



Western Australian Planning Commission

Minutes

Meeting No. 12

Thursday, 5 August, 2021

- Members:** David Caddy - Chairman WAPC
Jane Bennett - Professions Representative
Helen Brookes - Coastal Planning and Management Representative
Emma Cole - Metropolitan Local Government Representative
Lynne Craigie - Nominee of the Regional Minister
Veronica Fleay - Local government representative – non-metropolitan
- Apologies:** Justin McKirdy - Urban and Regional Planning Representative
Ralph Addis - Director General, Department of Primary Industries and Regional Development (Associate member)
Michelle Andrews - Director General, Department of Water and Environmental Regulation
Rebecca Brown - Director General, Department of Jobs, Tourism, Science and Innovation.
Jodi Cant - Director General, Department of Planning, Lands and Heritage
Fred Chaney - Professions Representative
Barry McGuire - Professions Representative
Mike Rowe - Director General, Department of Communities
Peter Woronzow - Director General, Department of Transport
- Others present:** Inga Butefisch - Principal Media Advisor, Communications
Kristi Clark - Director, Communications and Engagement
Shane Downes - Senior Planning Officer, Reform, Design and State Assessment
Sam Fagan - Manager, Commission Business
Stephen Ferguson - Director Legal Services, Strategy and Engagement
Poppy Justice - Commission Support Officer
Michelle King - Senior Commission Support Officer
Michelle Sanfilippo - Commission Support Team Leader
Margaret Smith - Planning Director, Reform, Design and State Assessment
- Applicants and Submitters:** Greg Boland - Cottesloe Residents and Ratepayers Association
Gary Dempsey - Gary Dempsey Developments
Tayne Evershed - Planning Solutions
Cr Melissa Harkins - Town of Cottesloe
Henry Jackson SC - Instructed by McLeods, on behalf of the Town of Cottesloe
Sam Klopper - Klopper and Davis Architects

Stephen Mellor - Cottesloe Residents and Ratepayers Association
Matthew Scott - Chief Executive Officer, Town of Cottesloe
Cr Lorraine Young - Town of Cottesloe

There were 40 members of the public in attendance.

1. Declaration of opening

The Chairman declared the meeting open at 2:08pm, acknowledged the peoples of the Noongar Nation as the traditional owners and custodians of the land on which the meeting is taking place and welcomed members. The Chairman paid respect to elders past and present, and extended solidarity and hope for a just and dignified future for us all.

The Chairman provided an introductory statement which is available [here](#).

The Chairman advised that no person may use any electronic, visual or audio recording device or instrument to record proceedings of the WAPC and outlined that the Commission is not recording this meeting.

The Chairman also advised all participants that Commission members may refer to technical devices, such as phones and laptops, throughout the meeting to assist them in considering the information before them.

2. Apologies

Ralph Addis - Director General, Department of Primary Industries and Regional Development

Michelle Andrews - Director General, Department of Water and Environmental Regulation

Rebecca Brown - Director General, Department of Jobs, Tourism, Science and Innovation. Jackie Kirchlechner attending as proxy

Jodi Cant - Director General, Department of Planning, Lands and Heritage

Fred Chaney - Professions Representative

Barry McGuire - Professions Representative

Mike Rowe - Director General, Department of Communities

Peter Woronzow - Director General, Department of Transport

3. Disclosure of interests

Mr Chaney declared a Perceived Impartiality Interest on Item 7.1 - Lot 500 (Strata Lots 1-7), 120 Marine Parade, Cottesloe - Seven Storey Mixed Use Development. Mr Chaney stated that he has an impartiality interest relating to some members of the proponents' team.

4. Declaration of due consideration

All members indicated that they had received and considered the agenda item prior to the Western Australian Planning Commission Part 17 meeting.

4.1 Questions from members and responses from DPLH Staff provided prior to the meeting

5. Deputations and presentations

5.1 Lot 500 (Strata Lots 1 - 7), 120 Marine Parade, Cottesloe - Seven Storey Mixed Use Development

Presenters: Stephen Mellor and Greg Boland - Cottesloe Residents' and Ratepayers' Association

Mr Boland and Mr Mellor presented to the Western Australian Planning Commission speaking against the application at Item 7.1.

