



Metro Inner Development Assessment Panel Minutes

Meeting Date and Time: Tuesday, 13 August 2024; 9:30am
Meeting Number: MIDAP/28
Meeting Venue: 140 William Street, Perth

A recording of the meeting is available via the following link:
[MIDAP/28 - 13 August 2024 - City of Subiaco](#)

PART A – INTRODUCTION

1. Opening of Meeting, Welcome and Acknowledgement
2. Apologies
3. Members on Leave of Absence
4. Noting of Minutes

PART B – CITY OF SUBIACO

1. Declaration of Due Consideration
2. Disclosure of Interests
3. Form 1 DAP Applications
4. Form 2 DAP Applications
5. Section 31 SAT Reconsiderations
 - 5.1 No. 424-428 (Lot 2) & No. 440 (Lots 4, 5 & 6) Hay Street, Subiaco -
Demolition of Existing Commercial Buildings and Construction of Single And Two
Storey Commercial Building – DAP/23/02559

PART C – OTHER BUSINESS

1. State Administrative Tribunal Applications and Supreme Court Appeals
2. General Business
3. Meeting Closure

Clayton Higham
Presiding Member, Metro Inner DAP



Attendance	
<i>Specialist DAP Members</i>	<i>DAP Secretariat</i>
Clayton Higham (Presiding Member)	Laura Simmons
Lee O'Donohue (Deputy Presiding Member)	Ashlee Kelly
John Syme	
<i>Part B – City of Subiaco</i>	
<i>Local Government DAP Members</i>	<i>Officers in Attendance</i>
Cr Russell Jones	Aoise Noone
Cr Simon White	Alex Petrovski
	Anthony Denholm
	Sofia Bornaga
	Randhir Karma
	James Hambly

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Applicant and Submitters
<i>Part B – City of Subiaco</i>
Anne Last Margaret Nowack Josh Casey Mark Tonti Jackie Greenshields Marion Gathercole Stephanie Stroud Brian Davies Peter McDonald (Tertiary Balance Pty Ltd) Penny O'Connor (Arc Insight) Thomas Murrell Mayor David McMullen (City of Subiaco) Colin Cameron (City of Subiaco) Malcolm Mackay (Sanur Pty Ltd) Cara McIntyre (Sanur Pty Ltd) Barrie Le Pley (Sanur Pty Ltd) Michael Cairnduff (Sanur Pty Ltd) Laura Gray (Heritage Intelligence WA) Alasdair Mackerron (Stantec) Donald Macmillan (BG&E) Julius Skinner (Thomson Geer) Craig Slarke (McLeods Lawyers) Madeline Madvav (McLeods Lawyers) Tim Beckett (McLeods Lawyers)

Members of the Public / Media

There were 5 members of the public in attendance.

Lloyd Gorman from The Post was in attendance.

Observers via livestream

There were 30 persons observing the meeting via the livestream.

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PART A – INTRODUCTION

1. Opening of Meeting, Welcome and Acknowledgement

The Presiding Member declared the meeting open at 9:39am on 13 August 2024 and acknowledged the traditional owners and paid respect to Elders past and present of the land on which the meeting was being held.

The Deputy Presiding Member 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 2024 under the *Planning and Development (Development Assessment Panels) Regulations 2011*.

1.1 Announcements by Presiding Member

The Presiding Member advised that panel members may refer to technical devices, such as phones and laptops, throughout the meeting to assist them in considering the information before them.

The meeting was recorded and livestreamed on the DAP website in accordance with regulation 40(2A) of the *Planning and Development (Development Assessment Panels) Regulations 2011*. Members were reminded to announce their name and title prior to speaking.

2. Apologies

Cr Penny O'Connor (Local Government Member, City of Subiaco)
Cr Rick Powell (Local Government Member, City of Subiaco)

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](#).

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PART B – CITY OF SUBIACO

1. Declaration of Due Consideration

The Presiding Member noted that details of a DAP direction for further information and responsible authority response in relation to Item 5.1, received on 9 August 2024 was published in Part B of the Related Information.

All members declared that they had duly considered the documents contained within Part B of the Agenda and Part B of the Related Information.

