



Metro-Inner North Joint Development Assessment Panel Minutes

Meeting Date and Time: Friday, 13 January 2023; 9:30am
Meeting Number: MINJDAP/170
Meeting Venue: Electronic Means

This DAP meeting was conducted by electronic means (Zoom) open to the public rather than requiring attendance in person

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Attendance

DAP Members

Ms Francesca Lefante (Presiding Member)
Ms Lee O'Donohue (Deputy Presiding Member)
Mr John Syme (Third Specialist Member)
Cr Rick Powell (Local Government Member, City of Subiaco)
Cr Garry Kosovich (Local Government Member, City of Subiaco)

Officers in attendance

Mr Anthony Denholm (City of Subiaco)
Mr Haydn Ruse (City of Subiaco)
Mr Brendan Philipps (City of Subiaco)
Mr Colin Cameron (Chief Executive Officer)

Minute Secretary

Ms Zoe Hendry (DAP Secretariat)

Applicants and Submitters

Mr Brett Lovett (Hay 263 Pty Ltd)
Mr Dan Lees (element)
Mr Ron Keogh (EMCO Building)
Mr Ronan Cosgrove (EMCO Building)

Members of the Public / Media

There were 3 members of the public in attendance.

Ms Sarah Makse (PerthNow) and Mr Lloyd Gorman (Post Newspapers) were in attendance.

1. Opening of Meeting, Welcome and Acknowledgement

The Presiding Member declared the meeting open at 9:31am on 13 January 2023 and acknowledged the traditional owners and paid respect to Elders past and present of the land on which the meeting was being held.

The Presiding Member announced the meeting would be run in accordance with the DAP Standing Orders 2020 under the *Planning and Development (Development Assessment Panels) Regulations 2011*.



1.1 Announcements by Presiding Member

The Presiding Member advised that in accordance with Section 5.16 of the DAP Standing Orders 2020 which states '*A person must not use any electronic, visual or audio recording device or instrument to record the proceedings of the DAP meeting unless the Presiding Member has given permission to do so.*', the meeting would not be recorded.

This meeting was convened via electronic means (Zoom). Members were reminded to announce their name and title prior to speaking.

2. Apologies

Nil

3. Members on Leave of Absence

Nil

4. Noting of Minutes

DAP members noted that signed minutes of previous meetings are available on the [DAP website](#).

5. Declaration of Due Consideration

The Presiding Member noted that an addendum to the agenda was published to include details of a DAP direction for further information and responsible authority response in relation to Item 9.1, received on 10 January 2023.

All members declared that they had duly considered the documents.

6. Disclosure of Interests

DAP Member, Cr Garry Kosovich, declared an Impartiality Interest in item 9.1. Cr Kosovich, prior to being elected as a Councillor, made statements to the City of Subiaco Council and the State Administrative Tribunal opposing this development application. Cr Kosovich has advised that he will determine this application on its merits and be unbiased.

In accordance with section 6.2 and 6.3 of the DAP Standing Orders 2020, the Presiding Member determined that the member listed above, who had disclosed an Impartiality Interest, was permitted to participate in the discussion and voting on the item.



7. Deputations and Presentations

- 7.1 Mr Dan Lees (element) addressed the DAP against the recommendation for the application at Item 9.1 and responded to questions from the panel.
- 7.2 Mr Ron Keogh (EMCO Building) addressed the DAP against the recommendation for the application at Item 9.1. Mr Keogh, Mr Douglas MacArthur and Mr Ron Cosgrove (EMCO Building) responded to questions from the panel.
- 7.3 Mr Brett Lovett (Devwest) addressed the DAP against the recommendation for the application at Item 9.1 and responded to questions from the panel.
- 7.3 The City of Subiaco officers addressed the DAP in relation to the application at Item 9.1 and responded to questions from the panel.