5.2 Lot 500 (Strata Lots 1 - 7), 120 Marine Parade, Cottesloe - Seven Storey Mixed Use Development

Presenter: Henry Jackson SC - Instructed by McLeods, on behalf of the Town of Cottesloe

Mr Jackson addressed the Western Australian Planning Commission speaking against the application at Item 7.1 and requested that the item be rejected or deferred so that further consultation by the Town of Cottesloe can be undertaken on the revised plans for the seven-storey development.

Mr Jackson responded to questions from members relating to the ability of Town of Cottesloe Scheme to allow a height greater than 21 metres.

5.3 Lot 500 (Strata Lots 1 - 7), 120 Marine Parade, Cottesloe - Seven Storey Mixed Use Development

Presenters: Gary Dempsey - Gary Dempsey Developments, Sam Klopper - Klopper and Davis Architects and Tayne Evershed - Planning Solutions

Mr Dempsey, Mr Klopper and Mr Evershed addressed the Western Australian Planning Commission in support of the application at Item 7.1. Mr Evershed referred to his presentation summary, submitted on 2 August 2021, which requests modification to Conditions 1 and 11.

Condition 1:

*Condition 1 of the SDAU's recommendation requires substantial commencement within 12 months. We respectfully request approval be subject to the **default period of 24 months** contemplated by s.278(2)(b) of the Planning and Development Act 2005.*

Condition 11:

Condition 11 (and associated references in condition 12) requires rear access to be retrospectively implemented once the two adjoining lots are re-developed. We respectfully request the condition be deleted.

Mr Klopper and Mr Evershed responded to questions from members relating to rear access, height limits, housing diversity, deep soil and landscaping.

In accordance with Clause 2.13.1 of the Standing Orders 2017, the Western Australian Planning Commission sought to close the meeting to seek legal advice from the Department of Planning, Lands and Heritage in relation to the application at Item 7.1.

Moved by Mr Caddy

Seconded by Ms Brookes

That the Western Australian Planning Commission resolves to, in accordance with Clause 2.13.1 of the Standing Orders 2017, close the meeting to seek legal advice of the Department of Planning, Lands and Heritage in relation to the application at Item 7.1.

The motion was put and carried

The meeting was closed to members of the public at 2:57pm.

The meeting was opened to members of the public at 3:17pm.

6. Presentation of key issues by the Department of Planning, Lands and Heritage

Ms Smith, Director of the State Development Assessment Unit presented the key issues and considerations of the application at Item 7.1 and responded to questions from members.

7. Item/s for decision

7.1 Lot 500 (Strata Lots 1 - 7), 120 Marine Parade, Cottesloe - Seven Storey Mixed Use Development

7.1.1 Addendum - Item 7.1

The Chairman invited discussion from members on the application presented at Item 7.1 of the agenda.

Members acknowledged the significant amount of information that has been presented to the Western Australian Planning Commission, including detail on financial costings, overshadowing, view diagrams, design outcomes, objectives of the significant development pathway, consultation with the Heritage Council and State Development Assessment Unit and noted that the consultation process was carried out over double the prescribed area to capture the opinions of a larger portion of the community. Members noted that the application has been in process for the past 8 months, and that the Town of Cottesloe held a special Council meeting on Tuesday, 3 August 2021 which considered the changes proposed in revised plans. Members stated that the variation from the Local Planning Scheme regarding height is minor and will have minimal impact on overshadowing. Members discussed that this development is an opportunity for good renewal investment in Marine Parade and that all due consideration has been given.

AMENDING MOTION

REASON:

Members moved an amendment to include an additional Condition that prior to the submission of the relevant building permit a notification be

placed on the Certificate of Title, to ensure future owners and/or strata managers are aware of future rear access requirements and responsibilities, and that such responsibilities transfer to the new owners, if required by the applicable planning framework at the time, to the satisfaction of the Western Australian Planning Commission.

Members noted that following this inclusion the numeration of conditions and reference to conditions in advice notes will be amended accordingly.

Moved by Mr McKirdy

Seconded by Mayor Cole

12. Prior to the submission of the relevant building permit, a notification is to be placed on the certificate of title so that future owners and/or strata managers are aware of the future rear access requirements and responsibilities and that such responsibilities transfer to the new owners, if required by the applicable planning framework at the time, to the satisfaction of the Western Australian Planning Commission.