2. Disclosure of Interests

DAP Member, Cr Penny O'Connor, declared an impartiality interest in item 5.1. Cr O'Connor spoke in support of the RAR and therefore against the proposed development at the JDAP meeting in December 2023 in her capacity as a resident of Subiaco and as a heritage professional operating a business in Subiaco (Arc Insights).

In accordance with section 3.3 of the DAP Code of Conduct 2024, the DAP Executive Director determined that the member listed above, who had disclosed a impartiality interest, was not permitted to participate in the discussion and voting on the item.

In accordance with section 2.4.9 of the DAP Code of Conduct 2024, DAP Member, Cr Russell Jones, and Cr Simon White, declared that they had participated in a prior Council meeting in relation to the application at item 5.1. However, under section 2.1.2 of the DAP Code of Conduct 2024, Cr Jones and Cr White acknowledged that they are not bound by any previous decision or resolution of the local government and undertakes to exercise independent judgment in relation to any DAP application before them, which will be considered on its planning merits.

In accordance with section 2.6 of the DAP Code of Conduct 2024, DAP members were invited to attend a site visit for the application at item 5.1 prior to the DAP meeting. A site visit did not occur due to limited attendance at the scheduled time.

3. Form 1 DAP Applications

Nil.

4. Form 2 DAP Applications

Nil.

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5. Section 31 SAT Reconsiderations

5.1 No. 424-428 (Lot 2) & No. 440 (Lots 4, 5 & 6) Hay Street, Subiaco - Demolition of Existing Commercial Buildings and Construction of Single And Two Storey Commercial Building – DAP/23/02559

Deputations and Presentations

Margaret Nowak addressed the DAP in support of the recommendation for the application at Item 5.1.

Roger Stroud on behalf of Anne Last addressed the DAP in support of the recommendation for the application at Item 5.1.

Jackie Greenshields addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Mark Tonti addressed the DAP in support of the recommendation for the application at Item 5.1.

Josh Casey on behalf of Bronte Talon (Cleo Collects) addressed the DAP in support of the recommendation for the application at Item 5.1.

Marion Gathercole OAM addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Stephanie Stroud addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Thomas Murrell (Fairview Historic House of Subiaco) addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Brian Davies addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Peter McDonald (Tertiary Balance Pty Ltd) addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Penny O'Connor (Arc Insight) addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Mayor David McMullen (City of Subiaco) addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

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Colin Cameron (City of Subiaco) addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Malcolm Mackay (Mackay Urbandesign) addressed the DAP against the recommendation for the application at Item 5.1 and responded to questions from the panel.

Laura Gray (Heritage Intelligence) addressed the DAP against the recommendation for the application at Item 5.1 and responded to questions from the panel.

Alasdair Mackerron (Stantec) addressed the DAP against the recommendation for the application at Item 5.1 and responded to questions from the panel..

Donald Macmillan (BG&E) addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Julius Skinner (Thomson Geer) addressed the DAP against the recommendation for the application at Item 5.1 and responded to questions from the panel.

Madeline Madvad (Mcleods Lawyers) addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Tim Beckett (McLeods Lawyers) addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

Craig Slarke (McLeods Lawyers) addressed the DAP in support of the recommendation for the application at Item 5.1 and responded to questions from the panel.

The City of Subiaco addressed the DAP in relation to the application at Item 5.1 and responded to questions from the panel.

The panel noted a written submission from Denise Chadwick in support of the recommendation for the application at Item 5.1.

The panel noted a written submission from Barrie Le Pley (Sanur Pty Ltd) against the recommendation for the application at Item 5.1.

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PROCEDURAL MOTION

Moved by: Lee O'Donohue

Seconded by: Cr Simon White

That the meeting be adjourned for a period of 10 minutes.

The Procedural Motion was put and CARRIED UNANIMOUSLY

REASON: To allow for a comfort break.

The meeting was adjourned at 11:49am.

The meeting was reconvened at 11:59am.