8. Form 1 – Responsible Authority Reports – DAP Applications

Nil

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

9.1 Lot 23-26 (No.263-277) Hay Street and Lot 31, 304 & 305 (No.17-19) Olive Street, Subiaco

Development Description:	Proposed extension of substantial commencement time of approval (six storey mixed use building)
Proposed Amendments:	Extension to substantial commencement timeframe (6 months)
Applicant:	Hay 263 Pty Ltd
Owner:	Hay 263 Pty Ltd
Responsible Authority:	City of Subiaco
DAP File No:	DAP/15/00921

REPORT RECOMMENDATION

Moved by: Cr Rick Powell

Seconded by: Cr Garry Kosovich

That the Metro Inner North Joint Development Assessment Panel resolves to:

- 1. **Accept** that the DAP Application reference DAP/15/00921 as detailed on the DAP Form 2 dated 26 October 2022 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*.



2. **Refuse** DAP Application reference DAP/15/00921 dated received 26 October 2022 (**Attachment 1**) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, Metropolitan Region Scheme, and the provisions of the City of Subiaco Local Planning Scheme No. 5, for the following reasons:

Reasons

1. The proposed development does not satisfy the provisions of Local Planning Scheme No. 5 in so far as:
 - a. The design of the development is not considered to be of high quality when assessed against the current planning framework, and does not meet Clause 9 (f)(v) of the Scheme;
 - b. The proposal is inconsistent with the following objectives of the Centre Zone in clause 16(2) of Local Planning Scheme No. 5:
 - i. The development was approved prior to the introduction of requirements to demonstrate good design and reflect local character through the planning framework, as outlined in State Planning Policy 7.0 – Design of the Built Environment. The development is not considered to reflect high quality design that responds to or enhances the special character of the area, and does not meet objective (c);
 - ii. The development was approved prior to the introduction of requirements to demonstrate good design and incorporate sustainability initiatives through the planning framework, as outlined in State Planning Policy 7.0 – Design of the Built Environment. The development is not considered to present a design that will contribute towards a vibrant and sustainable town centre, and does not meet objective (d);
 - iii. The development approval is now over six years and six months old and designed to respond to a now outdated planning framework. The development is not considered to be appropriate new development, and does not meet objective (e);
 - iv. The development has not been designed to respond to current planning requirements relating to design and functionality under the Residential Design Codes Volume 2. The development is not considered to present a built form and urban design that responds to public space areas to reinforce quality and functionality, and does not meet objective (g); and
 - v. The development retains street trees but provides minimal on-site landscaping and no Deep Soil Areas to facilitate mature trees. The development is not considered to contribute towards improvement to the City's urban tree canopy, and does not meet objective (h).



2. The request for an extension of time in which to substantially commence does not satisfy the provisions of Local Planning Policy 7.6 – Amendment and Extension to Term of Development Approval in so far as:
 - c. Clause 6.1.1 - The planning framework has significantly changed since the original approval was granted.
 - d. Clause 6.1.3 – Given the significant changes to the planning framework since original approval was granted, the development is unlikely to receive approval today.
 - e. Clause 6.1.4 – The applicant has not actively and relatively conscientiously pursued the implementation of the approved development in the context of a substantial commencement period spanning over 6 years and 6 months.

3. Having regard to the *Planning and Development (Local Planning Schemes) Regulations 2015* the proposed development does not satisfy the following matters for consideration:
 - a. Clause 67(a) – The proposal is not considered to be consistent with the aims and provisions of Local Planning Scheme No.5;
 - b. Clause 67(b) – The proposal is not considered to be consistent with orderly and proper planning;
 - c. Clause 67(g) – The proposal does not respond to the objectives and provisions of Local Planning Policy 7.6 - Amendment and Extension to the Term of Development Approval; and
 - d. Clause 67(v) – The proposal, having not been considered against the current requirements of the planning framework, does not provide community benefits that would otherwise be expected from mixed use developments under the operative planning framework. The approval of an extension to the substantial commencement timeframe for the development approval would therefore result in a loss of community benefits that would otherwise be required of new development.

