



ITEMS FOR DEBATE

COUNCIL MEETING 19 OCTOBER 2022

ADOPTION BY EXCEPTION RESOLUTION

RECOMMENDATION

That the Committee Recommendations for Items 12.1, and 12.2, and the Officer Recommendations for Items 15.1, 15.2, 16.1, 16.2, and 17.1 be adopted en bloc;

12.1	Finance Committee – 5/10/2022 - LIST OF PAYMENTS MADE - AUGUST 2022
12.2	Finance Committee – 5/10/2022 - FINANCIAL ACTIVITY STATEMENTS - YEAR TO DATE AS AT 31 AUGUST 2022
15.1	ENDORSEMENT OF COMMUNITY DEVELOPMENT PLAN
15.2	NAMING OF THE BUSSELTON PERFORMING ARTS AND CONVENTION CENTRE
16.1	LOCAL GOVERNMENT REFORMS - ELECTION TRANSITION ARRANGEMENTS
16.2	MICROSOFT 365 LICENSING RENEWAL
17.1	COUNCILLORS' INFORMATION BULLETIN

ITEMS TO BE DEALT WITH BY SEPARATE RESOLUTION (WITHOUT DEBATE)

Nil

ITEMS FOR DEBATE

Item No. 13.1	DRAFT LOCAL STRUCTURE PLAN, LOTS 176, 201 AND 9000 RENDEZVOUS ROAD, VASSE - REPORT FOR ADOPTION FOR FINAL APPROVAL	Pulled by Officers	Page 47
<p><u>ALTERNATIVE RECOMMENDATION</u></p> <p>That the Council defer for consideration, Item 13.1 'Draft Local Structure Plan for Lots 176, 201 and 9000 Rendezvous Road, Vasse – Report for Adoption for Final Approval', until the 16th November 2022 Ordinary Meeting of Council, to provide the opportunity for further community consultation.</p>			
<p><u>REASONS FOR ALTERNATIVE</u></p> <p>Due to administrative error the surrounding land owners who provided submissions on the proposal, during the advertising period, were not notified prior to the Community Access Session.</p> <p>It is therefore recommended Council defer consideration of the item to allow additional time for surrounding land owners to engage with Council prior to the item being considered at the next meeting.</p>			
<p><u>OFFICER COMMENT</u></p> <p>N/A</p>			
<p><u>LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT</u></p> <p>Pursuant to regulation 11(da) of the <i>Local Government (Administration) Regulations</i> 1996, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.</p>			

Item No. 13.2	SMITHS BEACH SIGNIFICANT DEVELOPMENT APPLICATION (PART 17 OF PD ACT 2005) - CITY OF BUSSELTON SUBMISSION	Pulled by Cr Riccelli	Page 3 Supplementary Agenda
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ALTERNATIVE 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 –

OVERALL RECOMMENDATION

Indicate that the City is not supportive of the Proposal and recommends that the WAPC, should it determine the application, refuse to grant development approval, for the following reasons –

1. The Proposal is inconsistent with the relevant planning framework and the outcomes of earlier planning and environmental processes associated with the Site; and
2. The Proposal will have unacceptable landscape and environmental impacts in some areas and does not include a completed EIA; and
3. The Proposal is not sufficiently tourism oriented and focused; and
4. It has not been demonstrated that an acceptable wastewater management solution can be implemented; and
5. It has not been demonstrated that an acceptable bushfire safety outcome is possible, particularly given the Site is subject to an extremely high level of bushfire risk; and
6. The need to consider the proposal in the context of the City's adopted Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) and that more detail is required before an assessment can be made to determine whether proposed approach to coastal hazards and management is acceptable; and
7. The need to indicate that a larger foreshore reserve is required other than what is proposed, with a total useable foreshore area of a minimum of 1.0 ha being seen as appropriate to meet community needs: and
8. Identify the need to resolve Aboriginal Heritage processes before the planning assessment can be completed for any proposal relating to the Site, because development in the area where the identified Aboriginal Heritage site is located is a critical element of the development, and should development in that area not be possible, significant changes to the proposal would be required.

