

COUNCIL AGENDA

Supplementary Items

19 October 2022

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

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CITY OF BUSSELTON








LATE ITEMS FOR THE COUNCIL MEETING TO BE HELD ON 19 OCTOBER 2022

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13. PLANNING AND DEVELOPMENT SERVICES REPORT

13.2 SMITHS BEACH SIGNIFICANT DEVELOPMENT APPLICATION (PART 17 OF PD ACT 2005) - CITY OF BUSSELTON SUBMISSION

STRATEGIC THEME	LEADERSHIP - A Council that connects with the community and is accountable in its decision making.
STRATEGIC PRIORITY	4.3 Make decisions that respect our strategic vision for the District.
SUBJECT INDEX	Development/Planning Applications
BUSINESS UNIT	Planning and Development Services
REPORTING OFFICER	Director, Planning and Development Services - Paul Needham
AUTHORISING OFFICER	Director, Planning and Development Services - Paul Needham
NATURE OF DECISION	Advocacy: to advocate on its own behalf or on behalf of its community to another level of government/body/agency
VOTING REQUIREMENT	Simple Majority
ATTACHMENTS	Attachment A Location Map  Attachment B Smiths Beach Development Guide Plan  Attachment C Explanatory Memorandum  Attachment D Planning Reform Fact Sheet  Attachment E Ministerial Statement 831  Attachment F Comments - Smiths Beach Proposed Development  Attachment G Peer Review of TIA 

OFFICER RECOMMENDATION

That the Council, with respect to the Significant Development Application (Proposal) for Lot 4131, Smiths Beach Road, Yallingup (Site), support the City making a submission to the WAPC in the following terms –

Concerns about use of the SDA process for Proposal

- a. Indicate that the Proposal is not considered to be ‘development ready’ to the extent contemplated by the Explanatory Memorandum supporting the amendment to the P&D Act that introduced the SDA process.
- b. Reiterate earlier concerns about the very limited scope for local government and local community input, relative to what would have occurred with a normal planning process.
- c. Strongly urge the WAPC, if and when it makes a decision on the Proposal, to do so from a premises located within the City of Busselton, at a meeting open to the public, and for WAPC members to undertake a site visit prior to making their decision.
- d. Reiterate earlier concerns about the capacity of the SDA process to undermine the integrity of the WA planning system, especially local government town planning schemes.

Concerns about consultation on the development application proceeding ahead of the completion of the EIA process

- e. Reiterate earlier concerns about consultation occurring ahead of completion of the EIA process, and request that there be a further formal opportunity for the City, community and State agencies to consider and comment on the Proposal prior to formal WAPC consideration, and following the completion of the EIA process.

The proposed development footprint and density (including landscape/visual impact considerations, flora and fauna considerations, and the extent of land to be ceded to the Crown)

- f. Do not support the westward extension of the development footprint relative to what was determined through earlier environmental and planning assessment processes for the Site, as there is insufficient information currently available to allow a planning decision-maker to express such support, particularly in terms of –
 - i. The fact that the EIA process, which will substantially deal with this issue, has not been completed and it would therefore be premature for any planning authority to indicate support for that westward extension;
 - ii. Detailed assessment and advice from landscape and visual assessment experts within DBCA and DPLH is not currently available publicly;
 - iii. The unresolved nature of the assessment of the flora values of the area where the Western Villas are proposed; and
 - iv. Uncertainty around whether the assumptions/assertions made by the Proponent around vegetation retention/landscaping and building design control are assumptions that a reasonable planning decision-maker should accept, and as such a reasonable planning decision-maker should base their landscape assessment on the basis of more conservative and risk averse assumptions about the potential landscape and visual impact of the Proposal.
- g. Note that some westward extension of the development footprint relative to what was determined through earlier environmental and planning assessment processes for the Site may, subject to more detailed assessment, be appropriate, but not the full extent proposed.
- h. Note the significant reduction in development proposed in the south-western part of the development footprint determined through earlier environmental and planning assessment processes for the Site.
- i. Note that, within the eastern part of the Site, the level of landscape and visual impact does look to be less than what would reasonably be expected to result from implementation of development in accordance with the outcomes of the earlier planning processes associated with the Site.

Bushfire safety and management

- j. Identify that it is unclear whether the proposed approach to bushfire management will be consistent with environmental and landscape values.
- k. Identify that there is a significant level of uncertainty around ongoing BMP implementation.
- l. Note that the City is not in receipt of sufficient expert advice to enable a full assessment of and/or support for significant elements of the BMP.
- m. Indicate that sustainable bushfire safety outcomes that appropriately balance bushfire safety, environmental and amenity considerations may be better achieved through constructing buildings to the BAL-40 standard, and note that, given that the WAPC is not bound by the planning framework in the same as a normal planning decision-maker, it would be open to the WAPC to impose such a requirement.
- n. Note that it is not practicable to develop a second means of access and egress for Smiths Beach.

- o. Note that, whilst it is too early to accept the case put by the Proponent, it is not considered unreasonable to suggest that a better overall bushfire risk outcome may be achieved through development of the Site, although that has not been clearly demonstrated by the Proponents at this stage.

Wastewater, stormwater and water infrastructure

- p. Note that the Proposal involves connection to reticulated water services.
- q. Indicate that further information is required to assess proposed approaches to stormwater and wastewater management and, as such, the proposed approaches cannot be supported at this stage.
- r. Indicate that, given the planning framework and the significance of the issues, the proposed approaches to stormwater and especially wastewater management should be set out, resolved and determined to be appropriate at a high level of detail and certainty before the granting of development approval, and not left to be resolved through conditions of approval.
- s. Note the unresolved nature of potential routes to connect the Site to reticulated water and/or wastewater services.

Residential / tourism mix / length of stay controls

- t. Identify that, should approval be granted, conditions achieving the following should be applied –

 - i. Ensuring that any of the Villas being leased, for either short or long stay purposes, is managed through a common letting pool and through a single managing agent; and
 - ii. Ensuring tight controls on modification or redevelopment of the Villas, setting out a need to maintain a consistent appearance and quality over time.
- u. Identify that, once other aspects of the Proposal are closer to resolution, consideration may need to be given to –

 - i. Identifying that a portion of the Villas cannot be used for long stay purposes; or
 - ii. Decreasing the number of Villas and/or increasing the number of Hotel rooms proposed.

Coastal hazards and management

- v. Note the proposed approach to coastal hazards and management looks to be broadly sound.
- w. Note that the City is likely to be granted a management order over the UCL where the proposed seawall/beach access ramp is located.
- x. Identify that, with respect to the proposed seawall/beach access ramp –

 - i. More detailed plans are required;
 - ii. There needs to be an appropriate mechanism to approve the development occurring on Crown Land;
 - iii. The Proponent to meet the costs of constructing and maintaining the structure for a significant period; and
 - iv. There needs to be a clear and unambiguous capacity to transfer that responsibility from the Proponent to any subsequent owners of the Site.

Traffic and parking

- y. Note that the Caves Road/Canal Rocks Road intersection requires upgrading, and the WAPC will need to determine the extent to which that upgrade should be funded by the Proponent and the extent to which it should be funded by the State.
- z. Identify that elements of parking supply and demand require further consideration, including –
 - i. Surf Life Saving Club associated demand; and
 - ii. Identified supply on the track to Smiths Point, the road reserve to the south of the Site and within the north-south oriented section of Smiths Beach Road.

Foreshore reserve and management, and proposal to accommodate SBSLC

- aa. Indicate that the location of the SBSLC facility outside the foreshore reserve is seen as appropriate, but that it also may be appropriate for the facility to be a free standing or separate building, rather than being fully integrated into the Proposal.
- ab. Indicate that appropriate perpetual tenure arrangements for the SBSLC facility need to be identified.
- ac. Indicate that a larger foreshore reserve than what is proposed is considered appropriate, with a total useable foreshore area of around 1.0 ha being seen as appropriate to meet community needs.
- ad. Note that continued vehicle access to Smiths Point looks to be inconsistent with the Proposal and with the creation of pleasant and safe foreshore amenity.

Community Title

- ae. Note planned use of Community Title, but indicate that should approval be granted, conditions would need to be applied that would require appropriate ongoing management and development should the Proponent choose not to make use of Community Title.

Aboriginal heritage

- af. Note the need to resolve Aboriginal Heritage processes before the planning assessment can be completed.

EXECUTIVE SUMMARY

The City has an opportunity to make a submission with respect to a Significant Development Application that has been lodged with and is being assessed by the Western Australian Planning Commission. It is recommended that the Council support the City making a submission in the terms described in the report.

BACKGROUND

The Council is asked to determine the content of the City's submission on a 'Significant Development Application' (SDA) that has been lodged with and is being assessed by the Western Australian Planning Commission (WAPC), pursuant to Part 17 of the *Planning & Development Act 2005* (PD Act). The proposed development (Proposal) subject of the SDA process is also currently subject of a formal Environmental Impact Assessment (EIA) process by the (State) Environmental Protection Authority (EPA), pursuant to the *Environmental Protection Act 1986* (EP Act). The applicant is Smiths 2014 Pty Ltd (Proponent).

The City had initially been asked by the WAPC to provide a submission by 21 September 2022. A request to extend that to 26 October 2022 was, however, subsequently approved by the Chair of the WAPC. The period for broader community consultation closed on 8 September 2022.

Key background is set out below under the following sub-headings –

1. The SDA and EIA processes;
2. The Site;
3. The Proposal; and
4. Planning history of the Site.

The SDA and EIA processes

More information about the SDA process and context is set out elsewhere in this report, including in the Statutory Environment section, but for the purposes of this report, the most important elements of the SDA process are considered to be –

1. The decision-maker is the WAPC and not the City (or a Development Assessment Panel – ‘DAP’);
2. The WAPC must give consideration to, but is not bound by, the relevant planning framework (the City or a DAP can often exercise discretion *within* the planning framework, but under Part 17 the WAPC has the capacity to exercise discretion *beyond* the planning framework, including beyond the discretion allowed for in the *City of Busselton Local Planning Scheme 21 – ‘Scheme’*);
3. Prior to making a decision, the WAPC must seek and give consideration to the input of the relevant local government, but it is not bound or constrained by the local government’s input; and
4. In common with other planning decision-makers, where a proposal is subject of a formal EIA process, as is the case with this proposal, the WAPC cannot make a decision before the EIA process is complete, and it cannot make a decision that is inconsistent with the outcome of the EIA process.

As part of the SDA process, consultation with the community and relevant State Government agencies was undertaken by the WAPC. The WAPC has provided the City with a very high level summary of the submissions received, as set out in the Stakeholder Consultation section of this report.

In parallel with the lodgement of the development application, the Proponent also referred the Proposal to the EPA. The EPA was then required to determine whether the Proposal should be subject of a formal EIA process and, if so, what ‘level of assessment’ should be undertaken. On 23 May 2022, having considered submissions made on the matter, the EPA determined that a formal EIA process was required, and that the level of assessment should be set at ‘Public Environmental Review’ (PER). PER is considered the highest of three potential levels of assessment. The City had itself lodged a submission, advocating that the Proposal should be assessed under the PER level of assessment.

The next step in the EIA process involves preparation of a ‘scoping document’ by the Proponent, setting out the nature of information required to facilitate the assessment. There is then a two week consultation period before the EPA formally considers the scoping document. Guided by the EPA’s decision, the Proponent then prepares and submits the required reports and other information, with a further six week consultation period before the EPA makes a formal decision. The City and community will also have an opportunity to provide input during both of those consultation periods.

The EPA, however, is not the final decision-maker. The EPA's decision is a recommendation to the (State) Minister for Environment – who is the final decision-maker. There are also opportunities for either proponents or third parties to lodge appeals with respect to some EPA decisions. In addition, as already noted above, WAPC cannot make a decision on the Proposal until the EIA process is complete. Given the timeframes associated with the EIA process, it is therefore considered that the WAPC is unlikely to make a decision prior to mid-2023.

Prior to and following the formal lodgement of the development application, the City has been in regular communications with –

1. The Proponent and their consulting teams (e.g. planning consultants);
2. The State Government officers that are facilitating the assessment and are expected to be responsible for preparing a report for consideration by the WAPC (i.e. staff at the Department of Planning, Lands and Heritage – 'DPLH' – within what is known as the State Development Assessment Unit – 'SDAU');
3. Other relevant State Government officers (e.g. Department of Biodiversity Conservation and Attractions – 'DBCA');
4. Surf Life Saving WA (SLSWA) and Smiths Beach Surf Life Saving Club (SBSLC); and
5. Members of the Smiths Beach Action Group (SBAG).

Communications have included officer level meetings, written communications and site visits. Communications have also included several informal briefings of the Council by the Proponent, by SDAU and by SBAG. City officers have also attended (as observers only, although with an opportunity to provide written information beforehand) meetings of the State Design Review Panel (SDRP) where the Proposal has been presented. City officers have also had an opportunity to attend and provide input into 'Development Assessment Forum' meetings organised by SDAU, and attended by the Proponent and a range of State Government agencies.

The Site

The land subject of the development application ('the Site') is Lot 4131, Smiths Beach Road, Yallingup. The Site is 40.5 hectares in area. The Site is approximately three kilometres south of Yallingup townsite 'as the crow flies', or seven kilometres by road. A location plan is provided at Attachment A.

The Site is bound to the north by foreshore reserve (currently Unallocated Crown Land – 'UCL'), or by existing privately owned tourism developments at Smiths Beach, in the form of the *Canal Rocks Beachfront Apartments* and *Smiths Beach Resort*. To the west, the Site is also bound by foreshore reserve which is currently UCL. The *Cape to Cape Track* traverses the foreshore reserve to the west and north of the Site.

The Site is bound to the south by an unnamed and mostly undeveloped road reserve which is 20 metres wide (there is a mineral earth track that runs within the Site at the eastern end and partly within the road reserve at the western end). The unnamed road reserve provides access to the 'natural aquarium' located at the northern end of Winjee Sam Bay. To the south of the unnamed road reserve, the land is incorporated into the Leeuwin-Naturaliste National Park ('LNNP'), extending south to Canal Rocks Road. On the opposite side of Canal Rocks Road, a little over 200 metres from the southern boundary of the Site, there are two private 'Conservation' Zoned land parcels (due south of the eastern part of the Site) and a further portion of the LNNP.

The Site is bound to the east by Smiths Beach Road, to the east of which is a 'Rural' Zoned property which accommodates the *Chandlers Smith Beach Villas*, with a further privately owned lot to the north which accommodates a dwelling. The Gunyulgup Brook flows through both lots, before reaching the beach. To the north-east of those lots is a further portion of the LNNP, which extends to Yallingup Beach Road and the southern edge of the Yallingup Townsite.

The Site itself is essentially undeveloped and completely vegetated with natural vegetation (although some weed species are also present). The vegetation consists of Peppermint Woodland in much of the eastern part of the Site, with generally lower coastal heath vegetation in the western part of the Site. The topography is characterised by two key features: a relatively low 'amphitheatre' in the eastern and central part of the site; and an elevated ridge in the western part of the site.

There are a series of mineral earth tracks in the southern and eastern parts of the Site, in particular a north-south oriented 'firebreak' that runs through the centre of the site from the northern to the southern boundary. That firebreak was the western boundary of the potential development footprint identified through earlier planning processes associated with the Site (the Site's planning history is set out in more detail later in this report).

The Proposal

The Proposal can be summarised as follows -

- Hotel / tourist development inclusive of:
 - 61 x hotel rooms;
 - Restaurant, lounge and bar;
 - Swimming pool; and
 - Wellness Centre.
- 'Community Hub' inclusive of:
 - Cape to Cape 'Welcome Centre';
 - Surf Life Saving Club;
 - Café, General Store and bakery;
 - Hire Shop;
 - Function centre;
 - Artist studio; and
 - Public amenities.
- Campground inclusive of:
 - 36 camp sites on raised platforms;
 - Central camper facilities including amenities and camp kitchen; and
 - Camper parking.
- 61 x 'Villas' or Holiday Homes (to be used for either extended/long-stay or short-stay purposes) – split into groups, with 15 'Western Villas' and 46 'Eastern Villas'.
- 'Bushfire refuge' integrated across the tourist development and community hub buildings.
- Foreshore reserve extension and beach access ramp.
- Approximately 200 car parking bays on the Site.
- National Park extension (land to be ceded to the Crown).

- Applicable services (power, water, lighting), including the extension of Water Corporation's Dunsborough reticulated water network to service the Site.
- On-site effluent disposal systems.
- Planned use of a Community Titles Scheme for ongoing management of the site.

The Proposal is described and supported by the following documents prepared for the Proponent -

1. [Development Application Report](#)
2. [Development Plans](#)
3. [Architectural Design Report](#)
4. [Visual and Landscape Assessment](#)
5. [Landscape Report](#)
6. [Bushfire Management Plan](#)
7. [Bushfire Emergency Evacuation Plan](#)
8. [Transport Impact Assessment](#)
9. [Waste Management Plan](#)
10. [Noise Assessment](#)
11. [Heritage Report](#)
12. [Environmental Assessment Report](#)
13. [Foreshore Management Plan](#)
14. [Coastal Hazard Assessment](#)
15. [Engineering Report](#)
16. [Urban Water Management Plan](#)
17. [Economic Benefit Study](#)
18. [Sustainability Strategy](#)
19. [R-Codes Assessment](#)

Planning history

The Site has a fairly long, complicated and at times controversial planning history. Key elements of that history are set out below -

- 1988 - initial scope for expansion of tourist development at Smiths Beach was provided as part of the *Leeuwin Naturaliste Region Plan — Stage One (Final)* report.
- 1998 - the progression of the strategic framework for expansion of Smiths Beach was facilitated by gazettal of *State Planning Policy No. 6.1 — Leeuwin-Naturaliste Ridge Policy* (SPP6.1), then called the *Leeuwin-Naturaliste Ridge Statement of Planning Policy* (LNRSP). The LNRSP identified Smiths Beach as a 'Tourist Node' and the Site predominantly within a 'Development Investigation Area' and partly within a 'Principal Ridge Protection Area'. The LNRSP set out that up to 500 permanent residents or approximately 230 dwellings (i.e. representing a maximum one third of the total accommodation units) could be facilitated within the development.
- 1999 – *Shire of Busselton District Town Planning Scheme No. 20* (DTPS20) was gazetted applying 'Tourist', 'Additional Use – Residential', 'Recreation Reserve' and 'Development Investigation Area' designations to the Site.

