.1 and responded to questions from the panel.
- 7.8 Mr Brad Russell-Lane addressed the DAP against the recommendation for the application at Item 10.1.
- 7.9 Mr Brendan Foley (Thomson Geer Lawyers) presenting in support of the recommendation for the application at Item 10.1 and responded to questions from the panel.
- 7.10 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.
- 7.11 The panel noted a total of 154 written submission, 152 were against the proposed development and 2 were in support.

PROCEDURAL MOTION

Moved by: Mr Gene Koltasz

Seconded by: Mr Jason Hick

That the meeting be adjourned for a period of 8 minutes.

The Procedural Motion was put and CARRIED UNANIMOUSLY.

REASON: To allow members to have a comfort break.

The meeting was adjourned at 10:18am.

The meeting was reconvened at 10:26am.

Mr Ray Haeren
Presiding Member, Regional JDAP



8. Form 1 – Responsible Authority Reports – DAP Applications

Nil

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

Nil.

10. State Administrative Tribunal Applications and Supreme Court Appeals

10.1 Lot 108 (No.57) Dunn Bay Rd and Lot 109 (No.6) Cyrillean Way, Dunsborough

Development Description: Mixed use development (office, shops, restaurant/café, liquor store – small & 35 multiple dwellings

Summary of Modifications:

- Building fronting Dunn Bay Road reduced from 4 down to 3 storeys;
- Building fronting Cyrillean Way reduced from 6 down to 5 storeys;
- Apartment numbers reduced from 41 to 35;
- Car parking bays reduced from 166 to 133;
- Reduction of commercial NLA from 3,689m² to 2,042m²;
- Architectural design of Dunn Bay Road façade modified to better reflect building styles within the Dunsborough Town Centre;
- Boundary wall to western boundary reduced in height from three storeys to two storeys, reduced in total length and broken into two sections; and
- Provision of additional crossover to Cyrillean Way to provide separate access for service vehicles and residents/tenants

Applicant: Planning Solutions
Owner: DCSC Pty Ltd
Responsible Authority: City of Busselton
DAP File No: DAP/21/02102



REPORT RECOMMENDATION

Moved by: Mr Gene Koltasz

Seconded by: Mr Jason Hick

That the Regional Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 11 of 2022, resolves to:

RECONSIDER its decision dated 10 January 2022 and **SET ASIDE the decision and substitute a new** decision for DAP Application reference DAP/21/02102 and amended plans (DA050 Rev M, DA130 Rev B, DA150 Rev F, DA200 Rev K, DA201 Rev M, DA202 Rev L, DA203 Rev L, DA204 Rev K, DA205 Rev K, DA206 Rev H, DA400 Rev G (Colour version), DA400 Rev G (Grayscale version), DA401 Rev G (Colour version), DA401 Rev G (Grayscale version), DA500 Rev F, DA501 Rev G and DA602 Rev D) 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:

1. This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially commenced within the specified 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, 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 Drainage Management Plan, the details of which shall incorporate Water Sensitive Urban Design principles as set out in the Western Australian Planning Commission's *Better Urban Water Management* guidelines and should ensure that surface water will be contained within the development site with no direct, unfiltered discharge to the Dugalup Brook.
 - 3.2 A Noise Management Plan which shall include (but not be limited to) all recommendations specified in the Environmental Noise Assessment Rev E and Transportation Noise Assessment Rev C, each dated 13 May 2022, prepared by Lloyd George Acoustics in order to reduce noise disturbance to neighbours and 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*.