MORE DETAILED COMMENTS

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.
- f. Note that subject to the receipt of necessary further information from the proponent on the proposal by the WAPC, as identified in the staff report, and the provision of that to the City along with all referral authority responses, the City will use this further opportunity to comment and provide any conditions of approval it considers necessary, if appropriate at that time.

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)

- g. Identify that the westward extension of the development footprint is not supported.
- h. Make the following additional comments with respect to this issue -
 - i. The extension is contrary to the planning intent for the site and to the identifiable developable area on the approved Structure Plan (DGP).
 - ii. The landscape and environmental assessments submitted with the application provide no evidence to support such an extension.
 - iii. 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;
 - iv. Detailed assessment and advice from landscape and visual assessment experts within DBCA and DPLH is not currently available publicly;
 - v. The unresolved nature of the assessment of the flora values of the area where the Western Villas are proposed; and
 - vi. 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.
- i. 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.

- j. 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.
- k. Note that although there has been a significant reduction in the development of the south west corner, this area has been earmarked for the onsite water treatment plant and associated effluent disposal that the proponent has failed to provide adequate details on (see point v.) and is likely to have substantial and ongoing direct and indirect impacts to the surrounding landscape. As such, this area cannot be considered to be retained for conservation purposes or to significantly contribute to the retention of landscape character.
- l. Note the reduced density proposed in the eastern portion of the Site may result in some reduction of visual impact from that which 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, however this was not an area that was identified of being of significant conservation value in the 2009 EPA report.
- m. Note that the reduction in density of development in the south-eastern part of the Site and the south-western part of the development area determined through earlier planning processes associated with the site does not offset impacts on visual or environmental values associated with the proposed westward expansion, and should not be used as a rationale to support any westward expansion.

Bushfire safety and management

- n. Identify that –
 - i. The Site is subject of a very high level of bushfire risk.
 - ii. There is only a single means of access and egress to Smiths Beach.
 - iii. At peak times, there is already a large number of people at Smiths Beach, creating significant management challenges in the event of a bushfire emergency. Adding a further (potential) 2700 people into this area significantly increases these challenges.
 - iv. It has not been adequately demonstrated that an acceptable and sustainable bushfire safety outcome can be achieved.
- o. Identify that it is unclear whether the proposed approach to bushfire management will be consistent with environmental and landscape values **or provide for immediate or ongoing acceptable levels of risk.**
- p. Identify that there is a significant level of uncertainty around ongoing BMP implementation.
- q. 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.
- r. 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 normal planning decision-maker, it would be open to the WAPC to impose such a requirement.~~

- s. Note that it is not practicable to develop a second means of access and egress for Smiths Beach.
- t. Note concerns about the use of a Refuge Building, including uncertainty about the proposed construction standard and how it will ensure occupant safety in a bushfire event, as well as concerns about the means by which ongoing maintenance of construction standards and operational procedures will be ensured.

Wastewater, stormwater and water infrastructure

- u. Note that the Proposal involves connection to reticulated water services.
- v. Indicate that ~~further information is required to assess~~ inadequate information has been provided to demonstrate the suitability of proposed approaches to stormwater and wastewater management and, as such, the proposed approaches cannot be supported at this stage.
- w. Indicate that, given the planning framework and the significance of the issues, the proposed approaches to stormwater and especially wastewater management should ~~have been~~ set out, resolved and determined to be appropriate at a high level of detail as part of the application. The extent of application areas outside individual residential sites is still unclear and unspecified as are the related landscape and environmental impacts associated with this. ~~and certainty before the granting of development approval, and not left to be resolved through conditions of approval.~~
- x. 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

- y. The Proposal is not sufficiently tourism oriented and focused, in that a majority of the land area and a majority of the proposed floorspace would be capable of being used for residential, rather than short stay or tourism purposes.
- z. Identify that, should approval be granted, conditions achieving the following should be applied –
 - i. Identify that a portion of the Villas cannot be used for long stay purposes; or
 - ii. Decrease the number of Villas and/or increase the number of Hotel rooms proposed.
- aa. 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.

Coastal hazards and management

- ab. Note the need to consider the proposal in the context of the City's adopted Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) and that more detail is

required before and assessment can be made to determine whether the proposed approach to coastal hazards and management is acceptable.