REPORT RECOMMENDATION

Moved by: Cr Simon White

Seconded by: Cr Russell Jones

It is recommended the Metro Inner Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 7 of 2024, resolves to:

Reconsider its decision dated 21 December 2023 and **AFFIRM** its decision for **Refusal** of DAP Application reference DAP/23/02559 and amended plans dated 24 May 2024 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, the City of Subiaco Local Planning Scheme No. 5 and Metropolitan Region Scheme, for the following reasons:

Reasons

1. The buildings contribute positively to the cultural heritage significance and heritage character of the Rokeby Road and Hay Street Heritage Area, and to the 'sense of place' that is defined by its cultural heritage significance and traditional streetscape character.
2. The City is not satisfied that the buildings have limited or no cultural heritage significance and is not satisfied that the buildings do not make a significant contribution to the broader cultural heritage significance and character of the locality in which they are located, and therefore Item 1(2) of Table 5 at Clause 32 of the City of Subiaco Local Planning Scheme No. 5 precludes granting demolition approval.
3. The proposal is inconsistent with the objectives of the City of Subiaco Local Planning Policy 3.6 – Development Guidelines for the Rokeby Road and Hay Street Heritage Area, as follows:
 - a) Objective 1(a) – “To enable on-going development of the Policy Area as a vibrant part of the town centre, while retaining, and where possible reinforcing, the 'sense of place' that is defined by its cultural heritage significance and traditional streetscape character.”

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- b) Objective 1(b) – “To conserve the significant fabric of those places which have been identified as making a considerable or some/moderate contribution to the Policy Area’s cultural heritage significance and traditional streetscape character”.
 - c) Objective 1(c) – “To ensure that new building developments, and alterations and additions to existing buildings, are designed in a manner that is in harmony with, and maintains the integrity of, the Policy Area’s cultural heritage significance and traditional streetscape character”.
 - d) Objective 1(d) – “To encourage opportunities for public appreciation of the cultural heritage values of the Rokeby Road & Hay Street Heritage Area.”
- 4. The application does not demonstrate that approval for demolition is justified, having regard to the considerations relating to demolition in clause 9.0 of the City of Subiaco Local Planning Policy 3.6 – Development Guidelines for the Rokeby Road & Hay Street Heritage Area.
 - 5. The proposal is inconsistent with the objective of State Planning Policy 3.5 – Historic Heritage Conservation ‘To conserve places and areas of historic heritage significance’
 - 6. Having regard to the development control principles concerning demolition of a place within a heritage area set out in State Planning Policy 3.5 – Historic Heritage Conservation, the applicant has not provided clear justification for approving demolition in this case.
 - 7. The proposal is inconsistent with the development requirement prescribed by sub-clause 7.1.2(a) of the City of Subiaco Activity Centre Plan that “Heritage fabric to be retained and conserved as identified by “Assessment of the Rokeby Road and Hay Street Heritage Area” report (Griffiths Architects, 2013) and Local Planning Policy 3.6 ‘Development guidelines for the Rokeby Road and Hay Street Heritage Area’.”
 - 8. The proposal is inconsistent with the Aims of the City of Subiaco Local Planning Scheme No. 5 set out in Clause 9, in that the demolition and new construction of the buildings would:
 - a) detract from the sense of place unique to Subiaco (contrary to Aim (a)); and
 - b) be inconsistent with wider regional planning objectives to ensure attractive character and heritage values within suburbs are retained and minimise changes to the existing urban fabric, where appropriate (contrary to Aim (d)); and
 - c) not promote and safeguard the special character and cultural heritage of the City (contrary to Aim (g)).
 - d) not reduce the demand for parking or promote alternative modes of transportation by proposing at-grade car parking (contrary to Aims (k), (m) and (n)).