- 2003 - Amendment No. 1 to the LNRSP was gazetted and incorporated a number of provisions relating to short-stay and permanent populations, including the determination of an 'identified developable area(s)' in which subdivision and development would have a ratio of not less than 70% tourist development and not more than 30% residential development. The policy also required that development at Smiths Beach is to reinforce the primary tourism function and not compromise the natural landscape, with the size, nature and location of development being determined having regard to the need to protect the visual amenity and environmental values of the area.
- 2006 - a draft Development Guide Plan (DGP) was adopted by Council for advertising (DGPs were the equivalent of what are now called Structure Plans under current planning regulations).
- 2007 - the DGP was advertised and 8,709 submissions were received. The submissions were the subject of an independent audit which found that 7,531 submissions were deemed to be valid, and of that number, 88% (6,674) objected to the proposal.
- 2008 – the then proponent lodged an application for review to have the advertised DGP determined by the State Administrative Tribunal (SAT) on the basis of 'deemed refusal' as the DGP had not been determined within statutory time limits. A modified DGP was submitted through this process. The Council subsequently refused to adopt the modified DGP and a further application for review of the Council's decision was lodged by the proponent with the SAT.
- 2009 – the Council resolved to settle the SAT proceedings on the advertised DGP (2007) by way of a consent determination supporting the modified DGP. This modified DGP arose from mediation on the advertised plan and the Environmental Protection Authority's earlier determination of a reduced footprint for the development of the Site relative to that proposed under the advertised plan.
- 2011 - WAPC endorsed the DGP, subject to modifications (see Attachment B). The DGP remains a relevant planning instrument.
- 2010 - 2013 – an application for subdivision approval was lodged with the WAPC and ultimately approved following further SAT proceedings. The subdivision approval has not been implemented and has now lapsed.
- 2014 – ownership of the Site changes when it is acquired by Smiths 2014 Pty Ltd.

OFFICER COMMENT

The Proposal is of significant community interest and the Site is strategically significant. Whilst the City is not a decision-maker with respect to the Proposal, it is expected that the WAPC will place significant weight on the submission from the City, especially if the WAPC perceives that the City's submission is based upon a sound and considered understanding and application of the planning framework, and sound strategic thinking.

This report seeks to assist the Council in determining the content of the City's submission, setting out and applying the planning framework to the Proposal. Because of the nature of the SDA process, however, application of the planning framework to the Proposal requires a broader perspective than would ordinarily be the case when assessing a development application. Discussion of the key issues considered relevant to assessment of the Proposal at this stage, or which may otherwise be of significant interest to the Council, is set out below, under the following sub-headings –

1. Concerns about use of the SDA process for the Proposal;
2. The extent to which the Proposal could be lawfully considered under the current planning framework if the SDA process had not been introduced by the State;
3. Concerns about consultation on the development application proceeding ahead of the completion of the EIA process;
4. The fundamental elements of the planning framework relating to the Site;
5. The proposed development footprint and density (including landscape/visual impact considerations, flora and fauna considerations, and the extent of land to be ceded to the Crown);
6. Bushfire safety and management;
7. Wastewater, storm water and water infrastructure;
8. Residential / tourism mix / length of stay controls;
9. Coastal hazards and management;
10. Traffic and parking;
11. Foreshore reserve and management, and proposal to accommodate SBSLC;
12. Aboriginal heritage; and
13. Proposed use of Community Title.

At the end of each sub-section, there is a brief summary of the recommended response with respect to each set of issues. There is then a further sub-section raising the question as to whether, in an overall sense, the City should support or object to the Proposal, or not indicate overall support or objection, but instead identify aspects of or issues with the proposal which are seen as being positive and/or resolved, or negative and/or unresolved.

It should be noted that this report does not seek to identify and assess all aspects of the Proposal or all of the relevant issues, instead focusing on what are considered to be the key issues at this stage. In substantial part that is because many of these key issues are considered unresolved, and it is therefore neither necessary nor possible to undertake a detailed assessment of all elements of the Proposal.

Concerns about use of the SDA process for the Proposal

There appear to be two key sets of concerns about use of the SDA process for the Proposal –

1. Concerns that it is not consistent with the stated intent of the SDA process, when the P&D Act was amended to create that process; and
2. Concerns about the SDA process in general, as it –
 - a. Provides only a limited place for local government and local community input; and
 - b. Gives the WAPC power to exercise discretion *beyond* the normal planning framework.

Whilst, given the fact that the SDA process does exist and the Proposal is being advanced through that process, these concerns are unlikely to have any bearing on the outcome, it is still seen as appropriate to briefly explore the issues in this report, as they have been matters of significant community interest.

The SDA process was facilitated via the introduction of Part 17 through a June 2020 amendment to the P&D Act. Part 17 sets out 'Special provisions for COVID-19 pandemic relating to development applications'. At the time of its introduction, the rationale for Part 17 set out by the State Government included that the powers provided to the WAPC –

1. Would be temporary;
2. Were intended to support 'economic recovery'; and
3. Would be for 'development ready' proposals.

That rationale was reflected in the Explanatory Memorandum supporting the amendment to the P&D Act (Attachment C) and a 'Planning Reform Fact Sheet' (Attachment D) published at the same time.

The temporary nature of the powers was directly reflected in the legislation itself, but the economic recovery and development ready elements of the rationale were not. There has, however, been a further amendment to extend the operating period, albeit the powers remain temporary in nature.

It has, however, been suggested that support for 'economic recovery' is not required, principally on the basis that WA's economy did not suffer to the same degree as many other places over the last few years. Employment and housing markets in much of Australia, including in WA and locally in particular, have in fact been tight for around two years, and there is an expectation that will continue for some time. There has also been a significant acceleration in inflation over that period. Economic growth in WA since June 2020 has also been fairly consistent with what had been experienced since around 2014 (the end of the 'mining boom'). On that basis, there does not seem to be a particular need for 'economic recovery' at the present time.

It is not, however, clear that economic growth will necessarily continue at its current rate. It is also the case that there has not been much significant investment in new tourism accommodation product, especially hotel accommodation, in the region for over a decade. It therefore remains arguable that investment in tourism product is desirable to support the WA and local economies in the future. It is also arguable that the SDA process, by allowing a project that might otherwise require a town planning scheme amendment and/or structure planning and/or subdivision approval process to occur prior to assessment of a development application, to instead proceed straight to the development application phase can result in planning decisions being made more efficiently, potentially facilitating investment that may not otherwise have occurred.

With respect to the development ready concern, the Proposal has not, in all aspects, been developed and documented to the extent necessary to lodge and assess a development application through normal planning procedures. From that perspective, the Proposal is not as development ready as might be expected of a 'normal' development application assessed by either a local government or development assessment panel. Given that, it is not considered to be 'development ready' to the extent contemplated by the Explanatory Memorandum supporting the amendment to the P&D Act.

Concerns about the SDA process more broadly, however, are considered to have more merit – and the Council may wish to reiterate earlier concerns it has raised with respect to the process. The potential basis for such concerns is set out in a little more detail below.

In terms of the involvement of the local government and local community, a 'normal' planning process to consider development on the Site consistent with the Proposal would involve –

1. Possibly, a town planning scheme amendment to change land use permissibility's in some parts of the Site, and potentially other town planning scheme provisions too. That process would involve technical assessment by City officers and the preparation of at least two formal reports for formal consideration of the Council, as well as a formal community consultation period. The planning consultation period would also be preceded by an EPA assessment process, which would also likely involve multiple opportunities for community input.
2. A structure plan process that would also involve technical assessment by City officers and, given the context of the Proposal and the Site, the preparation of at least two formal reports for formal consideration of the Council. The process would also include a formal community consultation period (although that could conceivably occur in parallel with the town planning scheme amendment process).
3. A subdivision application process, as part of which the City's comment would be sought, and the City would later have a role in 'clearing' some conditions of approval. There would not, however, be any community consultation or formal role for the Council as part of that process, and the City may still have a role in clearing conditions as part of the SDA and/or an involvement in a subsequent Community Title process.
4. A development application process, with the determining authority being the Regional Joint Development Assessment Panel (RJDA). That process would involve technical assessment by City officers and the preparation of a formal report for consideration by the RJDA (two members of which are local government Councillors), and would be preceded by a further phase of community consultation.
5. Council meetings referred to above would be open to the public, held locally, and provide opportunities for direct involvement by the local community. RJDA meetings would probably also be held locally, and would certainly be open to the public and provide opportunities for direct involvement by the local community.

It is clear that the SDA process, where there may be only one opportunity for the community to make comment as part of the planning process, and where there is no formal assessment or decision-making role for either local government officers or Councillors, provides significantly less scope for local community and local government input than would a normal planning process. It is also expected that when the WAPC makes a decision, it may do so from a premises in Perth, rather than locally, further limiting the capacity of the local community to be involved in the process.

Given the above, it is seen as appropriate that the Council reiterates earlier concerns about the limited capacity for local communities and local governments to be involved in the SDA process. In doing so, it is seen as appropriate that the Council not target that concern at the DPLH staff that have been involved in the process or, indeed at the Proponent, as in both cases their communications and relationships with the City have been appropriate and respectful. Rather, it is considered that it should be made clear that the concern is with the legislation that has created the SDA process, rather than those involved in implementing the legislation.

From a more practical perspective, however, it is also recommended that the Council request that, if and when the WAPC makes a formal decision on the Proposal, that it does so from a premises in the City of Busselton, at a meeting that is open to the public. That would assist, albeit in a small way, in allowing the local community to have more involvement in the process. In addition, given the nature of the issues likely to require consideration, it would be appropriate for all WAPC members involved in the decision to visit the Site prior to making their decision.

The most significant concern with the SDA process, however, is considered to be the capacity for the WAPC to exercise discretion *beyond* the planning framework. Through a normal planning process, approval of some elements of the Proposal may require a town planning scheme amendment, and at the end of that process, it must be tabled in Parliament and can be subject of a disallowance motion.

Whilst it may be the case that the WAPC has and will continue to be conservative and responsible in the use of its discretion, and also that disallowance motions with respect to town planning scheme amendments are exceedingly rare, it is unusual and concerning that an administrative body has, in a significant sense, been given a power to make decisions that would otherwise be subject of Parliamentary scrutiny. Further, should a proponent be aggrieved by a WAPC decision, it has the capacity to lodge an application for review (i.e. an ‘appeal’) in the State Administrative Tribunal (SAT). That means that the SAT also has the power to make decisions that would otherwise require Parliamentary scrutiny, should there be an application for review.

Given the above, it is considered that the SDA process does have the theoretical capacity to undermine the integrity of the WA planning system, in particular the controls on development set out in local planning schemes, which have been subject of formal decisions by local government councils and the responsible Minister, and then subject of Parliamentary scrutiny.

Although there are a number of other perspectives through which this issue could be considered, there is not considered to be a need to further explore the issue here. It is, however, seen as appropriate that the Council reiterate earlier concerns about the capacity of the SDA process to undermine the integrity of the WA planning system, especially local government town planning schemes.

Recommended response to this issue:

- a. Indicate that the Proposal is not considered to be ‘development ready’ to the extent contemplated by the Explanatory Memorandum supporting the amendment to the P&D Act that introduced the SDA process.
- b. Reiterate earlier concerns about the very limited scope for local government and local community input, relative to what would have occurred with a normal planning process.
- c. Strongly urge the WAPC, if and when it makes a decision on the Proposal, to do so from a premises located within the City of Busselton, at a meeting open to the public, and for WAPC members to undertake a site visit prior to making their decision.
- d. Reiterate earlier concerns about the capacity of the SDA process to undermine the integrity of the WA planning system, especially local government town planning schemes.

The extent to which the Proposal could be lawfully considered under the current planning framework if the SDA process had not been introduced by the State

Given the breadth of discretion available to the WAPC through the SDA process, concerns have been raised about the extent to which the Proposal could be *lawfully* approved under the current *planning* framework if the SDA process had not been introduced by the State.

Whilst there are some elements of the Proposal that may not be able to be lawfully approved in the absence of the SDA process, they are limited to ‘land use controls’ (see towards the end of this sub-section of this report for more details), and not to other aspects of the development, such as the development footprint, visual impact or effluent disposal – all of which broadly fall into the category of ‘development standards’, rather than land use controls. There are two key reasons for that.

Firstly, those development standards, where they are set out in the Scheme itself, are set out in –

1. The main body of the Scheme text:
2. ‘Schedule 8: Provisions Applying to Sussex Location 413 Smiths Beach Road, Yallingup’;
or
3. For much of the Site, in ‘Schedule 2: Additional Uses’ (specifically, Additional Use 36).

Clause 4.5.1 of the Scheme, however, sets out that –

Except for development in respect of which the R-Codes apply, if a development is the subject of an application for development approval and does not comply with a standard or requirement prescribed under the Scheme (including a policy or plan adopted pursuant to the Scheme), the local government may, despite the non-compliance, approve the application unconditionally or subject to such conditions as the local government thinks fit.

Whilst clause 4.5.1 does not apply to some development standards set out in the Scheme, it is not the case with development standards set out in either Schedule 2 or Schedule 8. As such, any development standards set out in the Scheme could be lawfully varied by a planning decision-maker through a normal planning process. The fact that a lawful discretion exists to approve something, however, does not necessarily mean that it should be approved.

Secondly, the other development standards set out in the planning framework that the Proposal is inconsistent with are set out in a Structure Plan (i.e. the approved ‘Development Guide Plan’ or ‘DGP’, see Attachment B – note that the DGP also provides guidance about land use). Whilst the City’s town planning scheme did, at times in the past, give Structure Plans or equivalent ‘the force and effect of provisions of the Scheme’, since at least 2015 that has not been the case.

In October 2015, the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations) came into effect. Schedule 2 of the Regulations is the ‘Deemed Provisions’. By virtue of Regulation 10 (4) of the Regulations and S257B of the P&D Act, the Deemed Provisions are applicable to all local planning schemes in WA, and if they are inconsistent with a provision of a local planning scheme, the Deemed Provisions will prevail.

Clause 27 (1) of the Deemed Provisions sets out the effect of a structure plan in the determination of an application for development approval, establishing that –

A decision-maker for an application for development approval...in an area that is covered by a structure plan that has been approved by the Commission is to have due regard to, but is not bound by, the structure plan when deciding the application.

That means that a planning decision-maker clearly has a capacity to approve development that is not ‘compliant’ with a Structure Plan. Again, however, the fact that a lawful discretion exists to approve something, however, does not necessarily mean that it should be approved.

Turning to land use controls, there may be some elements of the Proposal that a planning decision-maker in a normal planning process could not lawfully approve. This matter is addressed on pages 159-164, section 8.2.1, of the [Development Application Report](#), although City officers reach somewhat different conclusions to those set out in that report.

Most of the Site is Zoned 'Tourism' in the Scheme. That includes all portions of the Site where development is proposed. Most, but not all, of the area in the Tourism Zone is also subject of the 'Additional Use 36' (A36) designation. A36 sets out that, in addition to the uses normally permissible in the Tourism Zone, that uses normally permissible in the 'Residential' Zone are also permissible. Significantly, some of the area where the Villas are proposed is not subject of A36 (portions of the western and south-western portions of the Site are also identified as 'Recreation' Reserve, but there is no development proposed in that area – note that the area so identified is smaller than the area identified for transfer to National Park through the earlier planning process and, to a lesser extent, as part of the current Proposal).

In the [Development Application](#), four aspects of the development are identified that could potentially be considered to be prohibited, or 'X', land uses, or otherwise as a 'use-not-listed' –

1. The Hire Shop;
2. The Wellness Centre;
3. The liquor sales component of the General Store; and
4. The Villas.

The Hire Shop would, as a stand-alone use or development, clearly fall into the 'Shop' land use designation in the Scheme. Shop is a prohibited use in both the Tourism and Residential Zones. Given its relatively small-scale relative to the Hotel, Restaurant and some other uses, however, it could potentially be considered as a use that was ancillary to those uses, pursuant to clause 3.3.3 of the Scheme.

The Wellness Centre would, as a stand-alone development, clearly fall into the 'Recreation – Private' land use designation in the Scheme. Recreation – Private is a permissible use ('D' or 'discretionary') in the Tourism Zone. Given its relatively small-scale relative to the Hotel, Restaurant and some other uses, however, it could also potentially be considered as a use that was ancillary to those uses, pursuant to clause 3.3.3 of the Scheme. It is not clear why the report in the [Development Application](#) has identified the Wellness Centre as being a prohibited use.

The liquor sales component of the General Store would clearly fall into the 'Liquor Store – Small' land use designation in the Scheme. Liquor Store – Small is a prohibited use in both the Tourism and Residential Zones. Given its relatively small-scale relative to the Hotel, Restaurant and some other uses, however, it could potentially be considered as a use that was ancillary to those uses, pursuant to clause 3.3.3 of the Scheme. In fact, if the liquor sales component of the General Store is not an ancillary element, then the General Store itself would also not be ancillary and would, itself, be a Shop and would therefore be a prohibited use in its entirety.

The Villas, if they were being used for long-stay/permanent residential purposes only would fall into the 'Grouped Dwelling' use in the Scheme. As they are proposed to be used for both long-stay and short-stay purposes, however, they would, were it not for the fact that accommodation of more than six people for short-stay purposes is proposed, instead fall into the 'Holiday Home (Multiple/Grouped Dwelling)' land use classification. Whilst both of those land uses is permissible in the Residential Zone and therefore in the portion of the site subject of A36, both are, in fact, prohibited (or 'X') land uses in the Tourism Zone and therefore could not be approved in the portion of the site not subject of A36.

Because accommodation of more than six people for short-stay purposes is proposed, however, with up to 12 being proposed, the Villas cannot fall into the 'Holiday Home (Multiple/Grouped Dwelling)' land use classification. Instead, it is possible that they would fall into the 'Tourist Accommodation' land use classification, which is a permissible land use in the Tourism Zone. The Proponent has instead argued that the Villas constitute a 'use-not-listed', pursuant to clause 3.4.2 of the Scheme, and that is considered the only reasonable alternative to the Tourist Accommodation classification. In either case, however, the end result is the same – there is the lawful discretion to approve the Villas both within and outside the area affected by A36.

All other land uses included in the Proposal are permissible in the Tourism Zone and therefore across the whole of the portion of the Site where development is proposed. As such, it is clear those land uses could be lawfully approved. As with development standards, however, the fact that a planning decision-maker could lawfully approve something does not mean that it should, and it is clear that approval of the Proposal within the current planning framework would require the exercise of a significant level of discretion with respect to land use controls.

Recommended response to this issue:

- a. Not considered to be a need to include specific reference to this issue in the City's submission.

Concerns about consultation on the development application proceeding ahead of the completion of the EIA process

Where proposed development is subject of a formal EIA process a planning decision-maker, including the WAPC through the SDA process, cannot determine an application unless and until the EIA process is complete. All subsequent planning decisions must also be consistent with the outcome of the EIA process. An earlier development proposal for the Site has also already been subject of a formal EIA process and, whilst noting that the current Proposal is a different development proposal, the Proposal does look to be inconsistent with some outcomes of the earlier EIA process (see Ministerial Statement No. 831 – Attachment E). In particular, the Proposal –

1. Involves development outside the 'Identified Development Land Area' (Condition 4-2); and
2. Does not provide for all of the 'National Park Extension' (Condition 5-1).