- ac. Note that the City is likely to be granted a management order over the UCL where the proposed seawall/beach access ramp is located.
- ad. Identify that, with respect to the proposed seawall/beach access ramp –
 - i. More detailed plans are required;
 - ii. As part of the Proponent developing, and the City then assessing those more detailed plans, consideration needs to be given to designing the structure to minimise potential erosion impacts on other parts of the coast and foreshore, and to what measures and costs will be associated with managing those impacts, including costs associated with managing the impacts of the structure on other parts of the coast and foreshore;
 - iii. There needs to be an appropriate mechanism to approve the development occurring on Crown Land;
 - iv. The Proponent to meet the costs of constructing and maintaining the structure for a significant period, including costs associated with managing the impacts of the structure on other parts of the coast and foreshore; and
 - v. 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

- ae. 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.
- af. 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

- ag. 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.
- ah. Indicate that appropriate perpetual tenure arrangements for the SBSLC facility need to be identified.
- ai. Given the small number of significant coastal access nodes on the City's western coast, and the pressures created by a growing residential population and tourism numbers, indicate that a larger foreshore reserve than what is proposed is considered appropriate, with a total useable foreshore area of a minimum of 1.0 ha being seen as appropriate to meet community needs, in addition to any foreshore area that may be needed to support development on the Site.

- aj.** 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

- ak.** 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

- al.** Note the need to resolve Aboriginal Heritage processes before the planning assessment can be completed **for any proposal relating to the Site, due to the fact that development in the area where the identified Aboriginal Heritage site is located is of crucial importance to the development. Therefore, should it be determined that development in that area is not possible, this would require significant changes to the application.**

REASONS FOR ALTERNATIVE

Whilst the Officer Recommendation identifies some of the concerns around certain aspects of the Proposal, there are further areas that need highlighting, as per my recommended track changes.

Given the extent of these concerns, and the lack of necessary documentation to accompany the Proposal, it culminates in the need to recommend 'refusal' to the WAPC.

I have briefly outlined my primary concerns below:

- The Proposal is inconsistent with the relevant planning framework and the outcomes of earlier planning and environmental processes associated with the Site; and
- The Proposal will have unacceptable landscape and environmental impacts in some areas and does not include a completed EIA; and
- The Proposal is not sufficiently tourism oriented and focused; and
- It has not been demonstrated that an acceptable wastewater management solution can be implemented; and
- It has not been demonstrated that an acceptable bushfire safety outcome is possible, particularly given the Site is subject to an extremely high level of bushfire risk; and
- The need to consider the proposal in the context of the City's adopted Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) and that more detail is required before an assessment can be made to determine whether proposed approach to coastal hazards and management is acceptable; and
- The need to indicate that a larger foreshore reserve is required other than what is proposed, with a total useable foreshore area of a minimum of 1.0 ha being seen as appropriate to meet community needs; and
- Identify the need to resolve Aboriginal Heritage processes before the planning assessment can be completed for any proposal relating to the Site, because development in the area where the identified Aboriginal Heritage site is located is a critical element of the development, and should development in that area not be possible, significant changes to the proposal would be required.

OFFICER COMMENT

Following the Agenda Briefing and Public Presentation Sessions on 12 October 2022, officers have considered issues raised and discussed including, but not limited to, a draft alternative recommendation prepared and distributed by members of the Smiths Beach Action Group (SBAG) and, as a result have prepared an amended officer recommendation reflecting some, but not all, of the changes proposed by SBAG. Those changes have also been incorporated into Cr Riccelli's alternative recommendation and are supported by officers.