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

For: Cr Garry Kosovich
Cr Rick Powell

Against: Mr John Syme
Ms Lee O'Donohue
Ms Francesca Lefante



ALTERNATE MOTION

Moved by: Mr John Syme

Seconded by: Ms Lee O'Donohue

That the Metro Inner North Development Assessment Panel resolves to:

1. **Accept** that the DAP Application reference DAP/15/00921 as detailed on the DAP Form 2 dated 26 October 2022 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;
2. **Approve** DAP Application reference DAP/15/00921 dated 26 October 2022 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, Metropolitan Region Scheme, and the provisions of the City of Subiaco Local Planning Scheme No. 5, for the proposed six month extension to the substantial commencement timeframe for an approved six storey mixed use building at No. 263-277 (Lots 23-26) Hay Street and No. 17-19 (Lot 31, 304 and 305) Olive Street, Subiaco, subject to the following conditions:

Amended Conditions

9. Prior to the issue of a building permit, a dilapidation report prepared by a practising Structural Engineer shall be submitted to the City of Subiaco and the owners of adjoining properties listed below detailing the current condition and status of all buildings (both internal and external together with paved areas and Right of Ways), including all ancillary structures located upon these properties:
 - a) 23 Olive Street;
 - b) 281 Hay Street;
 - c) 188 Churchill Avenue;
 - d) 255 Hay Street;
 - e) 18 Olive Street

In the event that access for undertaking the dilapidation surveys is denied by an adjoining owner, the applicant must demonstrate in writing to the satisfaction of the Principle Certifying Authority that all reasonable steps have been taken to obtain access and advise the affected property of the reason for the survey and these steps have failed.

32. This decision constitutes a 6 month extension to development approval under DAP regulation 17 for the whole development valid until 13 July 2023. If the development is not substantially commenced by 13 July 2023, this approval shall lapse and be of no effect.

Amended Advice Notes

- i. All conditions, requirements and advice notes detailed on the development approval 7.2015.202.1 granted on 27 April 2016, and as amended by development approval 7.2021.149.1 granted on 14 February 2022, continue to apply to this approval.



New Advice Notes

- v. In relation to the condition relating to dilapidation reports, the dilapidation report(s) should address the following matters to satisfy the City of Subiaco:
- a) Dilapidation reports are to clearly identify the name of the organisation and person(s) undertaking the inspection and shall include their relevant qualifications;
 - b) Dilapidation reports are to be prepared in accordance with relevant legislation and standards, including Australian Standard AS4349.1 (or equivalent);
 - c) A calibration gauge should be used for measurement, in combination with high resolution photos for accurate record keeping;
 - d) Landowners of properties requiring dilapidation reports are to be afforded the opportunity by the applicant to identify any existing areas of concern that can be visually identified and recorded in any dilapidation report;
 - e) The applicant, in consultation with the owner of the property requiring the dilapidation report, is to ensure that every reasonable effort is made to ensure that they can obtain safe and reasonable access to any and all areas of a property requiring dilapidation reports; and
 - f) Landowners of properties requiring dilapidation reports are to be provided the same copy and version of the dilapidation report as any submitted to the City of Subiaco as part of any request to clear conditions of development approval as required.

For the City to be fully satisfied, consideration will be given to written feedback from landowners up to 7 days after receipt of the dilapidation report.