As will become apparent later in this report, the issues those conditions sought to address are also considered two of the most critical issues for planning assessment of the current Proposal. Those issues being, in simple terms: (1) visual and landscape impacts; and (2) flora and fauna impacts. Both of those issues are also expected to be central to the current EIA process for the Proposal and, in fact, it seems likely that it is the EIA process that will largely determine the regulatory position on those issues, rather than the planning process.

As will also become apparent later in this report, a third critical issue for the planning assessment of the current Proposal is related to water management, especially wastewater management. It is less clear that the EIA process will determine the regulatory position on that issue, but it is an issue that is clearly within the scope of the EIA process, and one where the EIA process may result in important and possibly binding guidance for the subsequent planning decision.

The outcome of the EIA process could also result in a need to modify the Proposal and/or impact the Proponent's willingness to proceed. Such change could conceivably be quite significant, including changes to the development footprint, density of development or approach to providing services, matters that are fairly fundamental to the Proposal.

Especially given the level of resourcing required at both State and local government level as part of the planning assessment, as well as the level of community interest in the process, it is considered that it would have been preferable that the planning consultation did not occur until after the EIA process had been completed. It is also considered that it would be appropriate for the State to re-consult as part of the planning process after the EIA process has been completed, before making a formal planning decision. The City has expressed similar views to both the WAPC and the Proponent in the past, and it is considered those views should be reiterated.

Recommended response to this issue:

- a. Reiterate earlier concerns about consultation occurring ahead of completion of the EIA process, and request that there be a further formal opportunity for the City, community and State agencies to consider and comment on the Proposal prior to formal WAPC consideration, and following the completion of the EIA process.

The fundamental elements of the planning framework relating to the Site

The planning framework relating to the site is principally set out in –

1. *State Planning Policy 6.1: Leeuwin-Naturaliste Ridge (SPP6.1);*
2. *Leeuwin-Naturaliste Sub-regional Strategy (LNSS);*
3. *City of Busselton Local Planning Strategy (LPS);*
4. *City of Busselton Local Planning Scheme 21 (Scheme); and*
5. *Smiths Beach Development Guide Plan (DGP).*

Both the LNSS and LPS, however, do not provide any guidance beyond what is set out in SPP6.1 and/or the DGP, meaning that the key strategic direction is set out in SPP6.1, direction which is then reflected in the Scheme and DGP.

Key planning outcomes that arise from application of that framework to determine the development potential of the Site are that –

- The Site is identified as a location where development is supported;
- The primary function of such development should be for tourism purposes;
- Landscape and environmental values are critical factors to be considered and addressed before development can be approved; and
- In the assessment and approval of the DGP, it had been determined that development should be restricted to the eastern part of the site, and the balance of the site should be ceded to the Crown and subsequently incorporated into the LNNP.

The application of more detailed elements of the planning framework is set out as necessary elsewhere in this report.

Recommended response to this issue:

- a. No response considered necessary.

The proposed development footprint and density (including landscape/visual impact considerations, flora and fauna considerations, and the extent of land to be ceded to the Crown)

Earlier EIA and planning processes (specifically the process associated with the DGP), identified that development should be restricted to the eastern part of the site, and the balance of the site should be ceded to the Crown and subsequently incorporated into the LNNP. The boundary between those two areas was determined as being the firebreak that runs through the centre of the site on a north-south orientation, with a public road intended to run essentially along the alignment of that firebreak. There are understood to have been three key reasons as to why that was identified as a logical boundary—

1. It protected what was understood to be an important coastal heath vegetation community in the western part of the site (including the area where some of the Western Villas are now proposed);
2. It meant that development did not extend further west towards Smiths Point or up the ridge in the western part of the Site, thereby reducing the landscape and visual impact of development from viewpoints along the coast within the LNNP; and
3. It provided a clear, ‘hard’ boundary between areas that would be developed and areas that would not be developed.

The initial focus in this section of this report is on considering the current Proposal in the context of these three key factors, as they are still considered to be useful as a basis for considering this set of issues.

With respect to the first factor (coastal heath vegetation community), as noted earlier in this report, it is an issue that will be considered and fundamentally determined by the EIA process. Accordingly, it would clearly be premature for any planning authority to indicate support for the proposed westward extension of the development footprint, given the fact the EIA process is incomplete. That is particularly the case with respect to some of the Western Villas, although it is a less significant issue with the Hotel component of the Proposal. As part of preparing this report, the author also sought advice from a City officer with particular expertise in relation to flora, fauna and some other environmental matters, and a copy of their advice is provided as Attachment F.

With respect to the second factor (landscape and visual impact), again, as noted earlier in this report, it is an issue that will be considered and fundamentally determined by the EIA process. Similarly, it would clearly be premature for any planning authority to indicate support for the proposed westward extension of the development footprint on that basis too. The City does not have the internal technical capacity to fully assess this issue and, in circumstances where the City itself has to determine applications in similar contexts, the City will seek and often rely to a significant degree on expert advice provided by DPLH and/or DBCA – but as the City is not the decision-maker, it has not been in a position to seek and consider such advice.

With respect to the third factor outlined above – the fact earlier planning had identified that a road would be developed along the western boundary of the development area, to provide a clear boundary between the development area and the land proposed to be included in the LNNP - the current Proposal also provides a roadway where the development area adjoins areas not proposed to be developed, although it does not align in all cases with the proposed tenure boundary, and is also in a different, generally more westward, location. Aside from the different location, however, a ‘hard’ boundary in the form of a public road is not necessarily considered to be the best outcome, as it would allow the public to access the LNNP with or from their vehicles in an area where that may not be appropriate. It is worth noting that unmanaged or unapproved access by vehicles in the LNNP is a management challenge and, in fact, unapproved access to the Site by people in vehicles and/or campers has in fact long been an issue of concern to the owners, the City and DBCA.

Notwithstanding the above, it is considered that the City can provide some substantive input that the WAPC may find useful in considering the Proposal. There are in fact some elements of the Proposal that, from a landscape and visual assessment proposal, are considered to be appropriate and, in fact, can be expected to deliver a better outcome than the earlier planning processes associated with the Site. Those elements are set out below.

Firstly, across most of the areas of the Site proposed to be developed, the overall density of development (in terms of the proportion of the land that would be built upon, or be covered in hard surfaces, as well as the potential height and bulk of buildings) will be less than what would reasonably have been expected with the earlier planning process. In addition, more vegetation should be able to be retained and/or planted, and there can be greater control and consistency in terms of building colours, finishes and materials. As set out later in this section of the report, however, those factors may not be as significant as the Proponent has suggested in their documentation.

It is considered clear that, in the portion of the site to the east of the firebreak, the Proposal would have less visual impact than would arise from development proceeding in accordance with the earlier planning processes. It is, in fact, fairly clear that development could occur at a density somewhat higher than what is currently proposed in that eastern area and the visual impact would still be less than what would likely arise from development proceeding in accordance with the outcome of those processes.

In addition, the Proposal does not involve development of buildings in the south-western corner of the development area identified through the earlier planning processes. Wastewater infrastructure is proposed in part of that area and would have some visual impact, but would have less visual impact than the buildings and roadways provided for through the earlier process. That south-western area is higher and more visible from at least some key vantage points than the area where some of the Western Villas are proposed and, as such, the fact development of buildings and roadways is not proposed in this area is considered to be an advantage of the Proposal relative to the outcome of the earlier processes.

The two aspects of the Proposal outlined above form part of the Proponent's rationale for the westward extension of the development area relative to the outcome of the earlier planning processes associated with the Site. Reiterating that the City does not have the internal technical capacity to fully assess the landscape and visual impact assessment, it is noted that the Proponent's rationale for justifying the Proposal in visual and landscape terms turns to a significant degree on there being a very high capacity to retain and/or plant vegetation, and control building design and the aesthetics of the development more generally.

Whilst it is considered reasonable to assume that the Proposal will provide for a higher level of control than what would result from the outcome of the earlier processes, it is not considered that the WAPC can reasonably assess the Proposal accepting that the degree of control contemplated by the Proponent will be achievable for the life of the development. Identifying exactly what degree of control can be assumed is somewhat difficult, but it is considered that a reasonably conservative approach should be taken, for the following key reasons -

1. Development approval 'runs with the land', and it cannot be assumed that, should an approval be granted, the Proponent will actually have a role in implementation, especially on a long term basis.
2. Assuming such a high level of control for the purposes of planning assessment would require the identification of clear, enforceable mechanisms that the planning authority can reasonably expect to be able to enforce, regardless of the responsible entity at the time – meaning that judgements about the capacity of the proponents *per se* are not relevant considerations.

3. Making an assumption of a high degree of control would require that the assessing planning authority was confident there would be a proactive, resourced and motivated planning authority in the development compliance space for the life of the development. Whilst it may be possible for DPLH/WAPC to develop that capacity, given that at this stage one can only assume that there will be a small and finite number of SDA sites, and that they will be scattered around the State, that seems unlikely. The experience with other State agencies with development compliance functions would suggest that such a capacity may not be developed and then maintained to the extent necessary.
4. Developments generally and often necessarily evolve over time, in response to a wide range of factors, including fashions and varying individual preferences, and in WA our capacity to maintain tight controls on design/presentation over long periods of time has not been well established outside some very narrow contexts.
5. There may be unforeseen issues or practical reasons why variations are required in future – e.g. something in future that is equivalent to the emergence of rooftop solar, or a need to replace and modify on-site effluent disposal systems in the future with different systems with different requirements.
6. There could be legislative or other regulatory change outside the control of the planning authority, or the proponents or owners at the time, which override conditions of approval. A possibility is State level guidance / requirements in terms of bushfire safety, in particular the potential for consistent, State level guidance around the establishment of APZs or similar around dwellings. Multiple reviews/inquiries have recommended establishment of such guidance, including Recommendation 5 of the recent Wooroloo Review (although it is understood that, rightly in the view of City officers, the State Government has not accepted that recommendation of the Review, but more considered and appropriate recommendations of earlier reviews/inquiries following major bushfires have been accepted by Government in the past – this particular issue is discussed in more detail later in this report).

Given the above, whilst it is agreed that all parties should aim to achieve a high degree of ongoing control over design and other aspects of the Proposal, should approval be granted, it is considered that landscape and visual impact assessment should be undertaken assuming a somewhat higher level of visual impact than what the Proponents aspire to, as a reasonable planning authority should take a more conservative approach.

In closing, it is seen as necessary for City officers to make some overall observations about the westward extension of the development area – as whilst the City is not in receipt of detailed expert assessment or critique of the Visual impact Assessment, City officers do have a sufficient understanding of the issues to provide some substantive comment. In short, consideration of the documents indicates that some westward expansion of the development footprint may be appropriate in landscape and visual impact terms, although not to the extent proposed, especially in the portion of the Site closest to the coast, where the Hotel component of the Proposal is situated.

Some of the westward expansion, in the area where the Western Villas are proposed, is on land that is within the ‘amphitheatre’ and is proposed to be developed at a fairly low density (and, despite the uncertainty around exactly how much vegetation may be able to be retained and/or planted, it is clear that a reasonable amount of vegetation could be incorporated into the development). Where westward expansion is proposed closer to the coast, however, it is in the form of somewhat denser development and would increase the horizontal extent of development at Smiths Beach when viewed from the north.

Recommended response to this issue:

- a. Do not support the westward extension of the development footprint relative to what was determined through earlier environmental and planning assessment processes for the Site, as there is insufficient information currently available to allow a planning decision-maker to express such support, particularly in terms of –
 - i. The fact that the EIA process, which will substantially deal with this issue, has not been completed and it would therefore be premature for any planning authority to indicate support for that westward extension;
 - ii. Detailed assessment and advice from landscape and visual assessment experts within DBCA and DPLH is not currently available publicly;
 - iii. The unresolved nature of the assessment of the flora values of the area where the Western Villas are proposed; and
 - iv. Uncertainty around whether the assumptions/assertions made by the Proponent around vegetation retention/landscaping and building design control are assumptions that a reasonable planning decision-maker should accept, and as such a reasonable planning decision-maker should base their landscape assessment on the basis of more conservative and risk averse assumptions about the potential landscape and visual impact of the Proposal.
- b. Note that some westward extension of the development footprint relative to what was determined through earlier environmental and planning assessment processes for the Site may, subject to more detailed assessment, be appropriate, but not the full extent proposed.
- c. Note the significant reduction in development proposed in the south-western part of the development footprint determined through earlier environmental and planning assessment processes for the Site.
- d. Note that, within the eastern part of the Site, the level of landscape and visual impact does look to be less than what would reasonably be expected to result from implementation of development in accordance with the outcomes of the earlier planning processes associated with the Site.

Bushfire safety and management

Bushfire is a significant hazard across most of the City. There are two key factors, however, that mean that the hazard and associated risk are relatively high on the Site, when compared with other locations in the City. Firstly, the Site adjoins highly vegetated areas of the LNNP, and is also in proximity to highly vegetated private land, as well as other private land that, whilst cleared, could have dry seasonal grasses present at times during the year, and therefore also be capable of carrying a running fire. Secondly, Smiths Beach Road is a cul-de-sac, accessed via Canal Rocks Road, which is also cul-de-sac, meaning that there is only one route available to access the broader road network, and so only one means of access and egress for people at the Site and/or emergency services, in the event of a bushfire. That is also true for the existing development at Smiths Beach.

The Proposal would not change either of those risk factors, although it would change several other factors. Firstly, by significantly increasing the overall scale of development at Smiths Beach, all else being equal, the bushfire risk would increase – simply because there would be more assets and more people potentially exposed to the hazard. There are, however, several key factors that could reduce the overall risk, both for the Proposal as well as for at least some of the existing development at Smiths Beach –

1. There would be a capacity to establish an Asset Protection Zone (APZ) around the southern and western perimeters of the Smiths Beach settlement (noting that Smiths Beach is identified as a 'Tourism Node' settlement in the LPS);
2. Because the Proposal involves development of new buildings that will need to be built to the determined Bushfire Attack Level (BAL) as per *Australian Standard AS3959: 2018 Construction of Buildings in Bushfire Prone Areas* (AS3959), it would mean that the buildings along the southern and western perimeters of Smiths Beach would be more able to withstand bushfire hazard than the existing development at Smiths Beach (which is generally older and not built to those standards);
3. The Proposal involves the connection of Smiths Beach to reticulated water services, and so would therefore improve access to water for fire-fighting purposes (note that there is some complexity with respect to this factor that may be important, but at the most fundamental level, connection to reticulated water services would improve access to water for fire-fighting in most situations); and
4. The Hotel and Community Hub buildings would have a significant capacity to provide a refuge in the event of a bushfire, both for those staying or working on the Site, but also others who may be at Smiths Beach during a bushfire event (again, note that there is some complexity with respect to this factor that may be important, but at the most fundamental level those buildings would have a significant capacity to act as a refuge, and beyond the capacity of any existing buildings at Smiths Beach).

Consideration of this issue by a planning authority, certainly through a normal planning process, however, requires assessment against a fairly detailed planning framework, set out in the following key documents –

1. *State Planning Policy 3.7: Planning in bushfire prone areas* (SPP3.7);
2. *Guidelines for Planning in Bushfire Prone Areas* (Guidelines); and
3. AS3959.

SPP3.7 and the Guidelines provide, *inter alia*, detailed guidance around five different 'Elements', setting out 'Acceptable Solutions' and, where those cannot be met, 'Performance Principles', against which planning proposals should be assessed to determine acceptability in terms of bushfire safety and management. The five Elements are –

1. Location;
2. Siting and Design of Development;
3. Vehicular Access;
4. Water; and
5. Vulnerable Tourism Land Uses.

The Proponent, in their BMP, has indicated that the Proposal meets the Acceptable Solutions for Elements 1, 4 and 5, but requires assessment against the Performance Principles for Elements 2 and 3. It is agreed that the Acceptable Solutions for Element 4 are met by the Proposal, and that the Acceptable Solutions for Elements 2 and 3 are not met. It is not considered entirely clear, however, that the Acceptable Solutions for Elements 1 and 5 are met.

At the outset it is worth noting that it is not readily apparent what the WAPC is seeking to achieve through Element 5, which to a significant degree repeats aspects of other Elements, including Element 1 – the Acceptable Solution for which requires development to be capable of being built to BAL-29 or below. The BMP sets out how that would be achieved in significant detail and complexity, but detailed critique of that aspect of the BMP would require advice either from an accredited Level 3 Bushfire Planning and Design (BPAD) Assessor and/or technical advice from the Department of Fire & Emergency Services (DFES), and, as the City is not the assessing planning authority, the City is not in receipt of either at this stage.

In addition, however, it needs to be noted that the approach to meeting Elements 1 and 5 may be affected by the outcome of the EIA process, both in terms of what vegetation may be removed, but also what vegetation may need to be retained and/or planted to achieve a satisfactory landscape outcome. Whilst it is clear that, with the nature and location of development proposed within the Site all buildings could be capable of being built to BAL-29 or below, it is not clear that will be possible whilst still achieving acceptable environmental and landscape outcomes. This issue, as well as much of the commentary provided below, is also relevant to assessment of the Proposal against Element 2.

Further, the BMP, like most BMPs, and in accordance with the Guidelines, indicates that ongoing compliance with the BMP will be achieved via the City's 'Bush Fire Notice', issued pursuant to Section 33 of the *Bush Fires Act 1954* (Bush Fires Act), unless modified by the BMP. That is the normal practice and the City's current Bush Fire Notice does provide for normal requirements to be replaced by the requirements of a BMP. It cannot, however, be assumed that the City's Bush Fire Notice will remain in its current form for the life of the Proposal, and multiple State Government reviews/inquiries into bushfire matters have recommended greater State guidance, control and standardisation of Bush Fire Notices. This is a matter that has been identified and recommendations made, but not implemented, through the following reviews/inquiries –

1. The first 'Keelty Report' (*A Shared Responsibility: The Report of the Perth Hills Bushfire February 2011 Review*, published in June 2011) – Recommendations 38 and 39;
2. The 'Ferguson Report' (*Report of the Special Inquiry into the January 2016 Waroona Fire*, published in April 2016) – Recommendation 11;
3. The 'Buti Review' (*Bushfire Planning and Policy Review – A Review into the Western Australian Framework for Planning and Development in Bushfire Prone Areas*, published in January 2019) – Recommendation 14 and Action 8; and
4. The 'Wooroloo Review' (*AFAC Independent Operational Review – A review of the management of the Wooroloo fire of February 2021*, published in December 2021) – Recommendation 5.