Cr Riccelli's alternative motion also incorporates a number of further changes, and comment regarding each is set out below –

1. Introduction of an overall recommendation, recommending that the WAPC refuse the application – the agenda report identifies that as, amongst other things, the City is not the actual decision-maker, it does not need to indicate overall support/approve or objection/refusal, however, it is open to the Council to do so.
2. Changes to indicate that no westward extension of the development footprint is supported – it is considered by officers that there is not yet sufficient information to indicate that no westward expansion at all may be appropriate. Prior to expressing a firm view on that matter it is considered that the Council should develop a more comprehensive understanding of the visual and landscape management principles that it considers should be applied. Because the Proposal is also subject of an EIA process where this issue will need to be considered, the Council would have an opportunity to develop that understanding in responding to the public consultation that will occur as part of that process.
3. Changes to indicate that, amongst other things, it has not been adequately demonstrated that an acceptable and sustainable bushfire safety outcome can be achieved – officers do not have any significant concern with this change, which is in substantial part a change of emphasis, rather than direction.
4. Changes with respect to commentary on residential / tourism mix / length of stay controls – officers do not have significant concerns with these changes. Officers consider that this is an issue that requires careful consideration, but that the 'binary' and highly quantitative understandings of the issue reflected in aspects of the existing local planning framework are not an appropriate basis for decision-making, and that a more nuanced and qualitative understanding is required. It is also important to note again that the highly quantitative approach set out in elements of the existing local planning framework could not actually be sustainably or robustly enforced in the manner originally envisaged, because of changes to the State-level planning framework.
5. Changes with respect to coastal hazards and management, making explicit the need to consider potential impacts on other sections of the coast and meeting additional costs that may be required to mitigate those impacts – officers are supportive of these changes.
6. Changes with respect to foreshore reserve issues, including that a larger foreshore reserve will be required to meet community needs – officers are supportive of these changes.
7. Changes with respect to Aboriginal Heritage issues - officers are supportive of these changes.

LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT

Pursuant to regulation 11(da) of the *Local Government (Administration) Regulations 1996*, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.

<p>Item No. 13.2</p>	<p>SMITHS BEACH SIGNIFICANT DEVELOPMENT APPLICATION (PART 17 OF PD ACT 2005) - CITY OF BUSSELTON SUBMISSION</p>	<p>Pulled by Cr Paine</p>	<p>Page 3 Supplementary Agenda</p>
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ALTERNATIVE 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 –

Indicate that the City is not supportive of the Proposal and recommends that the WAPC, should it determine the application, refuse to grant development approval, for the following reasons –

- a. **The Proposal is inconsistent with the relevant planning framework and the outcomes of earlier planning and environmental processes associated with the Site;**
- b. **The Proposal will have unacceptable landscape and environmental impacts;**
- c. **The Proposal is not sufficiently tourism orientated and focused;**
- d. **It has not been demonstrated that an acceptable wastewater management solution can be implemented;**
- e. **The Proposal is not in the public interest; and**
- f. **Given that the WAPC is not bound by the planning framework, and that through the SDA process, the WAPC is effectively able to determine both what the planning framework should be and then apply that theoretical framework –**
 - i. **Identify that should the existing strategic and statutory planning framework for the Site that supports development not exist, that for environmental, landscape and bushfire safety reasons, significant development on the Site would not be supported at all; and**
 - ii. **Given that, no significant development on the Site should be supported through the SDA process.**

Concerns about use of the SDA process for Proposal

- g. **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.**
- h. **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.**
- i. **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.**
- j. **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

- k. **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.**

- l. Note that subject to the receipt of necessary further information from the proponent on the proposal by the WAPC, as identified in the staff report, and that provision of that to the City along with all referral authority responses, the City will use this further opportunity to comment and provide any conditions of approval it considers necessary, if appropriate at that time.**

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)

- m. 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 –**
- vii. 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;**
 - viii. Detailed assessment and advice from landscape and visual assessment experts within DBCA and DPLH is not currently available publicly;**
 - ix. The unresolved nature of the assessment of the flora values of the area where the Western Villas are proposed; and**
 - x. 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.**
- n. 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.**
- o. 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.**
- p. 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.**
- q. Note that although there has been significant reduction in the development of the South West corner, this area has been earmarked for the onsite water treatment plant and associated effluent disposal that the proponent has failed to provide adequate details on (see point ??) and is likely to have substantial and ongoing direct and indirect impacts to the surrounding landscape. As such, this area cannot be considered to be retained for conservation purposes or to significantly contribute to the retention of landscape character.**
- r. Note the reduced density proposed in the eastern portion of the Site may result in some reduction of visual impact from that which what would reasonable be expected to result from implementation of development in accordance with the**

outcomes of the earlier planning processes, associated with the Site, however this was not an area that was identified of being of significant conservation value in the 200 EPA report.