The motion was put and carried

AMENDING MOTION

REASON:

Members moved an amendment to proposed Condition 11 to include an additional point to ensure the intent to maintain elements of deep soil are adhered to following a future amendment to the layout of rear access by providing landscaping at the front of the property.

Moved by Ms Brookes

Seconded by Mayor Cole

11. Within six (6) months of a paved vehicular driveway being constructed over both Lots 1 and 3 Marine Parade and over which access easements are established in favour of Lot 500 to enable vehicular access to the rear of Lot 500:

- i. all vehicular ingress and egress to the site, servicing and waste collection shall be from the rear of the property;*
- ii. the vehicle access from Marine Parade shall be permanently closed;*
- iii. a 4 metre wide easement adjacent to the rear boundary and limited in height to the underside of Level 2, is to be placed on the certificate of title of Lot 500 specifying vehicular access rights for the benefit of the adjoining Lots 1 and 3 Marine Parade; and*
- iv. an area of landscaping shall be provided at the front of the property;*

to the satisfaction of the Western Australian Planning Commission.

The motion was put and carried

AMENDING MOTION

REASON:

Members moved an amendment to proposed Condition 11, iii, that the reference to “level 2” be changed to “the first floor” as described in the plans.

Moved by Mr Caddy

Seconded by Mr McKirdy

11. Within six (6) months of a paved vehicular driveway being constructed over both Lots 1 and 3 Marine Parade and over which access easements are established in favour of Lot 500 to enable vehicular access to the rear of Lot 500:

- i. all vehicular ingress and egress to the site, servicing and waste collection shall be from the rear of the property;*
- ii. the vehicle access from Marine Parade shall be permanently closed;*
- iii. a 4 metre wide easement adjacent to the rear boundary and limited in height to the underside of the first floor, is to be placed on the certificate of title of Lot 500 specifying vehicular access rights for the benefit of the adjoining Lots 1 and 3 Marine Parade; and*
- iv. an area of landscaping shall be provided at the front of the property;*

to the satisfaction of the Western Australian Planning Commission.

The motion was put and carried

AMENDING MOTION

REASON:

Members moved an amendment to proposed Condition 1 that the development be substantially commenced within a period of 18 months, to allow time to commence building approvals and avoid seasonal wind during the first stages of basement construction.

Moved by Cr Fleay

Seconded by Ms Craigie

- 1. This decision constitutes planning approval only and is valid for a period of 18 months from the date of approval. If the development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.*

The motion was put and carried

SUBSTANTIVE RESOLUTION

REASON:

The Commission considered that the proposed Seven Storey Mixed Use Development at 120 Marine Parade, Cottesloe presents a high-quality design outcome, which has been significantly contemplated and will provide good renewal investment in Marine Parade. The proposed building height is considered a minor variation to the Town of Cottesloe Local Planning Scheme and that the revised development plans have received no objections from the Heritage Council.

The application is considered to have appropriately responded to the key considerations of Part 17 of the *Planning and Development Act 2005* (as amended by the *Planning and Development Act 2020*) and to the matters raised in submissions and, therefore, was conditionally approved.

Moved by Ms Bennett

Seconded by Cr Fleay

*That the Western Australian Planning Commission resolves to **approve** development application reference SDAU-010 and accompanying plans (date stamped 15 June 2021) for a seven-storey mixed-use development at Strata Lots 1 – 7, 120 Marine Parade, Cottesloe in accordance with s.274 of the Planning and Development Act 2005, subject to the following conditions:*

Conditions

Approval

1. *This decision constitutes planning approval only and is valid for a period of 18 months from the date of approval. If the development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.*

Conformity with Plans

2. *The development is to be undertaken in accordance with the approved plans and documents date-stamped 15 June 2021 and attached to this approval, final details of which are to be provided at working drawings stage to the satisfaction of the Western Australian Planning Commission.*
3. *The development is to be constructed with high quality and durable external materials and finishes, with final details (including colour swatches or material samples) being provided prior to applying for the relevant building permit, to the satisfaction of the Western Australian Planning Commission.*
4. *Prior to occupation of the development, the external face of all walls on or adjacent to the lot boundaries are to be finished to a high standard consistent with the rest of the development, to the satisfaction of the Western Australian Planning Commission.*