Should the recommendations of those reviews/inquiries be implemented, there is a risk that the approach to vegetation management set out in the BMP could be superseded by more standardised approaches set at State level and, whilst it is perhaps less likely, they could also be superseded by a decision of the City to modify its Bushfire Notice. There are further policy uncertainties related to the fact that, at the present time, there are no clear mechanisms for the adoption, modification or revocation of BMPs, which are not mentioned at all in the Bush Fires Act. The Bush Fires Act is also expected to be reviewed, as part of the planned development of a 'Consolidated Emergency Services Act'.

The City has, in fact, been advocating for a number of years, including through a submission made to the Wooroloo Review, for the State to prioritise implementation of these recommendations. That is because the lack of consistency and clarity with respect to Bush Fire Notices and BMPs is a significant issue of concern, given the key role they play in community safety and in ensuring alignment between planning and building approval decisions on the one hand, and ongoing vegetation and fuel hazard management requirements on the other. The City has very significant practical experience with respect to these matters, and reflecting that experience has consistently been advocating for the introduction of relatively simple and standardised approaches that appropriately balance often competing bushfire safety, environmental and amenity considerations. That may not, however, be consistent with the more fine-grained approach set out in the BMP for the Proposal.

Even without the uncertainties outlined above, however, it is generally considered that sustainable bushfire safety outcomes in locations such as Smiths Beach, especially those that appropriately balance bushfire safety, environmental and amenity considerations, may be better achieved through higher building standards, balanced against relatively low expectations for vegetation and fuel hazard management. In that context, it is considered that it may be preferable to construct the buildings, in particular the Villas, to the BAL-40 standard. Given that the WAPC is not bound by the planning framework in the same way as a normal planning decision-maker, it would be open to the WAPC to impose such a requirement.

The remainder of this sub-section is focused on Element 3, which relates to vehicular access. The key issue with respect to vehicular access relates to the fact that, as already noted, Smiths Beach Road is a cul-de-sac, accessed via Canal Rocks Road, which is also a cul-de-sac. That means there is only one route available to access the broader road network, and so only one means of access and egress for people at the Site and/or emergency services, in the event of a bushfire. The distance from the Site to Caves Road is also approximately 1.8km, the first 650m of which passes through an area of relatively high bushfire hazard, due to the presence of significant vegetation on one or both sides of the road.

The planning framework, however, creates a very strong expectation that development of the kind proposed should have at least two means of access and egress. That is so there are multiple routes available for evacuation of people from a location in the event of a bushfire, as one route may have been made unsafe by the bushfire. It is also to provide multiple routes for emergency services to both get into a location to fight a bushfire, and also to leave that location if it becomes unsafe, or to escort out people who may need to be evacuated.

The planning framework expresses that expectation in a number of ways, perhaps most significantly in this case in Acceptable Solution A3.2a and Performance Principle P3i, which are as follows –

- *A3.2a Multiple access routes*

Public road access is to be provided in two different directions to at least two different suitable destinations with an all-weather surface (two-way access).

If the public road access to the subject site is via a no-through road which cannot be avoided due to demonstrated site constraints, the road access is to be a maximum of 200 metres from the subject lot(s) boundary to an intersection where two-way access is provided.

The no-through road may exceed 200 metres if it is demonstrated that an alternative access, including an emergency access way, cannot be provided due to site constraints and the following requirements are met:

- *the no-through road travels towards a suitable destination; and*
 - *the balance of the no-through road, that is greater than 200 metres from the subject site, is wholly within BAL-LOW, or is within a residential built-out area – Figure 23.*
- *P3i*

The design and capacity of vehicular access and egress is to provide for the community to evacuate to a suitable destination before a bushfire arrives at the site, allowing emergency services personnel to attend the site and/or hazard vegetation.

The Proponent has identified in their BMP that the Proposal is not consistent with A3.2a and, as such, certainly in the context of a normal planning process, an assessment against P3i would be required. The Proponent's BMP does set out such an assessment – and also provides an assessment against other relevant provisions of SPP3.7.

Even in the context of a normal planning process, assessment of a proposal against SPP3.7, or against most provisions of SPPs, though, is not solely about assessing 'compliance' with particular provisions. A broader perspective, focused on intent and objectives is sometimes required. That was a clear conclusion drawn in *Bunnings Group Limited and Presiding Member of the Metro North West Joint Development Panel [2019] WASAT 121* (Bunnings Decision). The Proponents also reference the Bunnings Decision in their BMP.

It is clear that there is no practicable means of providing a second means of access and egress for Smiths Beach. Doing so would mean developing a new road, either to the north, through the LNNP to Yallingup Beach Road, or south, via Canal Rocks Road, through the LNNP and private properties, to connect to Wyadup Road. The landscape and environmental impacts of either of those hypothetical roads would be very significant (and almost certainly unacceptable), and the cost would also be prohibitive. In addition, it is questionable whether either would actually deliver a significant bush fire safety outcome, especially the hypothetical southern option, as if the existing route from Smiths Beach to Caves Road was not safe (i.e. turning west from Smiths Beach Road onto Canal Rocks Road), then the alternative may also not be safe (i.e. turning east from Smiths Beach Road onto Canal Rocks Road, before somehow heading south to Wyadup Road via a hypothetical new road).

The same is, however, true with respect to Yallingup, Bunker Bay and, arguably, Eagle Bay. It is also true of many other small coastal settlements in WA. It is also not just significant new development, such as what is contemplated by this Proposal, which is expected to have a second means of access and egress. The requirement also applies to much less significant development (although it should be noted that it does not apply to development of new houses on existing lots).

As such, applying such a requirement in an inflexible manner could result in the effective sterilising of many new development opportunities in those settlements. It is also conceivable that an inflexible approach could prevent new development occurring that, despite not having a second means of access and egress, might reduce the overall level of bushfire risk to that area or settlement. The Minister for Planning has in fact been reported as making statements to that effect with respect to the Proposal (although, if that reflects the Government's view, it is certainly not well reflected in the planning framework).

The Proponent's BMP is essentially setting out a case that the Proposal will, in an overall sense, reduce the bushfire risk to people and assets at Smiths Beach. Whilst it is considered somewhat early for the City to accept that case, principally because of the unresolved nature of the EIA process and the fact that the City is not in receipt of expert technical analysis, the case set out by the Proponents in a broad sense is not seen to be unreasonable.

Recommended response to this issue:

- a. Identify that it is unclear whether the proposed approach to bushfire management will be consistent with environmental and landscape values.
- b. Identify that there is a significant level of uncertainty around ongoing BMP implementation.
- c. Note that the City is not in receipt of sufficient expert advice to enable a full assessment of and/or support for significant elements of the BMP.
- d. Indicate that sustainable bushfire safety outcomes that appropriately balance bushfire safety, environmental and amenity considerations may be better achieved through constructing buildings to the BAL-40 standard, and note that, given that the WAPC is not bound by the planning framework in the same as a normal planning decision-maker, it would be open to the WAPC to impose such a requirement.
- e. Note that it is not practicable to develop a second means of access and egress for Smiths Beach.
- f. Note that, whilst it is too early to accept the case put by the Proponent, it is not considered unreasonable to suggest that a better overall bushfire risk outcome may be achieved through development of the Site, although that has not been clearly demonstrated by the Proponents at this stage.

Potable water, stormwater and wastewater infrastructure

The Proposal involves the extension of Water Corporation's Dunsborough reticulated water network to Smiths Beach, to service the Site, although the Water Corporation may not necessarily be the licensed water service provider for the infrastructure (which would involve a pipeline and pumping infrastructure to extend the current Dunsborough network from Yallingup to Smiths Beach). The exact pipeline route, however, has not been identified. The Proposal is consistent with the outcome of the earlier planning processes for the site in this regard, and this is considered to be an appropriate way to provide potable water to service the development.

With respect to stormwater, there is good soil permeability across much of the Site, and clearly a capacity to manage stormwater within the site. This aspect of the Proposal is, however, not fully resolved, and additional groundwater monitoring is required. Resolution of this issue may affect other aspects of the design, for instance if additional land is required for stormwater retention and treatment, there may need to be changes to the landscaping proposed.

The matter that is much less resolved, however, is the approach to wastewater, where on-site effluent disposal is proposed (through a combination of mainly individual ATUs for the Villas, and a larger, centralised system for the Hotel and other elements of the Proposal). The outcome of the earlier planning processes for the site, however, was that reticulated wastewater services would be required, with wastewater ultimately being pumped to Water Corporation's Anniebrook Waste Water Treatment Plant (WWTP). Whilst it may be possible to find an on-site solution that could work effectively and also meet environmental and other objectives, the Proponent has not provided enough information to assess the adequacy of the Proposal and, as such, the City is clearly not in a position to support the approach proposed at this stage.

There is also, however, not considered to be enough information available for the City to indicate that the only appropriate wastewater outcome for this Proposal would involve connection to reticulated wastewater services. There has been some external commentary suggesting that the Scheme 'requires' that the Site be connected to reticulated sewer/wastewater services. That is, however, not actually the case. Clause 5 (i) of Schedule 8 of the Scheme sets out that –

5...a Structure Plan must...Ensure that all development is connected to reticulated sewerage...unless the local government and other relevant responsible authorities are satisfied that suitable alternative technologies can be implemented.

The Scheme therefore does specifically allow consideration of alternatives to reticulated sewerage, but there is also a clear need to demonstrate that would result in acceptable outcomes. As set out above, the Proponent has not demonstrated that at this stage. It is also considered clear that the approach to and appropriateness of the proposed approach to wastewater should be set out and assessed to a very high level of detail and confidence before development approval should be contemplated. Given the planning framework and the significance of the issue, this is not a matter that should be left to resolution through conditions of approval.

With respect to reticulated water and, should the Proponent modify the Proposal at some stage wastewater services, there are also some unresolved issues with respect to pipeline routes and /or pumping infrastructure sites. Development of that infrastructure may also have environmental or visual impacts.

Recommended response to this issue:

- a. Note that the Proposal involves connection to reticulated water services.
- b. Indicate that further information is required to assess proposed approaches to stormwater and wastewater management and, as such, the proposed approaches cannot be supported at this stage.
- c. Indicate that, given the planning framework and the significance of the issues, the proposed approaches to stormwater and especially wastewater management should be set out, resolved and determined to be appropriate at a high level of detail and certainty before the granting of development approval, and not left to be resolved through conditions of approval.
- d. Note the unresolved nature of potential routes to connect the Site to reticulated water and/or wastewater services.

Residential / tourism mix / length of stay controls

Because of the planning framework, there is a need to consider the extent to which the Proposal is 'tourism' development, as distinct from 'residential' development. SPP6.1, which establishes the key strategic planning direction for the Site, contains the following provisions relevant to consideration of this issue -

1. Policy Statement PS 1.3, which sets out that –

The coastal settlements at Eagle Bay, Yallingup, Gracetown, Prevelly and Gnarabup will permit a mix of tourism and residential development. The Tourist Node of Smiths Beach, defined as being land west of Smiths Beach Road, has potential for tourist development, including short-stay accommodation. Residential development will be permitted on Sussex Location 413 (i.e. the Site) but will be secondary to the predominant tourist function.

Subdivision and development of the identified developable area(s) of Sussex Location 413 will have a ratio of not less than seventy percent (70%) tourist development and not more than thirty percent (30%) residential development calculated from the developable land area. Mixed residential densities of up to a maximum R Coding of R25 under Statement of Planning Policy No 3.1 (Residential Design Codes) for residential development will be considered. Identifiable developable land will exclude areas to be set aside for Principal Ridge Protection, national park, public open space, or similar purposes as designated on an approved Development Guide Plan.

2. Land Use Strategy LS 1.2.1, which sets out that –

Proposed development at Smiths Beach will reinforce the primary tourism function of the site and not compromise the landscape values of the area. The size, nature and location of any development in the development investigation areas at Smiths Beach must be determined having regard to the overriding need to protect the visual amenity and environmental values of the area.

Those provisions of SPP6.1 are then reflected in the Scheme, with clause 5 (c) of ‘Schedule 8: Provisions Applying to Sussex Location 413 Smiths Beach Road, Yallingup’, setting out that -

5...a Structure Plan must:...(c) Ensure that land identified for subdivision and development of the Identified Developable Land Area(s) is designated so that a ratio of not less than seventy percent (70%) of the overall Identified Developable Land Area(s) be used for tourist uses, as may be granted development approval in the 'Tourist' zone, and not more than thirty percent (30%) residential development be achieved from the overall Identified Developable Land Area(s).

The provisions are also then reflected in the DGP, with 70% of the developable area identified as ‘Tourist’ and 30% as ‘Residential’. For reasons set out earlier in this report, however, had subdivision proceeded as per the approved DGP, the DGP would not have had the same impact on development potential as had been envisaged when it was first adopted, and the zoning and land use controls set out within the Scheme would have prevailed. As a result of that, within the portion of the site subject of A36, development of dwellings is permissible, and the development of a Single House is, in fact, a ‘P’ or ‘permitted’ use (although it should also be noted that most development would likely have taken the form of Grouped Dwellings, which are a ‘D’ or ‘discretionary’ land use). In practice, without an amendment to the Scheme, there would be no clear way of consistently implementing the land use controls that the DGP sought to establish.

In addition, at the time SPP6.1 and the DGP were developed, there was a fairly ‘binary’ understanding of the issue in the planning framework, in that accommodation was generally considered to be either short-stay (and could not be used to accommodate the same people for more than 90 days in a year) or residential (and, in most cases in law, even if not in fact, not able to accommodate people for periods of less than 90 days in a year). Further, it was often understood that, if all else were equal, the returns from short stay development would be less than from residential development. Financial and regulatory risk factors could also significantly impact decision-making, as short stay development would typically be seen as higher financial risk and so face higher borrowing costs, and short stay only developments could also be subject of more onerous investment regulation.

There has, however, been a shift away from that binary understanding over the last decade or so. There are two key reasons for that. Firstly, whilst short term letting of 'residential' properties has long been a feature in the City, the emergence of online booking platforms with national or international presence has seen that grow, and coincided with an increasing 'professionalisation' of the activity. That has expanded the range of tourism markets making use of that kind of accommodation. Secondly, the activity has gone from being essentially unregulated in practice to, in the City and many other locations in WA and elsewhere, becoming an activity that is subject of evolving systems of regulation.

In some parts of the City, around a third of all housing stock has a current holiday home registration. There is a further significant and often larger proportion of the housing stock which is not permanently occupied, but generally used on a short stay basis only, by the owners and their friends and family. This includes places like Yallingup Townsite, Eagle Bay Townsite, Old Dunsborough and parts of Quindalup. In short, over half of the housing stock in these areas is not permanently occupied, and is used for short-stay / tourism purposes only. It is also considered that over the last decade or so the proportion of housing stock in the short stay letting market has generally increased in these areas, although good data is not actually available for the period prior to 2013, which was when the City began regulating the industry.

There is not seen as being any reason why the Villas that form part of the Proposal would have a higher level of permanent occupancy than the other parts of the City identified above. In fact, for a range of reasons, it is considered that the level of permanent occupancy would be lower, and the proportion being actively used as commercially rented holiday homes would be higher. That includes the fact that the restrictions that the Proponent proposes with respect to the use and development of the Villas would discourage those looking for a permanent residence. In many cases those wanting a house to live in would be better served by acquiring a more conventional residential or rural-residential property. It also includes the fact that the Villas would be physically integrated into a broader tourism development, meaning that short stay guests would have a different and in most respects superior amenity and access to facilities than would be the case with a more conventional 'holiday let'. A fairly conservative assumption would be that at least 50% of the Villas would be available for short-stay rental, even in the absence of any regulation.

The other accommodation takes the form of hotel rooms, which would be expected to be used for short stay purposes only, and there is therefore no reason to question whether it is 'tourist development'.

The key questions with respect to this set of issues are therefore seen as relating to the Villas, and the extent to which the Proposal would 'reinforce the primary tourism function of the site'. There will be those who would like to see that question addressed in a mostly quantitative fashion, seeking to identify what percentage of land area, accommodation units and/or building floorspace could only be used for short-stay purposes, and more specifically that it should be a minimum of 70%. That would, however, fail to recognise the fact that short-stay and residential are not binary concepts. It is also more relevant to a planning proposal that, like the earlier planning processes for the Site, would lead to subdivision of the Site, and a number of subsequent development processes on individual lots – and therefore a need to avoid the further 'watering down' of the tourism element as each lot gets developed (which, given the current planning framework, would have been difficult to avoid with the outcome of the earlier planning processes in any case).

As the Proposal is in the form of a development application, a detailed breakdown of floorspace can be provided, and there is not the same 'watering down' risk to consider (although it should be noted that future land use change cannot be ruled out, and some changes to design would be likely to occur over time). At the request of the City, the proponents have provided a somewhat more detailed floorspace breakdown than what has been provided in the application documents. That indicates a total development floorspace on the site (excluding the campground platforms) of 39,482m², of which 10,678m² would consist of the Hotel and Community Hub, with the balance being associated with the Villas.

There seems little question that, should the Proposal proceed, it would reinforce the tourism function of the Site. It is less clear, however, that it does so to the extent envisaged by the planning framework, as across a majority of the land area across the site where buildings are proposed, those buildings could be used for residential/long-stay purposes should the owners choose to do so. Given the unresolved nature of many of the other aspects of the Proposal it is somewhat difficult to develop firm views on what may be appropriate to ensure the intent is clearly achieved, but there are several means by which that could be done. Those means include –

1. Ensuring that any of the Villas being leased, for either short or long stay purposes, is managed through a common letting pool and through a single managing agent;
2. Ensuring tight controls on modification or redevelopment of the Villas, setting out a need to maintain a consistent appearance and quality over time;
3. Identifying that a portion of the Villas cannot be used for long stay purposes; or
4. Decreasing the number of Villas and/or increasing the number of Hotel rooms proposed.

Certainly points 1 and 2 are considered to be necessary conditions to apply to any approval, should approval be granted. It is not so clear, however, that points 3 and 4 necessarily have to be addressed, and it is in fact premature to do so until other elements of the Proposal are better resolved.

Recommended response to this issue:

- a. Identify that, should approval be granted, conditions achieving the following should be applied –
 - i. Ensuring that any of the Villas being leased, for either short or long stay purposes, is managed through a common letting pool and through a single managing agent; and
 - ii. Ensuring tight controls on modification or redevelopment of the Villas, setting out a need to maintain a consistent appearance and quality over time.
- b. Identify that, once other aspects of the Proposal are closer to resolution, consideration may need to be given to –
 - i. Identifying that a portion of the Villas cannot be used for long stay purposes; or
 - ii. Decreasing the number of Villas and/or increasing the number of Hotel rooms proposed.