- s. Note that the reduction in density of development in the south eastern part of the Site and south western part of the development area determined through earlier planning processes associates with the Site does not offset impacts on visual or environmental values associated with the proposed westward expansion, and should not be used as a rationale to support any westward expansion.

Bushfire safety and management

- t. Identify that it is unclear whether the proposed approach to bushfire management will be consistent with environmental and landscape values **or provide for immediate or ongoing acceptable levels of risk.**
- u. Identify that there is a significant level of uncertainty around ongoing BMP implementation.
- v. 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.
- w. 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.~~
- x. Note that it is not practicable to develop a second means of access and egress for Smiths Beach.
- y. **Note concerns about the use of a Refuge Building including uncertainty about the proposed construction standard and how it will ensure occupant safety in a bushfire event, as well as concerns about the means by which ongoing maintenance of construction standards and operational procedures will be ensured.**
- z. 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

- aa. Note that the Proposal involves connection to reticulated water services.
- ab. Indicate that **inadequate further information has been provided to demonstrate the suitability of is required to assess** proposed approaches to stormwater and wastewater management and, as such, the proposed approaches cannot be supported at this stage.
- ac. 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 **as part of the application. The extent of application areas outside individual residential sites is still unclear and unspecified as are then the related landscape and environmental impacts associated with this. and certainty before the granting of development approval, and not left to be resolved through conditions of approval.**

- ad.** 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

- ae.** Identify that, should approval be granted, conditions achieving the following should be applied –
 - iii. 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
 - iv. Ensuring tight controls on modification or redevelopment of the Villas, setting out a need to maintain a consistent appearance and quality over time.
- af.** Identify that, once other aspects of the Proposal are closer to resolution, consideration may need to be given to –
 - iii. Identifying that a portion of the Villas cannot be used for long stay purposes; or
 - iv. Decreasing the number of Villas and/or increasing the number of Hotel rooms proposed.
 - v. **So that minimum of 70% of the development is for tourism only purpose and a maximum of 30% is able to be used for residential purposes.**

Coastal hazards and management

- ag.** Note the proposed approach to coastal hazards and management looks to be broadly sound.
- ah.** Note that the City is likely to be granted a management order over the UCL where the proposed seawall/beach access ramp is located.
- ai.** Identify that, with respect to the proposed seawall/beach access ramp –
 - vi. More detailed plans are required;
 - vii. There needs to be an appropriate mechanism to approve the development occurring on Crown Land;
 - viii. The Proponent to meet the costs of constructing and maintaining the structure for a significant period; and
 - ix. 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

- aj.** 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.
- ak.** Identify that elements of parking supply and demand require further consideration, including –
 - iii. Surf Life Saving Club associated demand; and

- iv. 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

- al.** 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.
- am.** Indicate that appropriate perpetual tenure arrangements for the SBSLC facility need to be identified.
- an.** 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.
- ao.** 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

- ap.** 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

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

REASONS FOR ALTERNATIVE

Given the decision maker in the SDA process is not bound by the planning instruments, for any determination of a development application, there must also be an implied (though ephemeral) strategic decision.

Significant development of the site is only contemplated for the site due to the legacy decisions going back to 1988, if the strategic planning for the area were to be created anew, it is unimaginable to me that significant development would be recommended for the site in question.

Hence, the unbound decision maker in the SDA process is asked, by way of the development application, to make a strategic decision that would not be supportable to a contemporary planning authority.

OFFICER COMMENT

Following the Agenda Briefing and Public Presentation Sessions on 12 October 2022, officers have considered issues raised and discussed including, but not limited to, a draft alternative recommendation prepared and distributed by members of the Smiths Beach Action Group (SBAG) and, as a result have prepared an amended officer recommendation reflecting some, but not all, of the changes proposed by SBAG. Those changes have also been incorporated into Cr Paine's alternative recommendation and are supported by officers.