AMENDING MOTION

Moved by: Mr John Syme

Seconded by: Ms Lee O'Donohue

- (i) To amend the pre-amble to read as follows:

Approve DAP Application reference DAP/15/00921 dated 26 October 2022 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the Planning and Development (Local Planning Schemes) Regulations 2015, Metropolitan Region Scheme, and the provisions of the City of Subiaco Local Planning Scheme No. 5, for the proposed ~~six~~ **nine** month extension to the substantial commencement timeframe for an approved six storey mixed use building at No. 263-277 (Lots 23-26) Hay Street and No. 17-19 (Lot 31, 304 and 305) Olive Street, Subiaco, subject to the following conditions:

- (ii) To amend Condition No.32 to read as follows:

This decision constitutes a **nine (9) 6** month extension to development approval under DAP regulation 17 for the whole development. ~~valid until 13 July 2023. If the development is not substantially commenced by 13 July 2023, this approval shall lapse and be of no effect.~~



The Amending Motion was put and LOST (2/3).

For: Mr John Syme
Ms Lee O'Donohue

Against: Ms Francesca Lefante
Cr Rick Powell
Cr Garry Kosovich

REASON: The requested 6 timeframe extension was considered appropriate and reflect the applicants submissions and comments on actions and on arrangements to commence the works to satisfy substantial commencement.

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

For: Mr John Syme
Ms Lee O'Donohue
Ms Francesca Lefante

Against: Cr Garry Kosovich
Cr Rick Powell

REASON: The majority of the panel members supported the extension of time, due consideration was given to the extenuating circumstances, including labour and supplies in commencing development. The Panel noted that the extension of time does not alter the proposal design. The actions undertaken to implement the development approval as provided by the applicant, are appropriate and reasonable and on balance the majority of panel members supported a minor timeframe extension.

10. State Administrative Tribunal Applications and Supreme Court Appeals

The Presiding Member noted the following SAT Applications –

Current SAT Applications				
File No. & SAT DR No.	LG Name	Property Location	Application Description	Date Lodged
DAP/19/01651 DR160/2020	City of Nedlands	Lot 1 (80) Stirling Highway, Lots 21-23 (2, 4 & 6) Florence Road and Lots 33 & 33 (9&7) Stanley Street, Nedlands	Shopping Centre	21/07/2020
DAP/21/02136 DR60/2022	City of Nedlands	No. 43 Esplanade, Nedlands	Proposed Mixed Use Development - One consulting room and three multiple dwellings	01/04/2022



Current SAT Applications				
File No. & SAT DR No.	LG Name	Property Location	Application Description	Date Lodged
DAP/20/01770 DR140/2022	City of Nedlands	97 (Lots 1-4) and 105 (Lot 500) Stirling Highway, Nedlands	Mixed use development comprising of basement car parking, restaurants, offices, motor vehicle sales and multiple dwellings.	23/08/2022
DAP/22/02229 DR172/2022	Town of Cambridge	413 (Lot 11) Vincent Street West, Leederville	Two-Storey Childcare Centre	04/10/2022
DAP/22/02191 DR192/2022	City of Vincent	No. 391 (Lot: 20) Lord Street, Mount Lawley	Proposed Mixed Use Development	31/10/2022
DAP/22/02276 DR194/2022	Town of Cottesloe	19 Napoleon Street (Lot 20) Cottesloe (Also Known As 19 & 21 Napoleon Street)	Four-Storey Office Building with Rooftop Terrace, And Change of Use of Existing Ground Floor Buildings To 'Restaurant and Small Bar)	04/11/2022
DAP/22/02219	City of Bayswater	589-591 (Lot 160-161) Morley Drive, Morley	Proposed Childcare Centre	14/09/2022
DAP/22/02218	City of Subiaco	No. 414 (Lot 27) Rokeby Road, Subiaco	Demolition Of Existing Building and Construction of a Six Storey Mixed Use Development (Ten Multiple Dwellings and Three Office Tenancies)	07/12/2022



11. General Business

The Presiding Member announced that in accordance with Section 7.3 of the DAP Standing Orders 2020 only the Presiding Member may publicly comment on the operations or determinations of a DAP and other DAP members should not be approached to make comment.

12. Meeting Closure

There being no further business, the Presiding Member declared the meeting closed at 11:44am.