Coastal hazards and management

The Site is located close to the coast, and there is therefore a need to consider the potential for the Proposal to be exposed to coastal hazards i.e. coastal erosion and coastal inundation. The Proponents have provided a [Coastal Hazard Assessment](#) which addresses both hazards, and clearly identifies that the Site is not at significant risk from coastal inundation. The Site is, however, identified as being at risk from coastal erosion hazard, and a seawall, integrated into a beach access ramp, is in fact proposed in the foreshore reserve at the western end of the beach in front of the Site to manage coastal erosion. That structure would also improve access to the beach for Surf Life Saving activities.

The approach proposed is consistent with the direction set out in the City's recently adopted Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) – noting that the final CHRMAP document, at the time of writing, had not been finalised, but the Council has made a final decision on the CHRMAP recommendations. The CHRMAP identifies Smiths Beach as Management Unit MU01, and identifies 'Protect' as the adaptation pathway for coastal erosion hazard and 'Avoid' as the adaptation pathway for coastal inundation hazard. The Proposal is consistent with direction.

The CHRMAP, in Recommendation 4 (b) (i) also identifies -

4. That the City undertake or support, subject to appropriate assistance from the State and/or Federal Government, the following associated but additional work...(b) Coastal erosion modelling, following specific geotechnical investigations (possibly in partnership with landowners), for the following Management Units: (i) Smiths Beach...

The Proponents have, in fact, undertaken the specific geotechnical investigations and more detailed coastal erosion assessment contemplated by Recommendation 4 (b) (i). The geotechnical investigations indicate that there is a significant amount of rock under the Site and adjoining foreshore reserve, meaning that the level of coastal erosion risk is less than what is indicated by the modelling undertaken by the City and identified in the CHRMAP, which took a more conservative approach in the absence of detailed geotechnical information and which had assumed a relatively sandy and erosion prone geology.

Given the above, in a broad sense the Proposal is considered to appropriately respond to coastal hazards. There are questions, however, around land tenure, ongoing maintenance of the proposed seawall/access ramp and the eventual replacement of the proposed structure. Currently, the land where the structure is proposed is UCL, meaning that the State itself would need to approve the construction, but in the absence of something to the contrary, management and maintenance responsibility would rest with the City, through what are sometimes referred to as the 'otherwise unvested facilities' provisions. In practice, though, it is unlikely that the State would agree to the construction without first identifying how and by whom the structure would be maintained.

Processes are underway that would see the foreshore at Smiths Beach transferred from UCL and into the LNNP or, in the case of the portion adjacent the beach to the west of Gunyulgup Brook, subject of a management order granted to the City. That has been contemplated for a long time, and is now possible because of the broader South West Native Settlement process. For the purposes of this report it is assumed that, prior to any development proceeding, the City will have a management order over the portion of the foreshore where the seawall/access ramp is proposed. The structure would therefore be a private seawall being developed on Crown Land managed by the City.

There are other contexts where that has occurred the City, specifically private seawalls in the Siesta Park and Marybrook areas. In those contexts, the City has 'power to licence' over the foreshore reserve, and, with the consent of the Minister for Lands, enters into a licence agreements with the landowners that allow the construction to occur and require the landowner to maintain the structure at their cost. The construction also requires development approval, with more detailed plans than those currently available for this aspect of the Proposal being provided and assessed. Both the development approval and licence agreement also typically have finite, ten year periods of validity – although that does not necessarily mean that extensions may not be granted.

It is envisaged that, should the Proposal be approved, the City would enter into a licence agreement with the Proponents, with the consent of the Minister, which would allow the Proponent to develop the structure and take responsibility for its maintenance for a defined period. There would also need to be a clear and unambiguous responsibility to transfer that responsibility from the Proponent to any subsequent owners of the Site. A key question, however, would be what the defined period was and what happens at the end of that period.

The reason that a ten year period is applied to approvals for private seawalls in the Siesta Park and Marybrook areas is that it is not clear that the approaches being implemented are suitable for the longer term. The approach proposed for this Site, however, is considered appropriate for a considerably longer period, although even in this case it may eventually need to be incorporated into a broader and more integrated approach to erosion protection at Smiths Beach, to protect the foreshore / foredune itself, as well as existing and potential new public infrastructure and existing private development.

In such a context, and also because a licence over Crown Land in perpetuity would not be appropriate, a defined term is considered appropriate, but for a period longer than ten years. It is considered that a period of around 40 years may be appropriate, as it would be reasonable to develop infrastructure with such a design life, and integration into a broader protection strategy for Smiths Beach may be necessary by that time.

Recommended response to this issue:

- a. Note the proposed approach to coastal hazards and management looks to be broadly sound.
- b. Note that the City is likely to be granted a management order over the UCL where the proposed seawall/beach access ramp is located.
- c. Identify that, with respect to the proposed seawall/beach access ramp –
 - i. More detailed plans are required;
 - ii. There needs to be an appropriate mechanism to approve the development occurring on Crown Land;
 - iii. The Proponent to meet the costs of constructing and maintaining the structure for a significant period; and
 - iv. There needs to be a clear and unambiguous capacity to transfer that responsibility from the Proponent to any subsequent owners of the Site.

Traffic and parking

Because City managed public parking areas and roads may be affected by the Proposal, the City obtained an independent peer review of the Transport Impact Assessment. A copy of that review is provided as Attachment G. It should be noted, however, that Caves Road is managed by Main Roads WA (MRWA) and, as such, it is expected that the WAPC would largely rely on assessment and advice by MRWA in relation to any impacts on Caves Road and/or the Caves Road/Canal Rocks Road intersection. It is noted and agreed, however, that the intersection does require upgrading, the key issue is the extent to which that would be funded by the Proponent or by the State.

The peer review also identifies some questions around sight lines at other intersections, including proposed crossovers or new road connections from the Site onto Smiths Beach Road. Whilst not fully resolved, these are not considered by City officers to be difficult questions to resolve.

The City also needs to provide advice to the WAPC on parking considerations. At peak times, car parking demand exceeds supply at Smiths Beach. The same is true for many other coastal locations in the western part of the District, including City managed sites at Yallingup, Bunker Bay, Meelup Beach and in Quindalup. It is also true at a number of DBCA managed sites, such as at Injidup and Wyadup. In the case of Smiths Beach and at many of those other locations, there is only a very limited capacity to increase car parking supply without having unacceptable amenity, environmental or landscape outcomes. Any significant increase in supply may also result in infrastructure that is still insufficient to meet peak demand (demand which may simply expand to match any increase in supply – noting that at peak times many people would be choosing not to visit the sites because of the level of congestion currently experienced), but which is then underutilised for much of the year.

The Proposal would also result in a net increase in parking demand, as well as providing additional supply. The Proponent's assessment indicates that the Proposal would provide somewhat more additional supply than parking demand. Whilst much of their assessment is seen to be reasonable, there are some elements that may require further consideration, specifically –

1. An assessment of increased Surf Life Saving Club demand from members/parents, as opposed to staff/officers, has not been provided – whilst much of the demand may already exist, the development of the Club facility might be expected to increase demand, although it is not clear that the Proponent should be responsible for meeting that demand.
2. Some of the proposed additional supply is on public land, and it is not clear that it should be allocated to the Proposal and/or that it will actually be developable and/or useable, this consists of –
 - a. Parking along the currently informal track out to Smiths Point;
 - b. Parking along the currently undeveloped and unnamed road reserve to the south of the Site; and
 - c. On-street parking along the north-south oriented part of Smiths Beach Road.

It should be noted that the Council has recently made a decision to change parking management arrangements on the north-south oriented part of Smiths Beach Road. That was in response to safety concerns generated by inappropriate parking at peak times, with cars being parked on both sides of the road, partly on the road and partly on the verge, restricting access for other vehicles, including emergency services. Whilst previously parking was not allowed on either side of the road but was allowed on the verge on both sides, parking is now not allowed at all on the western side of Smiths Beach Road, but is allowed on the road and verge on the eastern side. The City will assess the success of this approach over the 2022/23 summer period.

In an overall sense, however, it is considered that, at peak times, public parking demand at Smiths Beach will expand to fill whatever supply is provided, and active management will increasingly be required.

Recommended response to this issue:

- a. Note that the Caves Road/Canal Rocks Road intersection requires upgrading, and the WAPC will need to determine the extent to which that upgrade should be funded by the Proponent and the extent to which it should be funded by the State.
- b. Identify that elements of parking supply and demand require further consideration, including –
 - i. Surf Life Saving Club associated demand; and
 - ii. Identified supply on the track to Smiths Point, the road reserve to the south of the Site and within the north-south oriented section of Smiths Beach Road.

Foreshore reserve and management, and proposal to accommodate SBSLC

It is understood that both SLSWA and SBSLC are broadly supportive of the proposal to accommodate SBSLC within the Proposal. That should not, however, necessarily be interpreted as support for the Proposal in a broader sense, and it is noted that neither SLSWA nor SBSLC is a planning authority or a body that has responsibilities with respect to development assessment. In the absence of development of the Site, it is difficult to see how a facility for SBSLC could be developed other than through placing a building in the foreshore reserve in front of the existing developed sites. Because reticulated wastewater is not currently available at Smiths Beach that would also entail on-site effluent disposal within the foreshore reserve.

SBSLC is a successful and popular club, providing water safety training and services to people in the western part of the District, and the incorporation of an appropriate facility for SBSLC within the Proposal is considered to be of significant potential benefit. Should the Proposal proceed, however, there would be a need to identify appropriate tenure arrangements for the facility. Often, surf lifesaving clubs operate from facilities on Crown Land, managed by the relevant local government and leased to Surf Life Saving for a 'peppercorn' amount – although operating, maintenance and sometimes asset replacement/renewal costs would also usually be recovered.

The City has discussed this matter with SLSWA, SBSLC and the Proponents, and it is understood that a similar arrangement may be appropriate in this instance, although rather than managing Crown Land, the City would need to own and manage a Community Title lot (see further discussion below), which it would then lease to Surf Life Saving for a peppercorn amount, as well recovering reasonable operating, maintenance and asset costs. It is considered likely, however, that the owners of 'normal' Community Title lots would have to contribute to the costs of maintaining the Site to a very high standard (in terms of landscaping/presentation), resulting in costs beyond what the City or Surf Life Saving would commit to in other contexts.

It is also worth noting that, whilst the Proponents do envisage making use of Community Title to implement the Proposal, they are not and cannot seek approval for Community Title through the SDA process, and it needs to be demonstrated that all aspects of the Proposal could be delivered without use of Community Title. Whilst, in most cases, there are considered to be workable alternatives, it is difficult to see how the SBSLC facility component of the Proposal could be implemented without some form of subdivision of the Site, and the creation of a lot or land title owned by the State, City or SLSWA (noting that Community Title is a form of subdivision, being in essence a form of Strata Title). A lease between the Proponents and the City, State or SLSWA would not be appropriate, as it could not provide perpetual tenure.

An alternative to providing the SBSLC facility integrated into the Proposal would be a separate building on the additional foreshore reserve that it is accepted should be ceded to the Crown in association with the development of the Site – although the exact size, dimensions and location of the land that should be ceded have not yet been determined or agreed. A facility could not, however, be accommodated within the area proposed to be ceded, certainly not without significantly affecting other uses of that space, and placing a building in the most important and intensively used part of the foreshore. It is considered preferable that the SBSLC facility is located outside the foreshore reserve, although it could conceivably be a free standing or separate building, rather than being fully integrated into the Proposal.

With respect to the foreshore reserve, notwithstanding the fact that coastal hazard issues appear to have been appropriately addressed, there is considered to be a need to consider what may be required to serve the community over the longer term, and to in fact look beyond the life of the Proposal. Once the Site has been developed, there is unlikely to be another opportunity to require the ceding of land in association with development. It should also be noted that there are very few opportunities to expand and essentially no opportunities to create new beach access nodes on City managed land on the City's western coast, meaning that Smiths Beach is very strategically important as a beach access node for the community – as it essentially represents the only significant expansion opportunity.

It is considered that the area proposed to be ceded would result in a total foreshore reserve area that would not be large enough to meet community needs, especially when the range of uses contemplated in association with the Proposal is considered – including a very tight integration with the Proposal itself and provision of vehicle access to Smiths Point (see discussion below). The total foreshore area, including both existing UCL and the land proposed to be ceded, would be around 6,000m². The equivalent areas at Yallingup and Old Dunsborough are currently around 4,000m², but do not have the same degree range of uses, and they are quite constrained in the range of activities possible. It is considered that a useable foreshore area of around 1.0 ha would be appropriate – noting that along the City's northern coast there are a significant number of locations where useable foreshore areas of that or larger size exist.

Continued vehicle access to Smiths Point is also considered to be inconsistent with the Proposal, or the creation of pleasant and safe foreshore amenity. It is also difficult to see how it would be consistent with the visitor experience sought by Hotel guests.

Recommended response to this issue:

- a. Indicate that the location of the SBSLC facility outside the foreshore reserve is seen as appropriate, but that it also may be appropriate for the facility to be a free standing or separate building, rather than being fully integrated into the Proposal.
- b. Indicate that appropriate perpetual tenure arrangements for the SBSLC facility need to be identified.
- c. Indicate that a larger foreshore reserve than what is proposed is considered appropriate, with a total useable foreshore area of around 1.0 ha being seen as appropriate to meet community needs.
- d. Note that continued vehicle access to Smiths Point looks to be inconsistent with the Proposal and with the creation of pleasant and safe foreshore amenity.

Proposed use of Community Title

The Proponents have indicated that they intend to use 'Community Title' to implement the proposal. Community Title is a form of Strata Title, that allows for multiple tiers or levels of titles, allowing for the creation of two or more lots which can then be further subdivided creating 'second tier' lots, or even third or fourth tier lots conceivably, within the context of an overall Community Title Scheme. That was not possible with earlier forms of Strata Title in WA. Community Title also provides for the progressive subdivision and development of land, and for a degree of flexibility over time, not possible under earlier forms of Strata Title. Community Title has become possible in WA through the *Community Titles Act 2018*. Whilst similar forms of title have existed in other jurisdictions for some time, Community Title is therefore a relatively new concept in WA – and there are currently no Community Title Schemes in the City of Busselton.

The Proponents have set out, in Part 3.8 of the [Development Application Report](#) a summary of their Community Titles concept. As already noted, however, they are not and cannot seek approval for Community Title through the SDA process, and it needs to be demonstrated that all aspects of the Proposal could be delivered without use of Community Title. Whilst it may in some cases be more challenging to do so, it is considered that there are, in most cases, multiple alternative means of achieving that. In such a context, however, it would be appropriate for any approval to be subject to a number of conditions requiring the identification of satisfactory arrangements for ongoing management of things like landscaping and shared infrastructure.

Recommended response to this issue:

- a. Note planned use of Community Title, but indicate that should approval be granted, conditions would need to be applied that would require appropriate ongoing management and development should the Proponent choose not to make use of Community Title.

Aboriginal heritage

The Proponents have provided a [Heritage Report](#) which indicates they are seeking approval to disturb an Aboriginal Heritage site pursuant to Section 18 of the *Aboriginal Heritage Act 1972*. The City does not have a formal role in that process and is not an authority on Aboriginal Heritage matters. Should that approval not be granted, however, it may require material changes to the Proposal. In practice that process will need to be completed before a planning assessment can be completed.

Recommended response to this issue:

- a. Note the need to resolve Aboriginal Heritage processes before the planning assessment can be completed.

Should the City support or object to the Proposal in an overall sense?

Officers have not recommended that the City support or object to the Proposal in an overall sense. It is, however, open to the Council to choose to do so. As set out in this report, however, significant aspects of the Proposal are considered to be unresolved and it would therefore clearly be inappropriate for the City to indicate overall support without significant caveats and conditions.

Recommended response to this issue:

- a. For the Council to determine.

Statutory Environment

The key statutory environment is set out in the P&D Act, the Regulations, the Scheme and the EP Act. Where elements of that statutory environment are considered to have a significant impact on the assessment of particular aspects of the Proposal or issues requiring consideration, it is set out alongside the discussion of that aspect or issue.

Relevant Plans and Policies

Key relevant plans and policies are –

1. *State Planning Policy 6.1: Leeuwin-Naturaliste Ridge* (SPP6.1);
2. *Leeuwin-Naturaliste Sub-regional Strategy* (LNSS);
3. *City of Busselton Local Planning Strategy* (LPS);
4. *City of Busselton Local Planning Scheme 21* (Scheme);
5. *Smiths Beach Development Guide Plan* (DGP); and
6. *State Planning Policy 3.7: Planning in bushfire prone areas* (SPP3.7) and associated Guidelines.

Where elements of those plans and policies are considered to have a significant impact on the assessment of particular aspects of the Proposal or issues requiring consideration, it is set out alongside the discussion of that aspect or issue.

Financial Implications

There are no financial implications associated with the officer recommendation.

Stakeholder Consultation

No external stakeholder consultation was required or undertaken in relation to this matter by the City. The City is, however, in receipt of feedback on the Proposal from some State agencies, as well as a high level summary of the outcomes of the community consultation on the Proposal undertaken by the WAPC, the outcomes of which were as follows –

1. Total valid submissions – 2,562
2. Support – 852
3. Support with changes – 78
4. Do not support – 1,632

A more detailed breakdown of submissions is not currently available to the City.

Risk Assessment

An assessment of the potential implications of implementing the officer recommendation has been undertaken using the City's risk management framework, with risks assessed taking into account any controls already in place. Noting that the recommendation involves the making of a submission on the Proposal to the WAPC, no risks of a medium or greater level have been identified.

Options

As an alternative to the recommendation the Council could:

1. Choose not to make a submission;
2. Choose to identify different and/or additional comments and/or issues of concern; and/or
3. Choose to indicate general support or general objection to the proposal, either instead of or in addition to identify comments and/or issues of concern.