Construction

5. *Prior to submission of an application for the relevant demolition or building permit, a Demolition and Construction Management Plan is to be submitted to and approved by the Western Australian Planning Commission, on advice from the Town of Cottesloe, addressing but not limited to:*

- i. hours of construction*
- ii. temporary fencing, hoardings, gantries and signage;*
- iii. site access and egress;*
- iv. construction traffic management;*
- v. pedestrian and cyclist management and any footpath obstructions;*
- vi. parking arrangements for staff and contractors;*
- vii. deliveries and storage of construction materials and machinery;*
- viii. management of vibration, dust, wind and erosion;*
- ix. management of any site dewatering or stormwater discharge;*
- x. management of construction noise and other site generated noise;*
- xi. demolition and construction waste management, recycling and removal;*
- xii. protection of street trees and public realm infrastructure; and*
- xiii. public communication and complaint handling procedures.*

This plan is to be adhered to at all times during demolition and construction, to the satisfaction of Western Australian Planning Commission.

6. *Prior to submission of an application for the relevant building permit, a Dilapidation Report is to be submitted to and approved by the Western Australian Planning Commission on advice from the Town of Cottesloe, detailing the current condition of adjacent public realm infrastructure and paving, as well as any buildings on the following properties;*

- i. No. 118 (Lot 3) Marine Parade*
- ii. Units 1 – 6, No.122 (Lot 1) Marine Parade*
- iii. No. 3A (Lot 36) Napier Street*
- iv. No. 5A (Lot 41) Overton Gardens*

7. Any damage to buildings, structures, infrastructure or paving as a result of demolition or construction is to be rectified at the developer's cost and in a timely manner, to the satisfaction of the Western Australian Planning Commission.

Landscaping

8. Prior to the submission of the relevant building permit application, final landscape plans and specifications for both the subject site and the public realm, including hard and soft landscape specifications and reticulation details are to be submitted to and approved by the Western Australian Planning Commission, on advice from the Town of Cottesloe.
9. Prior to the occupation of the development, all landscape areas within the site are to be installed in accordance with the final approved landscape plans and thereafter maintained, to the satisfaction of the Western Australia Planning Commission.
10. Prior to the submission of the relevant building permit application, a Stormwater Management Plan is to be provided to the satisfaction of the Western Australia Planning Commission, on advice from the Town of Cottesloe.

Parking and Access

11. Within six (6) months of a paved vehicular driveway being constructed over both Lots 1 and 3 Marine Parade and over which access easements are established in favour of Lot 500 to enable vehicular access to the rear of Lot 500:
 - i. all vehicular ingress and egress to the site, servicing and waste collection shall be from the rear of the property;
 - ii. the vehicle access from Marine Parade shall be permanently closed;
 - iii. a 4 metre wide easement adjacent to the rear boundary and limited in height to the underside of the first floor, is to be placed on the certificate of title of Lot 500 specifying vehicular access rights for the benefit of the adjoining Lots 1 and 3 Marine Parade; and
 - iv. an area of landscaping shall be provided at the front of the property;

to the satisfaction of the Western Australian Planning Commission.

12. Prior to the submission of the relevant building permit, a notification is to be placed on the certificate of title so that future owners and/or strata managers are aware of the future rear access requirements and responsibilities and that such responsibilities transfer to the new owners, if required by the applicable planning framework at the time, to the satisfaction of the Western Australian Planning Commission.

13. *Prior to the occupation of the development, a Parking and Operational Management Plan is to be submitted to and approved by the Western Australian Planning Commission, on advice from the Town of Cottesloe. The Plan is to include details of the following, and be reflected in the working drawings, where applicable:*
- i. car parking and vehicle access arrangements from the rear of the property upon closure of the temporary access from Marine Parade;*
 - ii. effective and safe management of traffic movements within the car parking areas;*
 - iii. identification of ACROD bays;*
 - iv. identification of parking, loading, delivery and waste management areas;*
 - v. procedures for car lift maintenance and repairs; and*
 - vi. the identification of clear, safe and accessible pedestrian paths through the car parking and servicing areas.*

The approved plan shall be adhered to at all times by the owners and occupants of the approved development, to the satisfaction of Western Australian Planning Commission.