Mr Ray Haeren
Presiding Member, Regional JDAP



- 3.3 Lighting Plan which shall include 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 available for customers of commercial premises.
- 3.5 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.
- 3.6 Details of the treatment of the external surface of the boundary wall abutting the adjoining lot to the west, such as to provide a suitable aesthetic appearance to the satisfaction of the City. Details should include materials to be used, textures, colours and artwork.
- 3.7 A Signage Strategy which shall identify the location of signage to provide reasonable opportunity for recognition of businesses and residences within the development. The Signage Strategy should include but not be limited to the location, design, materials and levels of illumination (where applicable) of any proposed signage.
- 3.8 Detailed plans of the required 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.
- 3.9 A final Landscaping Plan (LP). The LP shall include the following:
 - a. the location, number, size and species of existing and 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. open style fencing to the northern site boundary to provide definition to the Dugalup Brook Recreation Reserve (R42673);
 - f. verge treatments, including hard and soft landscaping treatments; and
 - g. consideration of Designing Out Crime principles.
- 3.10 A Tree Protection Plan (TPP) for the trees to be retained on the site and adjoining road reserves and for vegetation within the adjoining Recreation Reserve – R42673 (Dugalup Brook). The approved TPP shall be implemented before any of the substantive development is commenced and shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site. Within any areas identified to be fenced, nothing shall be stored or placed, and the ground levels shall not be altered.



- 3.11 A Construction Management Plan (CMP). The CMP shall address the following:
- a. public safety and amenity;
 - b. site security;
 - c. contact details of essential site personnel, construction period and operating hours;
 - d. community information, consultation and complaints management;
 - e. traffic, access and parking management;
 - f. waste management;
 - g. sanitary facilities;
 - h. stormwater and sediment control; and
 - i. any other matter deemed relevant by the City.
- 3.12 Details of the proposed bicycle parking and end of trip facilities, designed in accordance with the Australian Standard for Parking facilities – Bicycle parking (AS2890.3-2015) and accommodating a minimum of 42 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").
- 3.14 Revised plans showing deletion of proposed on street parking bays along Cyrillean Way.
- 3.15 Revised plans showing provision of a door into the Shop floorspace at the corner of Dunn Bay Road and Cyrillean Way.
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 \$115,325.00 towards community facilities in the Dunsborough and Quindalup precinct.
 - 4.2 A contribution of \$100,000.00 towards the upgrading by the City of the Dunn Bay Road/Cyrillean Way intersection.

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 Arrangements being made with the City for an easement in accordance with sections 195 and 196 of the *Land Administration Act 1997* for the benefit of the City of Busselton and the public at large to be shown on the Deposited Plan to be registered on the Certificate of Title over a 3m wide by 13m deep section of the southwest access way (to Dunn Bay Road).
- 5.3 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.
- 5.4 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).

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 any of the ground floor commercial tenancies.
 - 6.2 All glazing to the ground floor commercial tenancies are to be clear, non-tinted glazing and shall not be subsequently obscured by alternative window treatments, substantial signage or internal shelves, to the satisfaction of the City.
 - 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 to the satisfaction of the City.
 - 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.

Mr Ray Haeren
Presiding Member, Regional JDAP



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 suitably 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 adjusted 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. 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 community facility plan for the precinct.
8. No signage should be installed that is inconsistent with the approved Signage Strategy without the further written approval of the City.
9. 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.

Mr Ray Haeren
Presiding Member, Regional JDAP



10. 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>
11. 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.
12. 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*.
13. 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 put and CARRIED (3/2).

For: Mr Ray Haeren
Mr Gene Koltasz
Mr Jason Hick

Against: Cr Paul Carter
Cr Phill Cronin

REASON: The panel, having considered both the public submissions and the planning framework, considers the proposal to be an appropriate balance of future character and existing context. The proposed changes to the planning framework were noted, however with other existing approvals over 3 storeys and given the early stage of the process of the changes a SAT hearing would give limited weight to this. A significant portion of the building will be 3 storeys and the design quality is high, as verified by the previous Design Review.

Mr Ray Haeren
Presiding Member, Regional JDAP



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/21/02120 DR49/2022	City of Busselton	Lot 400 (No.24) Dunn Bay Road, Dunsborough	Proposed six storey mixed use (Restaurant/Cafe and Multiple Dwellings) Development	23 March 2022
DAP/21/02138 DR67/2022	City of Busselton	Lot 9556 Napoleon Promenade, Vasse	Shop (Fresh Food retailer) with select advertisements	14 April 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 11:14am.