CONCLUSION

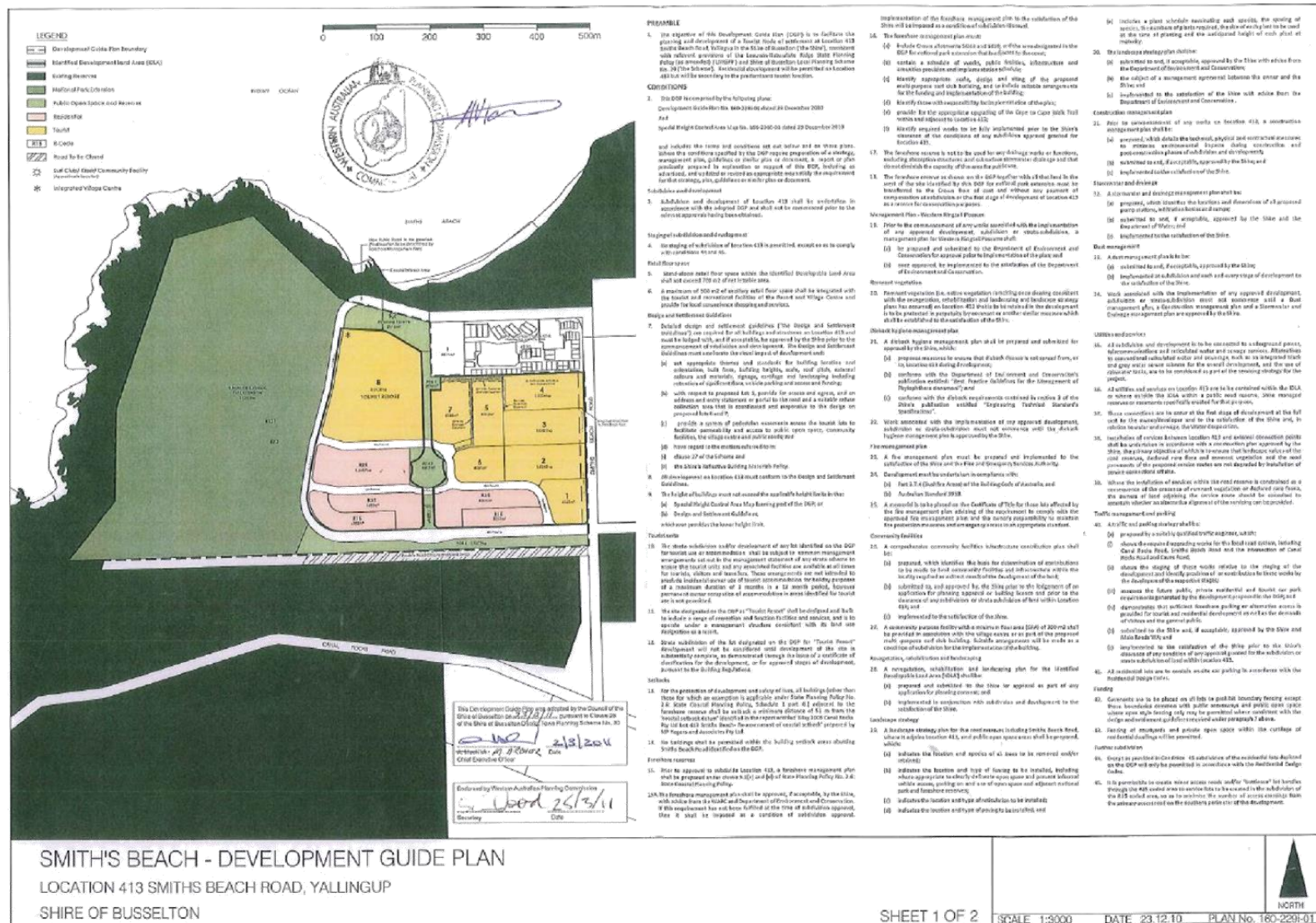
It is recommended that the Council make a submission on the Proposal, generally consistent with the Officer Recommendation.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Should the Council choose to make a submission and determine the terms of that submission, a submission will be provided to the WAPC by no later than 26 October 2022.

LOCATION MAP SMITHS BEACH





EXPLANATORY MEMORANDUM
Planning and Development Amendment Bill 2022

OVERVIEW

The purpose of this Bill is to amend the *Planning and Development Act 2005* ('the PD Act'). The amendments relate to Part 17 – *Special provisions for COVID-19 pandemic relating to development applications*.

Part 17 was introduced by the *Planning and Development Amendment Act 2020* ('Amendment Act 2020'). This is a temporary system designed to generate economic output to benefit the State economy, by encouraging major development activities through appropriate regulatory flexibility and a coordinated assessment process. These reforms introduced a new flexible and streamlined approval pathway for certain significant development applications (with an estimated cost of \$20 million or more in the metropolitan region and \$5 million or more in regional areas), as well as other referred developments.

The benefits of the Part 17 pathway for proponents included:

- a coordinated development assessment process by the Western Australian Planning Commission ('WAPC' or 'Commission');
- a more flexible and less prescribed assessment process;
- explicit and coordinated management by the Commission of the agency referral process to ensure referrals are responded to in the timeframe allocated;
- a substantially more flexible application of planning rules, including the ability to consider non-planning matters in the public interest; and
- a much stronger degree of certainty for proponents who obtain approval, ensuring other approval regimes administered by other government agencies and authorised persons (for example, in relation to a building permit, liquor licence, noise permit, or road access etc.) will not later frustrate any development approval obtained under this pathway without special authorisation to do so.

To ensure these regulatory benefits are actioned, Part 17 was designed with an 18-month sunset clause, which precluded new applications being lodged after 7 January 2022. The system also featured other in-built restrictions, such as prohibiting the Commission from extending the "substantial commencement" period for development activities, ensuring proponents begin significant construction activities and not simply "bank" their planning approvals.

Noting both the fast-changing circumstances since the Amendment Act 2020 was introduced, as well as a degree of ongoing uncertainty into the future, it has been determined that it is appropriate to extend temporarily the operation of the Part 17 pathway. Matters have since arisen that were not foreseen in 2020, such as challenges relating to construction, labour, supply and transportation constraints.

While prudent economic management has seen the State navigate the worse aspects of the last two years, in light of ongoing uncertainties, both domestically and internationally, it is premature to say the economic impacts of the pandemic are over. There remains, therefore, a need to continue to support and facilitate development in response to the economic effects of the COVID-19 pandemic.

As a consequence, the purpose of these amendments is broadly fourfold:

- Extend the timeframe by which new development applications can be submitted within the Part 17 system, to 5pm on 29 December 2023.
- Enable the Commission to extend the timeframe by which existing development approvals must be substantially commenced.
- To clarify and “tidy-up” existing ambiguities in Part 17.
- Provide any transitional or other arrangement necessary to achieve these aims.

CLAUSE NOTES

Clause 1. Short title

This clause provides that the name of this Bill when enacted is the *Planning and Development Amendment Act 2022*. A standard clause.

Clause 2. Commencement

This clause sets out when different provisions of the Bill become operational. A standard clause.

Clause 3. Act amended.

This clause explains this Part amends the PD Act. A standard clause.

Clause 4. Section 269 amended.

Section 269 provides the definitions section for Part 17. Clause 4 introduces a new term, being “extended recovery period”. The new extended recovery period will operate from the commencement of this Bill and expire at 5pm on 29 December 2023, which is the last business day of 2023.

Rather than attempt to extend the original period, which has since expired, the legislation in effect will permit two separate periods of operation under Part 17:

- the original “recovery period” (from 7 July 2020 to 7 January 2022); and
- a new “extended recovery period” (from the commencement of this Bill till 29 December 2023).

This will create a gap from 8 January 2022 to the commencement of this Bill, when new applications under Part 17 cannot be lodged. However, given a number of applications were lodged just prior to the cut-off date, plus the ongoing effective functioning of the Development Assessment Panel system, this gap is unlikely to have any significant impact. Nonetheless, this approach is clearer, compared with potentially dealing with more complicated questions of retrospective approvals and complex transitional provisions.

Clause 5. Section 271 amended.

Section 271 sets out the period in which a development application can be submitted under Part 17. Clause 5 permits certain development applications to be lodged during the new extended recovery period, in addition to the current recovery period.

Importantly, both the recovery period and extended recovery period only set out when certain development applications must be initially lodged – not finally determined. Provided an application is lodged in time, the Commission can continue to deal with such applications, or amendments to those applications, after the expiry of both periods.

Clause 6. Section 272 amended.

Section 272 provides the Premier and Minister with options to refer certain development applications to the Commission, in order to be determined under Part 17. There were no such referrals during the original recovery period, which expired on 7 January 2022. Notwithstanding that fact, clause 6 has been introduced to replicate the existing referral powers, but with respect to the new extended recovery period.

Clause 6(3) introduces new subsection (8), and cross-references back to section 268A of the PD Act. Section 268A sets out a procedure for laying documents before each House of Parliament when not sitting. This amendment is a “tidy-up”, noting there is some risk of confusion as to how the Premier is to inform each House under section 268A, when section 268A only deals with the actions of the Minister. An administrative amendment.

Clause 7. Section 273 amended.

Section 273 sets out what information is provided to the Commission as part of an application under Part 17. Clause 7 amends section 273(2), by inserting a cross-reference to section 272(3A), to take into account a potential referral during the new extended recovery period. An administrative amendment.

Clause 8. Section 274 amended.

Section 274 sets out the Commission’s role in determining a development application under Part 17. Clause 8 amends section 274(1)(a) and (3), to make references to the new extended recovery period. An administrative amendment.

Clause 9. Section 278 amended.

Section 278 deals with substantial commencement periods. This section requires any development application approved under Part 17 be substantially commenced either within 24 months or some other period specified in the approval.

The term “substantially commenced” is set out in section 269, and cross-references the definition in the *Planning and Development (Local Planning Schemes) Regulations 2015* (‘LPS Regulations’), Schedule 2 clause 1. The meaning in effect entails, “that some substantial part of work in respect of a development approved under a planning scheme or under an interim development order has been performed.”

Substantial commencement periods are a longstanding feature of the planning system. Importantly, substantially commenced does not mean substantially completed. Nonetheless, substantial commencement requirements exist to ensure development approvals are not “banked”

or “warehoused”, are acted upon within a timely fashion, and there is a commitment of resources of such proportion relative to the approved development so as to carry the assurance that work has really commenced.

The original intent, as reflected in sections 278 and 279, was to prevent the Commission from extending a substantial commencement period. This was a departure from the ordinary planning framework that exists outside the Part 17 system, where a planning authority usually does retain the power to grant an extension to the substantial commencement period. Noting the temporary and time-limited nature of Part 17, proponents were to treat their development approvals as “use-it-or-lose-it” opportunities, without the prospect of extension.

While this original intent has not changed, unforeseen issues have since arisen in relation to construction, labour, supply and transportation constraints. It has therefore been deemed appropriate that there should be some ability to extend the substantial commencement period.

Note both the Commission (under section 279) and the Governor (under section 284, in practice on advice, through Cabinet processes) will have the power to grant an extension. Clause 9 directs readers to this dual pathway for extension in a new advice note.

Clause 9 also amends section 278 by inserting new subsections (4) and (5). These provisions clarify that the power to extend a substantial commencement period can be granted even if the original approval has lapsed. This largely reflects the intent of current planning legislation outside the Part 17 system. For example, the LPS Regulations, Schedule 2, clause 77, already permits an application being made “to amend the approval so as to extend the period within which any development approved must be substantially commenced”, and being “made during or after the period within which the development approved must be substantially commenced”.

Clause 10. Section 279 amended.

Section 279 empowers the Commission to amend an existing Part 17 approval. Note subsection (4) currently prohibits the Commission from extending the substantial commencement period. Reflecting other changes to section 278, clause 10 will amend section 279 by deleting subsection (4).

Clause 10 also introduces additional provisions into section 279, which will now explicitly permit the Commission to extend any existing substantial commencement period.

New subsection (6A) allows for only one application for extension to be made, and limits the Commission to granting only one extension. This will ensure Part 17 approvals remain temporary and time-limited in nature, rather than allow approvals to be banked or warehoused, *per* the original intent of the framework.

Clause 11. Section 280 amended.

Section 280 introduces conflict resolution provisions into the Part 17 system. Together with sections 281 and 282, these provisions exist to provide greater regulatory certainty for proponents, by ensuring other approval regimes administered by other Government agencies and authorised persons (for example, in relation to a building permit, liquor licence, noise permit, or road access etc.) will not later frustrate any development approval under Part 17.

Clause 11 includes an amendment to clarify and “tidy-up” potential ambiguities in section 280. Namely, existing section 280(1)(b) possibly suggests only conditions imposed by the

Commission made under section 274 can benefit from the conflict-resolution mechanisms. This in turn may suggest the Commission's amendments under section 279, or conditions imposed by the Governor under section 284, might be excluded from the conflict-resolution provisions. This is not the intent. An administrative amendment.

Clause 12. Section 284 amended.

Section 284 empowers the Governor (in practice on advice, through Cabinet processes) to amend or cancel approval granted by the Commission under section 279. This remains an important safeguard or check on the broad decision-making discretion afforded to the Commission under Part 17. It ensures Government oversight of the Commission's decision-making functions.

Importantly, where the Governor does intervene under section 284, such an order is to be treated as subsidiary legislation and subject to the procedures set out in section 42 of the *Interpretation Act 1984*. That is, the Governor's order must be laid before each House of Parliament and is subject to potential disallowance. Thus, while Part 17 affords the Commission's broad discretion, that power is ultimately subject to the oversight of Government, and Government to Parliament, within established Westminster traditions of Responsible Government.

Clause 12 inserts new section 284(2)(a), more explicitly empowering the Governor to extend the substantial commencement period of an existing approval. Note the Governor is not limited to granting just one extension, as is the case with the Commission under new section 279(6). In an unforeseen but extraordinary situation where more than one extension might be warranted, it is appropriate that the Governor (in practice on advice, through Cabinet processes) alone have such power, subject to oversight and potential disallowance by Parliament.

Clause 13. Part 19 heading amended

Part 19 contains transitional provisions arising out of the Amendment Act 2020 but is being amended to include transitional provisions arising from the Bill. Clause 13 deletes the reference to the Amendment Act 2020 in the current heading. An administrative amendment.

Clause 14. Part 19 Division 1 heading inserted.

Clause 14 makes the current Part 19 heading, referring to the Amendment Act 2020, as a new Division 1 within Part 19.

Clause 15. Part 19 Division 2 inserted.

Clause 15 provides transitional provisions arising out of the Bill, to be set out in a new Division 2 within Part 19. Division 2 contains two new sections: section 295 and section 296.

Section 295: This transitional provision clarifies that the new powers to extend the substantial commencement period, as set out in clauses 9 to 12 of this Bill, include existing applications lodged during the original recovery period and not only future applications to be lodged during the new extended recovery period. An administrative amendment.

Section 296: This transitional provision clarifies that existing fees imposed by the *Planning and Development (Part 17 Fees) Notice 2020* will apply to new applications lodged during the extended recovery period. It also clarifies that the existing fees will apply to an application for an extension of the substantial commencement period, whether relating to applications lodged during either the original recovery period or the extended recovery period. Finally, while the transitional provisions automatically extend the operation of the existing fee notice, it does not

preclude a new or amended fee notice also being prepared in the future. An administrative provision.



Planning Reform



2. Streamline Significant Developments

To assist with COVID-19 recovery initiatives the State Government is reforming the *Planning and Development Act 2005*, *Planning and Development (Local Planning Scheme) Regulations 2015* and State planning policies to create a more flexible, responsive and contemporary planning system that can support Western Australia's economic recovery. This is a short-term initiative aimed to stimulate the economy by delivering high quality and sustainable development, create new employment and business opportunities, in addition to ensuring people have their say early about future development in their communities.

Certain sites, locations and projects can present opportunities for broad community value. Expanded approval powers are proposed for the Western Australian Planning Commission to determine such proposals in the short-term.

Key Reforms

- Proposed amendments to the *Planning and Development Act 2005* will temporarily establish the Western Australian Planning Commission as the new decision-making authority for all development proposals of State significance. The change in role for the Commission is proposed for a fixed 18-month period from Royal Assent to support our economic recovery from the Coronavirus pandemic. This proposal is similar to measures adopted in other States.
 - Significant developments by their nature are complex and require input from a myriad of technical experts and authorities as part of the assessment process. In most instances the key referral authorities are State agencies. To be considered as a significant development, proposals must:
 - have an estimated cost of \$30 million or more; and
 - incorporate 100 or more residential dwellings; or
 - include a minimum of 20,000 sqm net lettable area of commercial floor space*.
- * Note: this excludes warehouses.
- The Premier, on recommendation of the Minister for Planning, can also refer any proposal deemed to be of State significance to the Commission for determination. This is important to allow for consideration of regional and tourism projects and initiatives that may not meet the criteria but are considered important to assist in COVID-19 recovery.
 - Enhanced approval powers for the Commission will enable more strategic assessment of significant developments that deliver broad economic, social and environmental benefits for the State. In determining the applications, the Commission will consider a broader range of matters including non-planning related matters in the public interest.
 - Public consultation is considered a key part of the assessment of significant development proposals.
 - The Commission must engage the Environmental Protection Authority on all significant development proposals and will work to ensure that the referral process is efficient and responsive without extended referral periods. Without special authorisation to do so, no other authority will be positioned to make a decision that is inconsistent with the decision of the Commission.



Planning Reform



- Proposals will be lodged directly with the Department of Planning, Lands and Heritage who will facilitate early discussions prior to lodgement of any application, assess proposals and provide recommendations to the Commission.
- Consultation with local government will also be undertaken as part of the assessment process, with due regard given to any submission received.
- A sunset clause has been included as part of the new legislation, at which point the necessary regulatory changes to establish a Special Matters Development Assessment Panel will be complete.
- An applicant's right of appeal through the State Administrative Tribunal will apply as normal.

Desired Outcomes

- The reform of Western Australia's planning system will help prepare our State for strong economic recovery from COVID-19, and support the delivery of strong, high quality development outcomes into the future.
- The temporary change in approval authority to the Western Australian Planning Commission will enable the State Government to prioritise projects that have investment certainty, are well designed and are ready for construction to commence.
- A key focus of these reforms is improving our planning system with robust and responsive measures that support rigorous and streamlined assessment.
- In the design and planning of significant developments, all applicants will be strongly encouraged and advised to engage key stakeholders and the community as early as possible in the process. Early engagement, as opposed to during the final stages when an application has been lodged and under the pressure of statutory timeframes, will ensure the best possible planning and design outcomes.
- This is not to facilitate speculative development proposals; rather to deliver on development ready proposals. The Commission will have the ability to reject proposals on the basis that they are not certain to be delivered in the near term.
- In line with our commitment to Design WA principles, good design will continue to be at the centre of all development.
- Together with tourism initiatives, commercial and industrial projects along with "Build to Rent" proposals will be targeted.
- These amendments will support development and infrastructure that will create jobs and underpin our economic recovery and growth, now and into the future.

Implementation

- Amendments to the *Planning and Development Act 2005* will be packaged across two Bills to be considered by State Parliament. The first Bill, including enhancing the decision-making powers of the Western Australian Planning Commission, will be introduced to Parliament in May 2020.
- The new approval powers of the Commission will come into effect upon Royal Assent of the Bill.

STATUS OF THIS DOCUMENT

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Published on: 15 June 2010

Statement No: 831

**STATEMENT THAT A STRATEGIC PROPOSAL MAY BE IMPLEMENTED
(PURSUANT TO THE PROVISIONS OF THE
ENVIRONMENTAL PROTECTION ACT 1986)**

SMITHS BEACH DEVELOPMENT, SUSSEX LOC 413, YALLINGUP

Proposal:

The strategic proposal is to:

- a) extend the Leeuwin Naturaliste National Park into the western part of Sussex Location 413; and
- b) develop the eastern part of Sussex Location 413 for tourism and residential purposes with associated public open space and foreshore reserves as generally depicted on the Development Guide Plan.