14. *Prior to the occupation of the development, all car parking spaces, access aisles and loading bays are to be paved, sealed, marked and drained in accordance with AS2890.1 and thereafter maintained by the owners of the development, to the satisfaction of the Western Australian Planning Commission.*
15. *Prior to submission of the relevant building permit application, the Waste Management Plan by Talis Consultants for 120 Marine Parade, Cottesloe (ref. TW19050 dated 7 April 2021) and any access modifications required shall be submitted to, and approved by, the Western Australian Planning Commission on advice from the Town of Cottesloe. The approved plan shall be implemented and adhered to at all times by the owners and/or managers of the development, to the satisfaction of the Western Australian Planning Commission.*

Sustainability

16. *The development is to achieve an average 8 Star NatHERS design rating or equivalent. Prior to the submission of the relevant building permit application, the applicant is to submit an updated sustainability report demonstrating how an average 8 star NatHERS or equivalent sustainable design rating is to be achieved and confirming the final strategy that will guide construction. The accepted sustainability initiatives shall be incorporated into the development and thereafter maintained by the owners of the development to the satisfaction of the Western Australian Planning Commission.*

17. *Prior to the submission of the relevant building permit application, a final Acoustic Report and associated construction plans certified by a qualified acoustic consultant are to be submitted to and approved by the Western Australian Planning Commission, in consultation with the Town of Cottesloe.*
18. *Prior to the occupation of the development, certification is to be provided from a qualified acoustic consultant confirming that the recommendations of the approved Acoustic Report have been implemented in the completed development, to the satisfaction of the Western Australian Planning Commission.*

Lighting

19. *Prior to submission of the relevant building permit application, a Lighting Strategy detailing external illumination of the development which is sympathetic to the adjacent Cottesloe Beach Foreshore and enhances the amenity and safety of the area is to be submitted to and approved by the Western Australian Planning Commission.*

Utilities and Facilities

20. *Any proposed air-conditioning condensers, external building plant, lift overruns, piping, ducting, transformers and fire control rooms being integrated into the design of the building and located or screened to minimise any visual and noise impact on the residents of the neighbouring properties and public realm, with details of the location and screening of such plant and services being submitted to, and approved by, the Western Australian Planning Commission on advice from the Town of Cottesloe prior to applying for the relevant building permit.*
21. *Any external signage is to be integrated with the design of the building facades, with final details of the location and design of the signs provided prior to installation, to the satisfaction of the Western Australian Planning Commission, on advice from the Town of Cottesloe.*

Advice Notes

- a. *With regard to Condition 1, and in accordance with s.279(4) of the Planning and Development Act 2005, the Western Australian Planning Commission cannot do anything that would have the effect of extending the period within which the development must be substantially commenced.*
- b. *This is a development approval only. The applicant/owner is advised that it is their responsibility to ensure that the proposed development complies with all other applicable legislation, local laws and/or licence/permit requirements that may relate to the development.*
- c. *With regard to Condition 2, a copy of the final working drawings prepared for the submission of an application for a building permit and all associated reports and information that address the*

conditions of approval are to be submitted to and cleared by the Western Australian Planning Commission. The final working drawings and associated documents are to comply with all of the relevant conditions of development approval, as confirmed by the Western Australian Planning Commission, and any variations from the approved development plans are required to be clearly identified. Following satisfactory assessment of the plans and documents, the Western Australian Planning Commission will provide a clearance letter and copies of the documents to the local government to assist with building permit assessment. Where works and/or building permits are proposed to be staged, the Commission may agree to a staged clearance of working drawings and associated conditions of approval. The final plans and documents submitted to the Western Australian Planning Commission to satisfy the conditions of this approval will be verified by the Department of Planning, Lands and Heritage officers and any other Local or State government agency, where applicable. Approval for any substantive changes to the approved plans will need to be obtained in writing from the Commission, via an Amended Application process (Form 17C).