Cr Paine's alternative motion also incorporates a number of further changes, and comment regarding the key changes is set out below –

1. Introduction of an overall recommendation, recommending that the WAPC refuse the application – the agenda report identifies that as, amongst other things, the City is not the actual decision-maker, it does not need to indicate overall support/approve or objection/refusal, however, it is open to the Council to do so.
2. Introduction of point 6 within the overall recommendation, in simple terms setting out a view that the current planning framework applicable to the Site is not appropriate, and that if the Site had not historically been identified as a location where significant development could occur, change to the planning framework to support development would not be made in the contemporary planning context. Officers have significant concerns with this aspect of the alternative recommendation.

It is certainly arguable that a site of this kind, which is mostly vegetated, in a visually sensitive location and subject of significant bushfire hazard, would not be supported for rezoning to allow for significant development in the contemporary context. The empowering legislation for the SDA process also does appear to allow the WAPC to consider such arguments in its decision-making, as the WAPC's decision-making discretion under the legislation does extend both to refusing development that could not otherwise be approved, as well as refusing development that may otherwise be approved.

In the WA planning system, however, changes to zoning or similar that significantly reduce the development potential of private land are not common, and are most often associated with plans to acquire the land to accommodate infrastructure (e.g. new or upgraded regional roads) or for regional open space (e.g. as occurs in those regions of WA where regional planning schemes are in place). 'Down-zoning' of the kind that is, in effect and in part, being suggested by Cr Paine's alternative motion would also raise concerns about investor confidence and security of property rights. Whilst there have been a number of regulatory changes in recent years that have had the same kinds of impact on development potential in some contexts, including greater environmental regulation and requirements to more fully consider bushfire risk as part of planning assessment processes, explicit and deliberate down-zoning to such an extent, and where the existing planning framework is very clear, deliberate and explicit in identifying the site for development, would be quite different.

Also, in a context where the City is expressing concerns about the potential for the discretion available to the WAPC through SDA process to undermine the integrity of the existing planning framework, it is considered counter-intuitive and contradictory to advocate that the WAPC should, in fact, use that discretion as a basis for refusing the development application.

LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT

Pursuant to regulation 11(da) of the *Local Government (Administration) Regulations 1996*, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.

<p>Item No. 13.2</p>	<p>SMITHS BEACH SIGNIFICANT DEVELOPMENT APPLICATION (PART 17 OF PD ACT 2005) - CITY OF BUSSELTON SUBMISSION</p>	<p>Pulled by Officers</p>	<p>Page 3 Supplementary Agenda</p>
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AMENDED 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.
- f. **Note that subject to the receipt of necessary further information from the proponent on the proposal by the WAPC, as identified in the staff report, and the provision of that to the City along with all referral authority responses, the City will use this further opportunity to comment and provide any conditions of approval it considers necessary, if appropriate at that time.**

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)

- g. 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 –
 - xi. 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;
 - xii. Detailed assessment and advice from landscape and visual assessment experts within DBCA and DPLH is not currently available publicly;

- xiii. The unresolved nature of the assessment of the flora values of the area where the Western Villas are proposed; and
 - xiv. 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.
- h.** 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.
 - i.** 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.
 - j.** 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.
 - k.** Note that although there has been a significant reduction in the development of the south west corner, this area has been earmarked for the onsite water treatment plant and associated effluent disposal that the proponent has failed to provide adequate details on (see point v.) and is likely to have substantial and ongoing direct and indirect impacts to the surrounding landscape. As such, this area cannot be considered to be retained for conservation purposes or to significantly contribute to the retention of landscape character.
 - l.** Note the reduced density proposed in the eastern portion of the Site may result in some reduction of visual impact from that which 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, however this was not an area that was identified of being of significant conservation value in the 2009 EPA report.
 - m.** Note that the reduction in density of development in the south-eastern part of the Site and the south-western part of the development area determined through earlier planning processes associated with the site does not offset impacts on visual or environmental values associated with the proposed westward expansion, and should not be used as a rationale to support any westward expansion.

Bushfire safety and management

- n.** Identify that it is unclear whether the proposed approach to bushfire management will be consistent with environmental and landscape values **or provide for immediate or ongoing acceptable levels of risk.**
- o.** Identify that there is a significant level of uncertainty around ongoing BMP implementation.
- p.** 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.