The strategic proposal and identification of future proposals is further documented in Schedule 1 of this statement.

Proponent:

Canal Rocks Pty Ltd

Proponent Address:

Suite A7
435 Roberts Road
SUBIACO WA 6008

Assessment Number:

1597

Report of the Environmental Protection Authority: Report 1318

The future proposals identified in the strategic proposal referred to Schedule 1 of this statement may be implemented. The implementation of the future proposals shall be subject to the following conditions and procedures (subject to the Minister for Environment's identification of relevant conditions under section 45A(3) of the *Environmental Protection Act 1986*):

1 Proponent Nomination and Contact Details

- 1-1 The proponent for the time being nominated by the Minister for Environment under sections 38(6) or 38(7) of the *Environmental Protection Act 1986* is responsible for the implementation of the proposal.

- 1-2 The proponent shall notify the Chief Executive Officer of the Office of the Environmental Protection Authority of any change of the name and address of the proponent for the serving of notices or other correspondence within 30 days of such change.

2 Time Limit of Authorisation

- 2-1 The authorisation to implement future proposals provided for in this statement shall lapse and be void within ten years after the date of this statement if the future proposals to which this statement relates are not substantially commenced.
- 2-2 The proponent shall provide the Chief Executive Officer of the Office of the Environmental Protection Authority with written evidence that demonstrates that future proposals have substantially commenced on or before the expiration of ten years from the date of this statement.

3 Compliance Reporting

- 3-1 The proponent shall prepare and submit a compliance assessment plan to the satisfaction of the Chief Executive Officer of the Office of the Environmental Protection Authority at least 6 months prior to the first compliance report required by condition 3-6 or prior to the commencement of future proposals, whichever is sooner.
- 3-2 The proponent shall implement and maintain to the Chief Executive Officer of the Office of the Environmental Protection Authority the compliance assessment plan required by condition 3-1. The compliance assessment plan shall indicate:
- a) the frequency of compliance reporting;
 - b) the approach and timing of compliance assessments;
 - c) the retention of compliance assessments;
 - d) the reporting of potential non-compliances and corrective actions taken;
 - e) the table of contents of compliance reports; and
 - f) the public availability of compliance reports.
- 3-3 The proponent shall assess compliance with conditions in accordance with the compliance assessment plan required by condition 3-1.
- 3-4 The proponent shall retain reports of all compliance assessments described in the compliance assessment plan required by condition 3-1 and shall make those reports available when requested by the Chief Executive Officer of the Office of the Environmental Protection Authority.

- 3-5 The proponent shall advise the Chief Executive Officer of the Office of the Environmental Protection Authority of any potential non-compliance as soon as practicable.
- 3-6 The proponent shall submit a compliance assessment report annually from the date of the Minister for Environment's notice under section 45A(2) of the *Environmental Protection Act 1986* addressing the previous twelve month period or other period as agreed by the Chief Executive Officer of the Office of the Environmental Protection Authority. The compliance assessment report shall:
- a) be endorsed by the proponent's Managing Director or a person, approved in writing by the Office of the Environmental Protection Authority, delegated to sign on the Managing Director's behalf;
 - b) include a statement as to whether the proponent has complied with the conditions;
 - c) identify all potential non-compliances and describe corrective and preventative actions taken;
 - d) be made publicly available in accordance with the compliance assessment plan; and
 - e) indicate any proposed changes to the compliance assessment plan required by condition 3-1.

4 Development

- 4-1 Development of Sussex Location 413 shall be generally in accordance with the *Smith's Beach - Development Guide Plan (Mediated Plan) Plan No. 160-60K* dated 18 June 2009 ("DGP") (Figure 1).
- 4-2 There shall be no development of Sussex Location 413 outside the Identified Development Land Area shown on the *Smith's Beach - Development Guide Plan — IDLA Plan No. 160-73G* dated 18 June 2009 (Figure 2), other than development of public infrastructure such as works, public facilities, infrastructure and amenities within foreshores reserves; community facilities; landscape works; stormwater and drainage infrastructure; and utilities and services.
- 4-3 Development on Sussex Location 413 shall not exceed the heights indicated on the *Smith's Beach - Development Guide Plan - Special Height Control Area Map Plan No. 160-61M* dated 18 June 2009 (Figure 3).

5 National Park Extension

- 5-1 The 20.97 ha depicted as "National Park Extension" in the DGP (Figure 1) shall be incorporated into the Leeuwin-Naturaliste National Park prior to any subdivision or development of Sussex Location 413 (other than subdivision or development undertaken for the sole purpose of transferring that land to the Crown for incorporation into the National Park).

5-2 The Fire Management Plan referred to in Figure 1 shall be to the requirements of the Department of Environment and Conservation in relation to impacts on the Leeuwin-Naturaliste National Park and the extension to the Leeuwin-Naturaliste National Park.

5-3 Public access from the development to the Leeuwin-Naturaliste National Park extension shall be managed to the requirements of the Department of Environment and Conservation in order to protect the granite heath vegetation.

6 Revegetation

6-1 Within five years from the date of the Minister for Environment's first notice under section 45A(2) of the *Environmental Protection Act 1986*, the proponent shall revegetate 20 hectares of the 'Mt Duckworth Site' (shaded area in Figure 4) and 2.4 hectares of the 'Gunyulup Site' (shaded area in Figure 5) to meet the criterion of 2000 plants per hectare using the species and proportions as listed in Attachment 1 of this statement.

Hon Donna Faragher JP MLC
MINISTER FOR ENVIRONMENT; YOUTH

Schedule 1

The Strategic Proposal and Identification of Future Proposals (Assessment No. 1597)

The Strategic Proposal is to:

- a) extend the Leeuwin-Naturaliste National Park into the western part of Sussex Location 413; and
- b) develop the eastern part of Sussex Location 413 for tourism and residential purposes with associated public open space and foreshore reserves as generally depicted on the Development Guide Plan (Figure 1).

Future proposals will include:

- Subdivision and development proposals for tourism or residential purposes;
- The provision of public infrastructure within Sussex Location 413 directly related to the above mentioned derived proposals.

The main characteristics of the strategic proposal and extent of future proposals are summarised in Table 1 below.

Table 1: Summary of Key Proposal Characteristics

Strategic proposal	
Element	Description
Overall area	Sussex Location 413
Development area	The Identified Development Land Area as delineated in <i>Smith's Beach - Development Guide Plan — IDLA Plan No. 160-73G</i> dated 18 June 2009 (Figure 2).
National Park Extension area	The National Park Extension as delineated in the <i>Smith's Beach - Development Guide Plan (Mediated Plan) Plan No. 160-60K</i> dated 18 June 2009 (Figure 1).
Future proposals	
Type of future proposal	Key characteristics
Tourist	<ul style="list-style-type: none"> • generally in accordance with the <i>Smith's Beach - Development Guide Plan (Mediated Plan) Plan No. 160-60K</i> dated 18 June 2009 (Figure 1). • within the 'Identified Development Land Area' (Figure 2). • compliant with the <i>Smith's Beach - Development Guide Plan - Special Height Control Area Map No. 160-61M</i> dated 18 June 2009 (Figure 3). • sets out building envelopes. • includes Development Guidelines specifying an

	<ul style="list-style-type: none"> acceptable colour palette. prohibits fencing apart from a private courtyard. restricts plantings to an approved plant species list of appropriate native plants.
Residential	<ul style="list-style-type: none"> generally in accordance with the <i>Smith's Beach - Development Guide Plan (Mediated Plan) No. 160-60K</i> dated 18 June 2009 (Figure 1). within the 'Identified Development Land Area' (Figure 2). compliant with the <i>Smith's Beach - Development Guide Plan - Special Height Control Area Map Plan No. 160-61M</i> dated 18 June 2009 (Figure 3). includes Development Guidelines specifying an acceptable colour palette prohibits fencing apart from a private courtyard. restricts plantings to an approved plant species list of appropriate native plants.
Public Infrastructure	<ul style="list-style-type: none"> generally in accordance with the <i>Smith's Beach - Development Guide Plan (Mediated Plan) Plan No. 160-60K</i> dated 18 June 2009 (Figure 1).

Figures:

Figure 1: *Smith's Beach - Development Guide Plan (Mediated Plan) Plan No. 160-60K* dated 18 June 2009.

Figure 2: *Smith's Beach - Development Guide Plan - IDLA Plan No. 160-73G* dated 18 June 2009.

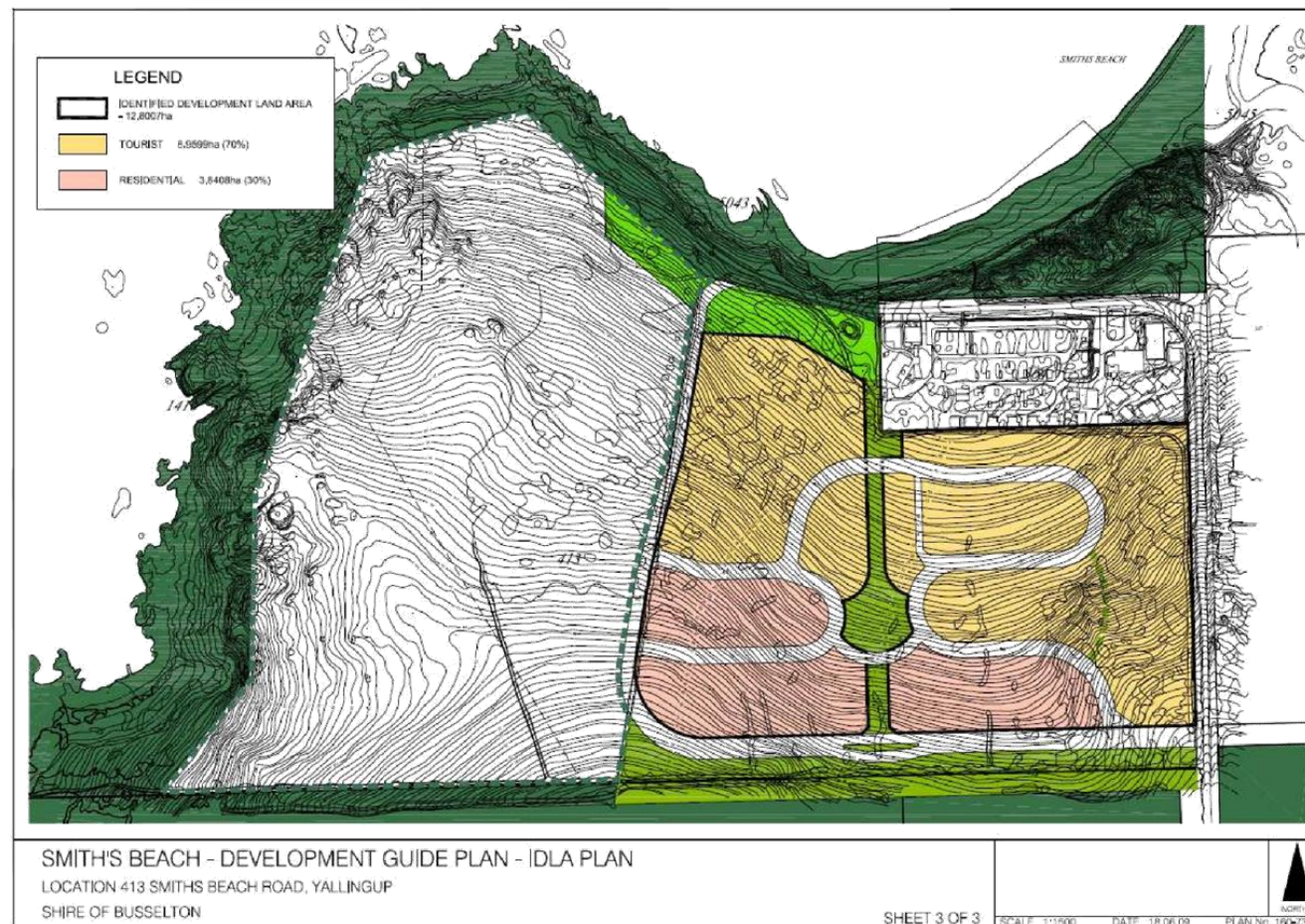
Figure 3: *Smith's Beach - Development Guide Plan - Special Height Control Area Map Plan No. 160-61M* dated 18 June 2009.

Figure 4: Revegetation - Mt Duckworth Site.

Figure 5: Revegetation - Gunyulup Site.

[illegible]

Figure 2 Smith's Beach - Development Guide Plan - IDLA Plan No. 160-73G dated 18 June 2009.



Legend

- Waterfront Reserve
- Residential
- Commercial
- Industrial
- Public Open Space

Notes

- 1. All buildings and structures must be constructed in accordance with the relevant planning scheme.

Map Labels:

- 1410
- 5043
- 5044
- 5045
- 364
- EXISTING TOURIST COMPLEX AND CARAVAN PARK
- TOURIST RESORT
- FORESHORE RESERVE
- TOURIST
- BACKPACKERS, CARAVAN, CAMPING AND CHALET PARK
- POS
- RESIDENTIAL
- Road To Be Closed
- SMITHS BEACH ROAD

SMITH'S BEACH - DEVELOPMENT GUIDE PLAN - SPECIAL HEIGHT CONTROL AREA MAP
 LOCATION 413 SMITHS BEACH ROAD, YALLINGUP
 SHIRE OF BUSSELTON

Scale: 1:10,000
Date: 18/06/08
Sheet: 2 OF 3

Figure 4 Revegetation - Mt Duckworth Site

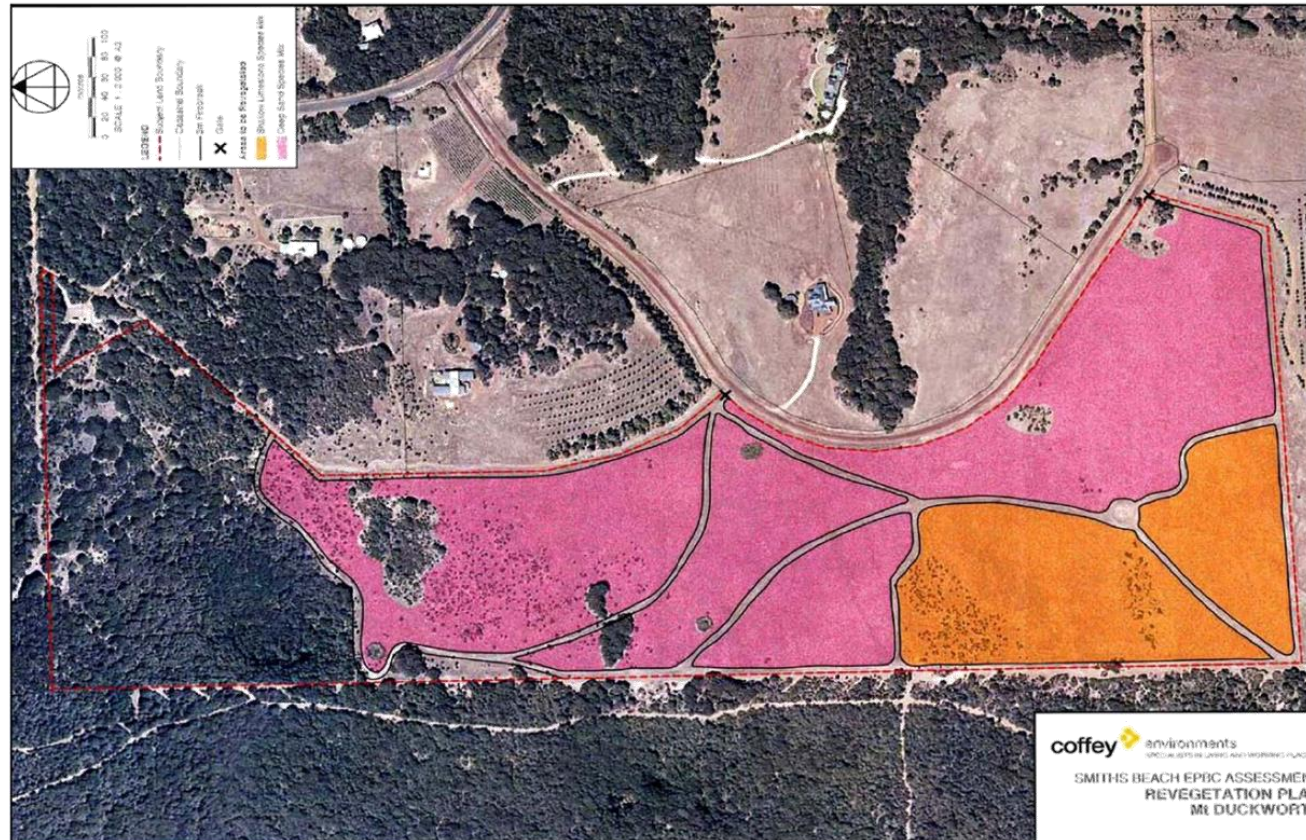
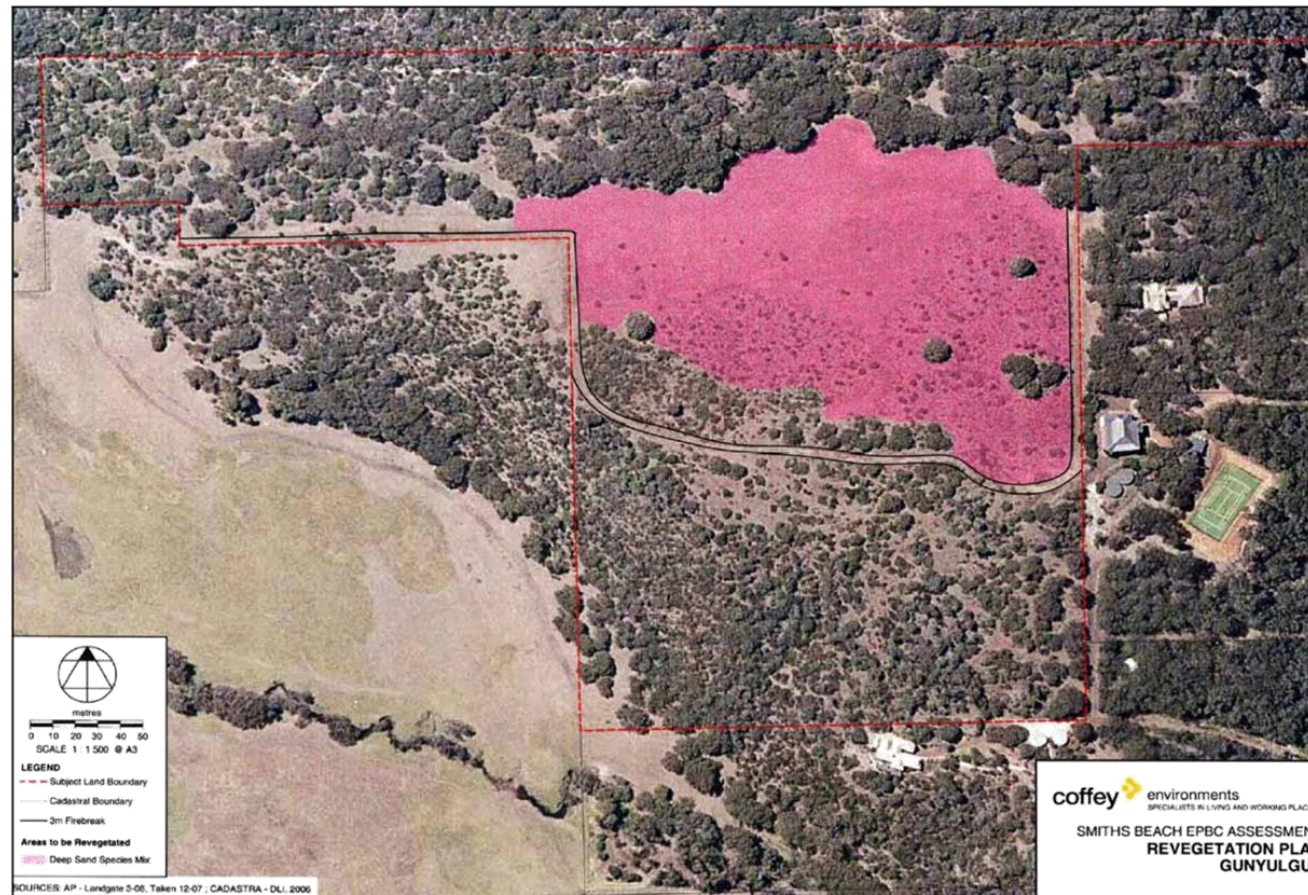