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9. The proposal is inconsistent with the Objectives the Centre Zone of the City of Subiaco Local Planning Scheme No. 5 set out in Clause 16, Table 2, in that the demolition and new construction of the buildings would:
 - a) Objective (c) – The demolition of buildings which contribute to the special character of their location, and new unauthentic construction does not “... encourage buildings of high-quality design that respond to and enhance the special character within their location of the Town Centre of Subiaco, contributing to a sense of place and a recognition of local history and built form”.
 - b) Objective (d) – The at-grade car parking and homogenous land use does not “...create a vibrant, sustainable town centre, with a broad range of activities, well serviced by public transport”.
10. The proposal does not satisfy Clause 34 of the City of Subiaco Local Planning Scheme No. 5 as the proposed development is not appropriate for approval in considering Clause 67 of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, Subiaco Activity Centre Plan, Seddon Street Local Development Plan, Local Planning Policy 3.6 – Development Guidelines for the Rokeby Road & Hay Street Heritage Area, and the Residential Design Codes Volume 2 – Apartments. The proposed development is considered to have an adverse amenity impact on the locality as the demolition and new construction does not respond to the existing or desired character of the area.
11. Having regard to State Planning Policy 7.0 Design of the Built Environment, the proposed development does not adequately satisfy the following design principles:
 - a) Principle 1 *Context and Character*, as the demolition will result in the permanent loss of significant heritage fabric and the new construction does not genuinely interpret the heritage of the area, obscuring the understanding of the places; and
 - b) Principle 9 *Community*, as the loss of contributory heritage buildings is a poor community outcome and the replication of the buildings creates ambiguity, obscuring the understanding of the places and broader heritage area.
 - c) Principle 10 *Aesthetics*, as the proposed façade mimics the existing buildings in a non-authentic manner which will have a detrimental impact on the values of the Rokeby Road and Hay Street Heritage Area.
12. Having regard to the Residential Design Codes Volume 2 – Apartments, the proposed development does not adequately achieve the following Element Objectives:
 - a) Element 3.3 Tree Canopy and Deep Soil Areas
 - b) Element 3.6 Public Domain Interface
 - c) Element 3.9 Car and Bicycle Parking
 - d) Element 4.10 Façade Design; and

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13. The buildings on the subject site are currently the subject of proceedings before the State Administrative Tribunal. Accordingly, those proceedings are likely to result in findings which are directly related to the future of the site. A premature decision on this application could greatly interfere with those proceedings, which have been progressing for over a year.

The Report Recommendation was put and CARRIED (4/1).

For: Clayton Higham
Lee O'Donohue
Cr Russell Jones
Cr Simon White

Against: John Syme

REASON: The majority of the panel members were satisfied that the existing buildings had retained sufficient building fabric to support their inclusion as being of considerable significance under the LPP 3.6 having given due regard to the SAT affirmation that the buildings are heritage protected places. The majority of the panel members were not convinced by the arguments presented by the applicant that the buildings had been altered to the extent that they no longer had sufficient heritage related fabric and that they were in danger of collapsing and there was no remedial action that could be taken and therefore required demolition. The panel members acknowledged that the structural stability could be decided at the SAT although were quite satisfied with the City's advice that there were no signs of imminent collapse according to their structural engineer. Finally, the majority of the panel members did not think that the proposed replacement buildings would be a good solution and saw the proposal as something of a poor contemporary replacement even though it was given some support by the Design Review Panel and largely met the planning requirements.

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PART C – OTHER BUSINESS

1. State Administrative Tribunal Applications and Supreme Court Appeals

The DAP noted the status of the following State Administrative Tribunal Applications and Supreme Court Appeals:

Current SAT Applications				
File No. & SAT DR No.	LG Name	Property Location	Application Description	Date Lodged
DAP/22/02317 DR81/2023	City of Vincent	41-43 and 45 Angove Street, North Perth	Proposed Service Station	31/05/2023
DAP/23/02480 DR184/2023	City of Vincent	Lot 3 (37-43) Stuart Street, Perth	Proposed Unlisted Use (Community Purpose) & Alterations & Additions	12/12/2
DAP/22/02259 DR166/2023	City of South Perth	Lots 253 & 50 (4-8) Charles Street, South Perth	Mixed use development	03/11/2023

Finalised SAT Applications*				
File No.	LG Name	Property Location	Application Description	Date Lodged
DAP/22/02259 DR166/2023	City of South Perth	Lots 253 & 50 (4-8) Charles Street, South Perth	Mixed use development	03/11/23

2. General Business

The Presiding Member announced that in accordance with Section 7.3 of the DAP Standing Orders 2024 a DAP member must not publicly comment on any action or determination of a DAP.

3. Meeting Closure

There being no further business, the Presiding Member declared the meeting closed at 12:36pm.

Clayton Higham
Presiding Member, Metro Inner DAP