- d. With regard to Condition 3, final specifications and samples should be provided for all external elevations, demonstrating that high quality, durable and low reflective materials have been maintained (or enhanced) from development application stage through to working drawings and construction.*
- e. With regard to Condition 6, in the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate in writing to the satisfaction of the Western Australian Planning Commission that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.*
- f. With regard to Condition 8, the Landscape Plan should include (but not be limited to):*
 - i. details of the how the landscape design, plantings and levels will effectively integrate with the adjacent public realm;*
 - ii. species, sizes and types of plantings;*
 - iii. reticulation to plantings including any rain/grey water capture and re-use;*
 - iv. paving, kerbs and other surface treatments;*
 - v. seating, lighting, shade structures and other hard infrastructure;*
 - vi. integration of wind amelioration strategies for outdoor spaces;*
 - vii. integration of any public art; and*

viii. *details of ongoing management and maintenance.*

- g. *With regard to Condition 10, all stormwater must be contained on site in accordance with the Town of Cottesloe's requirements for onsite stormwater management unless otherwise approved.*
- h. *With regard to Conditions 9 and 11, any redundant vehicle crossovers to Marine Parade should be removed and the kerbing, verge, and footpath reinstated to the specifications of the Town of Cottesloe. The existing verge levels at the front property boundary and any crossovers or verge assets (inclusive of street trees) shall not be altered or removed without the prior approval of the Town of Cottesloe.*
- i. *With regard to Condition 19, the lighting plan and subsequent installed lighting should demonstrate that any light spill to adjoining properties is minimised to acceptable levels and is in compliance with AS4282:1997.*
- j. *If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with Part 17 of the Planning and Development Act 2005.*

The motion was put and carried

8. State Administrative Tribunal applications

Nil.

9. General business

Nil.

10. Meeting closure

The Chairman made the following statement in closing the meeting:

CLOSING STATEMENT

In closing this meeting, I would like to comment on and note the importance of the context of this decision, and to acknowledge the varied interests in the proposal and matters raised by community members, the broader general public, the Town of Cottesloe and the proponent.

I note as outlined by SDAU Director, Margaret Smith, that public consultation for an initial nine-storey development with rooftop amenities on this site attracted 960 public submissions, and significant feedback from the Town of Cottesloe, that a building of this height and scale was not suitable in this location, and indeed was contrary to Town Planning Scheme No. 3 into which the community had had considerable input, albeit that the Enquiry by Design workshop was conducted well over 10 years ago.

When revised plans for an eight-storey development were submitted, these were also subject to consultation and received almost 500 submissions which drew similar comments from the Town.

I note that earlier issues raised on building height, overshadowing, bulk and scale and landscaping were addressed through modifications to the plans from two iterations of public consultation as part of the planning process.

The further revised plans considered today were lodged in response to those concerns of the Town, and similar concerns from the Heritage Council of WA and the State Design Review Panel.

These plans which have a façade as Mr Evershed stated of just 20cm higher than that specified by the Town's local planning scheme, and as we have seen during the presentations today, creates negligible overshadowing of the beachfront and has an imperceptible effect on views from Cottesloe Civic Centre.

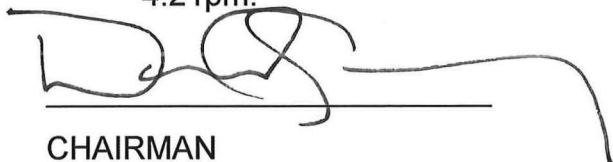
In approving this development, I note that it addresses the purpose and intent of the planning framework and has benefitted from extensive design review resulting in quality design outcomes.

Given the same themes and concerns were raised across two rounds of consultation, and that the revised seven-storey plans further addressed concerns raised, they were not subject to further consultation or design review.

All submissions received in regard to both the nine and eight-storey proposals were given due regard in the assessment of this proposal and have been shared with Commission members for consideration in determining the application.

Commission members have today resolved that the application is a well-designed proposal that is ready for construction to commence, delivering immediate and long-term benefits for Western Australia as prescribed under Part 17 of the *Planning and Development Act 2005* (as amended by the *Planning and Development Act 2020*), and that is why they have approved the application.

There being no further business before the Commission, the Chairman thanked members for their attendance and declared the meeting closed at 4:21pm.



CHAIRMAN

12.08.2021

DATE