- q. 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 normal planning decision-maker, it would be open to the WAPC to impose such a requirement.~~
- r. Note that it is not practicable to develop a second means of access and egress for Smiths Beach.
- s. ~~Note concerns about the use of a Refuge Building, including uncertainty about the proposed construction standard and how it will ensure occupant safety in a bushfire event, as well as concerns about the means by which ongoing maintenance of construction standards and operational procedures will be ensured.~~
- t. 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

- u. Note that the Proposal involves connection to reticulated water services.
- v. Indicate that ~~further information is required to assess~~ inadequate information has been provided to demonstrate the suitability of proposed approaches to stormwater and wastewater management and, as such, the proposed approaches cannot be supported at this stage.
- w. Indicate that, given the planning framework and the significance of the issues, the proposed approaches to stormwater and especially wastewater management should ~~have been~~ set out, resolved and determined to be appropriate at a high level of detail as part of the application. ~~The extent of application areas outside individual residential sites is still unclear and unspecified as are then the related landscape and environmental impacts associated with this. and certainty before the granting of development approval, and not left to be resolved through conditions of approval.~~
- x. 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

- y. Identify that, should approval be granted, conditions achieving the following should be applied –
 - v. 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
 - vi. Ensuring tight controls on modification or redevelopment of the Villas, setting out a need to maintain a consistent appearance and quality over time.
- z. Identify that, once other aspects of the Proposal are closer to resolution, consideration may need to be given to –
 - vi. Identifying that a portion of the Villas cannot be used for long stay purposes; or

- vii. Decreasing the number of Villas and/or increasing the number of Hotel rooms proposed.

Coastal hazards and management

- aa. Note the proposed approach to coastal hazards and management looks to be broadly sound.
- ab. Note that the City is likely to be granted a management order over the UCL where the proposed seawall/beach access ramp is located.
- ac. Identify that, with respect to the proposed seawall/beach access ramp –
 - x. More detailed plans are required;
 - xi. There needs to be an appropriate mechanism to approve the development occurring on Crown Land;
 - xii. The Proponent to meet the costs of constructing and maintaining the structure for a significant period; and
 - xiii. 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

- ad. 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.
- ae. Identify that elements of parking supply and demand require further consideration, including –
 - v. Surf Life Saving Club associated demand; and
 - vi. 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

- af. 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.
- ag. Indicate that appropriate perpetual tenure arrangements for the SBSLC facility need to be identified.
- ah. 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.
- ai. 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

- aj. 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

ak. Note the need to resolve Aboriginal Heritage processes before the planning assessment can be completed **for any proposal relating to the Site.**

REASONS FOR ALTERNATIVE

Following the Agenda Briefing and Public Presentation Sessions on 12 October 2022, officers have considered issues raised and discussed including, but not limited to, a draft alternative recommendation prepared and distributed by members of the Smiths Beach Action Group (SBAG) and, as a result have prepared an amended officer recommendation reflecting some, but not all, of the changes proposed by SBAG. The changes relative to the originally published officer recommendation are briefly described below (with reference to the numbering in the amended recommendation as printed above) –

1. New point (f) – this change proposed to make clearer the expectation that further information and further consultation would be appropriate prior to the WAPC making a decision on the application, which should occur after completion of the EIA process.
2. New points (k) to (m) – changes proposed to provide some more detailed input and provide additional context to the input.
3. Change to point (n) – specifically identifying in the same point that it is unclear that the proposed approach to bushfire management will meet the key objectives – landscape, environmental and bushfire safety (with this last element added to this point).
4. Change to point (q) – remove reference to status of planning framework, as the point is already made clearly in the report.
5. New point (s) – to specifically identify concerns/issues to resolve with respect to the refuge building/strategy that is an important part of the BMP.
6. Change to point (v) – in practice minor wording change with different tone.
7. Change to point (w) – provides more detailed input.
8. Change to point (ak) – makes it clear this comment relates to any proposal for the Site that may seek to develop/disturb the identified Aboriginal Heritage site.

OFFICER COMMENT

As above

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