Figure 5 Revegetation - Gunyulup Site



Attachment 1

Species mix for revegetation (percentage of tubestock seedlings)

Mt Duckworth Site	Gunyulgup Site
Sandy Soils	Whole Site
<i>Agonis flexuosa</i> (WA Peppermint)	<i>Agonis flexuosa</i> (75%)
<i>Corymbia calophylla</i> (Marri)	<i>Corymbia calophylla</i> (15%)
<i>Eucalyptus marginata</i> (Jarrah)	<i>Banksia grandis</i> (5%)
Shallow Limestone Soils	<i>Banksia sessilis var cordata</i> (5%)
<i>Banksia sessilis var cordata</i> (formerly <i>Dryandra sessilis var cordata</i>) (Parrot Bush) (50%)	
<i>Agonis flexuosa</i> (30%)	
<i>Hakea oleifolia</i> (10%)	
<i>Corymbia calophylla</i> (10%)	

Comments- Proposed Smith Beach development- June 2022, Kay Lehman

Review-Strategen JBS&G- Smiths 2014 Pty Ltd Environmental Assessment Report, Lot 4131 Smiths Beach Road, Yallingup WA 6282

- The proposal significantly impacts listed Threatened Species and Ecological Communities and Listed Migratory Species.

Extent of Vegetation Clearing and Impacts

- **Impacts to Regional Significant Vegetation**
 - Previous advice from the EPA was for the development to be only east of the firebreak to protect regionally significant vegetation and this is not being adhered to in this current proposal.
 - Priority Ecological Community vegetation- proposed clearing of PEC-
 - The proposal will directly impact 0.31 ha (3.80%) of the "Low shrublands on acidic grey-brown sands of the Gracetown soil-landscape system" PEC situated in the western portion of the site. Of this, 0.11 ha will be fully cleared, and 0.21 ha will be partially modified. This impact will be confined to the extreme eastern extent of the PEC. This impact will not cause fragmentation, increase the potential for edge effects or reduce the viability of the PEC extent. Given this, the development is not considered to significantly impact this PEC occurrence"
 - The proposed clearing of PEC vegetation will impact the overall remaining amount of the PEC on the site. Community access through the remaining PEC needs to be carefully managed to prevent degradation of vegetation condition. The development should not be impacting PEC vegetation and should be modified to protect all of the PEC in the study area.
 - **Impact to PEC P2 Low shrubland on acidic grey-brown sands of the Gracetown soil-landscape system-** impacts from edge effect with potential new trails, weeds etc. edge effects. There is no/little detail on how this will be managed.
- **Impacts to 'Managed' Vegetation within the Site.**
 - **The entire area (18.46ha) of vegetation proposed to be cleared and/or modified should be assessed by the EPA** -as the modified/managed vegetation directly adjacent to proposed cleared area for development will be subject to various impacts which will very likely degrade the condition of vegetation. It is proposed to clear 7.32 ha with an addition 11.14ha subject to modification to allow for fuel reduction and proposed landscaping works.
 - **There is a lack of detail on management measures for the 'managed vegetation' in the short and long-term.** How long is the Community Corporations management enforceable?
 - The 7.32ha of modified/managed vegetation is proposed to be managed by the Community Corporation "which will audit onsite landscaping prior to bushfire season and conduct spot checks through the season. The Community Corporation will implement the BMP and BEMP for the entire precinct." It is stated that residual impacts to flora and vegetation within the Site will be managed through the implementation of a Construction EMP and offset strategy. This may be effective through the construction phase of the project, but what are the ongoing measures and plans to ensure that

this native vegetation is not degraded over time. How will the condition of the vegetation be retained in this area? How will this managed natural vegetation be managed in the long term?

- The proposal states that “60% of the tree canopy will be retained with the ‘managed vegetation’ “but the understorey will be highly modified.
- Areas to be modified/managed will be subject to Bushfire requirements through Firebreak notices under the *Bushfire Act 1954*. The proposed bushfire mitigation includes “retaining canopy cover (trees greater than 4 m in height) at varying densities, but will have shrubs and understorey cover reduced as per the specifications in the BMP”. The BMP states: “Low threat vegetation further from buildings within the park spine and campground, prioritising tree retention but be highly managed and fragmented to reduce bushfire spread and impact on buildings”.
- The impacts of landscaping works and ongoing impacts by people pressure in this modified environment is likely to degrade the condition of the native vegetation including weed invasion and reduced habitat values. **Impacts to *Banksia sessilis* var *cordata* P4** – unlikely that protection can be managed with construction impacts, susceptibility to dieback etc. The modified native vegetation to be retained in the development will be subject to bushfire requirements as part of the bushfire risk minimisation which states: “retain canopy cover (trees greater than 4 metres in height) at varying densities but will have shrubs and understorey cover reduced as per specification detailed in the BMP”. *Banksia sessilis* var *cordata* is a shrub to 2.5m in height. *Banksia* species are sensitive to soil disturbance and highly susceptible to dieback pathogen.
- **There are no details on weed management in the Environment Assessment Report for the development area (only in the foreshore area- in the FMP). Weed control works should be undertaken prior to construction works. The Construction EMP should include:**
- Weeds-recorded in the study area-
 - *Schinus terebinthifolius*- Brazilian Pepper- although not listed as a Declared Weed under the *Biosecurity and Agriculture Management Act 2007* or a Weed of National Significance- is an aggressive woody weed which displaces native vegetation and rapidly invades disturbed areas. It is dispersed by birds and mammals. Needs control prior to works.
 - In addition, Flinders Ranges wattle *Acacia iteaphylla* (an invasive woody weed) should also be controlled prior to works. Given the proximity to the National Park- these weeds should be controlled prior to works to prevent their spread.
 - Both these above weeds are listed as Priority Weeds for control in the City’s Weed Strategy.
 - Arum Lilies and Bridal Creeper weeds recorded- Declared and WONS weeds- Should be a condition to control all arum lilies on site prior to works and release of the biological rust treatment for the bridal creeper.
- **Management of ‘Edge Effects’ to National Park**
 - Proposed development in the western section -Western Holiday Homes area- likely impacts from residents/visitors - access tracks developing, impacts to native vegetation/habitat condition, weed invasion, degradation of PEC vegetation.

- There are no details on how this will be managed.
- **Flora and Vegetation Assessment**
 - The Spring Flora and Vegetation (Emerge, 2018) was not undertaken in accordance with EPA guidelines- *EPA (2016) Technical Guidance Flora and Vegetation Surveys for Environmental Impact Assessment*.
 - The Emerge (2019) Flora and Vegetation Assessment had a number of limitations including:
 - Threatened Flora-the flora survey by Emerge was undertaken on 17 Aug 2018 and 26-28 November 2018. Targeted threatened flora survey should be undertaken in the SW Botanical Province when the majority of species are flowering in accordance with EPA Technical Guidance. The survey was not undertaken in Sept/Oct when potentially threatened ephemeral/annual species flowering such as the spider orchid *Caladenia excelsa* (flowering sept-Oct) and *Caladenia caesarea* subsp. *maritima* (flowering Aug-Sept) listed as possible to occur in the study area.
 - Of concern another listed limitation of the survey- Pg 36 Emerge Flora report- "Not all targeted areas where the relevant soil or vegetation complexes occur could be assessed during the survey due to time constraints and/or a lack of access to privately owned land. Therefore, some potential sites could not be ground truthed and it is likely that further unrecorded occurrences of the 'low shrublands on acidic grey-brown sands' PEC occur".
 - **Noted botanical Errors in the Flora and Vegetation Report (Emerge, 2019):**
 - Error in Table 1 of the Emerge Flora and Vegetation Assessment- the orchid *Caladenia viridescens* is not a listed P2 it is a Threatened species under the EPBC Act.
 - Error in Flora species list- Species listed in the wrong Family- *Chamaecilla corymbosa* is listed in Xanthorrhoeaceae family- should be in Hemerocallidaceae family
 - The subsequent Flora and Vegetation Survey (Strategen, 2021) does not detail the type of vegetation survey or sampling techniques used (as required by EPA guidelines for flora surveys) and whether potential threatened flora were targeted.
 - **Do not have access to-** Strategen JBS&G (2021b), Smiths Beach Stage 2 Approvals- Vegetation Site Visit, October, prepared for Smiths 2014 Pty Ltd.
- **Fauna Management**
 - The Fauna Assessment (Biologic, 2020) appears to comply with EPA Guidance for conducting fauna surveys.
 - A Fauna Management Plan is proposed to be development- without the management details it is difficult to comment on. Lighting should be addressed in terms of impacts to fauna- minimising night light.
 - Six fauna species of conservation significance were recorded within the Site (Biologic, 2021) including Western ringtail possum, Carnaby's Black Cockatoo, Baudin Black Cockatoo, Ctenotus ora (skink), Quenda and Brush tailed Phascogale.
 - "WRP dreys 6 and potential black cockatoo habitat trees 5 situated in the development footprint are expected to be fully retainable through avoidance measures incorporated into detailed development design".

- EPBC Act referral with potential significant impacts to Western Ringtail Possums and Black Cockatoo habitat trees. **Need the EPA Assessment completed to comment further on this.**
- Pet restrictions- Holiday homes, camping. Impact on native wildlife- **there should be restrictions with no pets allowed on site, particularly cats.**
- **Smiths Beach Sustainability Report- should include the use of 'Owl- Friendly' rodent control products.** <https://owlfriendly.org.au/rodent-control/>

Hydrology/Sewerage- in relation to vegetation impacts

- The impacts (including vegetation clearing and habitat loss) of the proposed piping of water from Yallingup to the development- need to be included in the EPAs assessment of proposed disturbance areas.
- Onsite sewerage treatment- Western Holiday Homes will dispose of treated wastewater within its own lot.
 - Impacts to native vegetation from nutrient load have not been discussed.
 - Shallow soil/rock not suitable for onsite sewerage disposal.
 - Impacts to water quality and the marine environment of the Ngari Capes Marine Park have not been discussed.

Foreshore Plan

- The Priority Ecological Community (PEC) 'Low Shrubland on acidic grey-brown sands of the Gracetown soil-landscape system' is also located in the foreshore area in the north. This area requires greater protective measures than what is being proposed in the FMP.
- Proposed revegetation in foreshore area- very difficult site to establish vegetation in rocky/shallow sandy soil.
- Foreshore – primary dunes to be cleared to formalise carparking areas.
- Small northern section of the National Park's extension included with CoB's management responsibility. This include a portion of the Cape to Cape track.
 - Track maintenance? Signage, liability? The City to be part of the Community Title Scheme group to manage. Will need City resourcing.
 - 5 year management program by Proponent- then ongoing management handed over to CoB and DBCA. Subject to a separate management agreement, the Community Corporation may however continue to manage the area under CoB responsibility.
- Proposed outdoor shower facilities- problematic, water wastage, illegal campers using. The Urban Water MP (hYd2o, 2021) lists in it design objectives: adoption of waterwise practices!
- Significant modification to the foreshore area with proposed stone seawall, timber staircase- into water? Erosion? On-going maintenance, costs.

Urban Water MP

- Impacts to the natural, permanent water soak- located in the Foreshore Plan area- there is little information in the report on the proposed management of this site- is this the proposed Rock Pool area in the FMP? This natural spring (groundwater expression) needs protection.
- Encourage the use of rainwater tanks onsite- sustainability.

Bushfire Management

- Bushfire risk- with proposed housing directly adjacent to the National Park -all required bushfire clearing requirements should be included in the proposed development area- and not to impact the National Park.
- Proposed new public road on the southern boundary- impacts to native vegetation?

Landscape Report

- Only local native flora species should be utilised in landscaping works- on review of the proposed landscape planting list- there are invasive weed species including *Bromus hordeaceus* (introduced grass). This species should be excluded from the final Landscape Management Plan.
- Native vegetation should be retained with the development as much as possible- and inclusions of a proposed Community Garden- is out of step and inappropriate in a coastal beach environment, water use etc.
- The protection and natural enhancement (revegetation) of the natural water soak should be included in the landscape design.

City of Busselton
Smith Beach Development
Peer Review of TIA



EXECUTIVE SUMMARY

This technical note has been prepared for the City of Busselton to peer review the traffic impact assessment prepared by Cardno / Stantec for the proposed Smiths Beach project, dated 8 December 2021.

In summary there are some key elements missing from the TIA that should be addressed, and include:

- Assessment of intersection visibility
- Refining of the Sidra analysis

REVIEW OF TRAFFIC IMPACT ASSESSMENT

The review of the traffic impact assessment (TIA) is undertaken with reference to each section where comments are made. Sections not shown raise no issues or concerns.

Section 3.2 Existing Parking Supply and Demand

The TIA states that there are currently 64 formal car parking bays provided at Smiths Beach. Surveys undertaken for the TIA suggest the peak car parking demand is in the order of 130 to 150 cars during peak periods of activity.

Reference to Google Maps confirms 64 parking bays currently exist.

It is noted that current peak parking demand is significantly greater than existing parking provision. This is not a matter that is required to be addressed by any development.

Section 3.3 Existing Road Network

The TIA states that Canal Rocks Road has a posted speed of 110kph. This is actually incorrect based on MRWA web mapping which indicates the 50kph speed applies to Canal Rocks Road from Caves Road. This should be checked, particularly if used in the Sidra assessment.

Section 3.4 Existing Traffic Volumes

Existing traffic volumes on Caves Road are indicated to be in the order of 2,600vpd based on MRWA data from 2018. Reference to MRWA data from 21/22 south of Yallingup Beach Road indicates 3,812vpd. However, the data suggests little change in demand since the 18/19 year. On this basis the traffic demands shown in table 3.2 can be accepted as being reflective of current base line demands.

It is noted that MRWA traffic data also indicates there are no traditional AM and PM peaks, but a peak occurring around mid-day.

Section 4.2 Vehicle Access

The access locations appear to be acceptable. However, the TIA makes no comment in regard to access visibility. This must be addressed.

Section 5.1

The TIA states 64 existing bays currently exist, but in section 5.1 states 133 are provided off-site. Whilst there are parking areas that can be used, the report does not specify if the development will create the 133 off-site parking bays. This section is unclear.

Section 5.2 Parking Demand and Reciprocity

The TIA states a reduction of 50% of the peaking demand based on reciprocity of existing land uses and activity. No reference or evidence is provided to support this assumption. Whilst the arguments raised in regard to reciprocity are acceptable and may indeed support up to a 50% reduction, it is considered that the reductions to the hotel and campsite parking are not supportable. All hotel guests will need a bay per room as will guests at the campsite (it would be assumed that all campsites would be large enough for a car and separate parking would not be required except for staff).

The reductions applied to other land uses are considered acceptable. However, it is noted that the resultant parking provision is less than required by the City's LPP.

Section 7.2 Traffic Generation Estimation

Trips rates reference ITE and RA. Both acceptable sources.

Noted that 1% growth pa applied to background traffic in local area. This is acceptable as the development will be the actual increase in traffic demand to use local roads.

Section 7.5.2 states the right turn gap has been reset from Sidra to Austroads recommended values. Need to ensure that these are as per MRWA values, or MRWA will not support results.

Sidra model

Reference to Google maps indicates Canal Rocks Road has a single lane approach of about 3m widening to 7.8m at the stop line by virtue of the approximate 10m corner radius. The sidra model shows two lanes for 9m of the approach, suggesting 2 vehicles can access the stop

line. This is not accepted as at 5m from the stop line the lane width is 5m and would require that a right turn vehicle is hard up to the centre line. The approach should be modelled as a single lane approach as the ability for 2 vehicles to wait at the stop line is severely restricted. Further the model shows a dedicated right turn lane which does not exist. Aerial mapping indicates a southbound carriageway of 5m making passing a turning vehicle slow.

It is noted that the current intersection of Caves Road / Canal Rocks Road falls well below the MRWA standard applied to new development access.

The Sidra results for Scenarios 1 and 2 are acceptable. However, the results for Scenario 3 with a delay of 58.5s for the right turn is a little bit concerning. The level of delay could be likely to result in a higher incidence of crashes occurring. It is recommended that this be further investigated as the comment that it occurs on a handful of days need to be further substantiated.

Section 7.3.4 Smiths Beach Road

The Sidra analysis of this intersection is as to be expected. However, as previously stated no assessment of visibility has been provided.

Section 8.1 MRWA Warrants

It is noted that the existing intersection of Caves Road / Canal Rocks Road is substandard and that the development should not be required to upgrade the intersection. However, given the Sidra assessment is in need of review, it would be recommended that the matter is raised with MRWA and timing for the intersection upgrade identified. Based on Scenario 3, the current intersection is shown to operate poorly, which may increase crash rates. Based on the Sidra analysis the development may need to provide 2 approach lanes to Caves Road as a minimum requirement. Any works should be done in liaison with MRWA to get the whole intersection to a better standard.