

11.3 DA16/0503 - DEVELOPMENT APPLICATION FOR A MARKET - LOT 400 (NO.24) DUNN BAY ROAD, DUNSBOROUGH

SUBJECT INDEX:	Development /Planning Applications
STRATEGIC OBJECTIVE:	A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.
BUSINESS UNIT:	Development Services and Policy
ACTIVITY UNIT:	Statutory Planning
REPORTING OFFICER:	Senior Development Planner - Andrew Watts
AUTHORISING OFFICER:	Director, Planning and Development Services - Paul Needham
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Attachment A Location Plan⇒ Attachment B Development Plans⇒ Attachment C Schedule of Submissions⇒

PRÉCIS

The Council is asked to consider an application seeking approval for a Market on Lot 400 (No.24) Dunn Bay Road, Dunsborough (“the site”). This follows the City’s earlier deferral of consideration at its 24 August 2016 meeting, with a request for the applicant to provide additional information prior to the application being determined. That additional information has now been received.

The planning proposal has been placed before Council due to the volume of public submissions received raising concern with the development and, more particularly, the nature of the issues that require consideration in determining the application. The key matters for consideration are amenity and design.

It is considered that the proposal is consistent with the relevant planning framework and is recommended for approval subject to conditions including a temporary approval timeframe of five years.

BACKGROUND

Lot 400 (No.24) Dunn Bay Road is bound by Dunn Bay Road to the north-west, Seymour Boulevard to the south-west, Chieftain Crescent to the south-east and Lot 200 Dunn Bay Road (Bay Village Resort) to the north-east. A location plan is provided in **Attachment A**.

Under Local Planning Scheme 21 the site is zoned ‘Special Purposes – Mixed Use’ and is subject to Special Provision 49. Special Provision 49 in respect to commercial uses states that:

“Land-use permissibility shall be the same as for the ‘Business’ Zone...”

The proposed development takes the form of an open sided roof structure, with market ‘stalls’ operating out of a series of converted sea containers. The proposal is for twenty five shipping containers to be used as a market with eleven sea containers proposed to be used as ‘market stalls’ for artists (or similar) and twelve sea containers to be used for food ‘kiosk stalls’, with car parking, landscaping and open-sided roofed structure over much of the site. The proposed building has a maximum total height of approximately 5.50 metres, which is consistent with the Scheme height limit. Development plans are provided in **Attachment B**.

General hours of operation have been indicated as market stalls Friday and Saturday 4pm-10pm, with potential additional trading on school holidays, public holidays, special events and Sunday mornings. Proposed operating hours for food kiosks are Monday – Sunday 7am–10pm.

Under the Scheme this fits within the use class of 'Market' which is a 'D' use (i.e. discretionary, with or without consultation, depending on whether consultation is considered to be appropriate given the particular circumstances) in the Business Zone. In this case, it was considered that consultation should occur before the application is determined.

The proposal was previously presented to Council at its meeting of 24 August 2016 where it was resolved by Council that decision on this matter be deferred until the applicant has provided additional information as specified by Council including: a noise management plan to demonstrate that acceptable noise levels can be maintained at the boundaries of neighbouring residential properties; and details for buildings facing Dunn Bay Road and Seymour Boulevard and to ensure the development is compatible with its setting, represents a high architectural standard and will provide for activation of Dunn Bay Road and Seymour Boulevard street frontages and bin storage details.

STATUTORY ENVIRONMENT

The key elements of the statutory environment that relate to the proposal are set out in Local Planning Scheme No.21.

The site is zoned 'Special Purpose-Mixed Use'. Special Provision 49 also relates to the site -

No.	PARTICULARS OF LAND	ZONE	SPECIAL PROVISIONS
SP49	Lot 202 Dunn Bay Road, Dunsborough	Special Purpose – Mixed Use	<p>1. Land-use permissibility shall be the same as for the 'Business' Zone, other than as varied by point 2 below.</p> <p>2. The Council may approve the use of up to, but no more than, 75% of any future accommodation units developed on-site with no restriction of length of stay. The remainder of the accommodation units shall be subject to length of stay restrictions limiting occupancy to no more than 3 months in any 12 month period.</p> <p>For the purpose of this provision 'accommodation unit' means any tourist accommodation unit, grouped dwelling unit, multiple dwelling unit or other unit used for overnight accommodation or as a place of residence.</p>

As Special Provision 49 states that "land permissibility shall be the same as for the 'Business' Zone, the objectives and policies of the 'Business' Zone effectively apply. The objectives of that Zone are as follows -

- (a) To provide for conveniently-located shopping and other service associated commercial activities to service each centre's catchment area, as determined by the relevant planning framework.
- (b) To maintain and reinforce the viability of existing commercial centres, including those supporting adjoining agricultural areas.

Policies of the 'Business' zone relevant to this application are -

- (a) To encourage the provision of retail and other business services and associated development to add to the strength and diversity of existing centres.

- (b) As far as is practical and appropriate to allow market forces to influence the location of retail and office uses within existing centres with minimal intervention by the local government.
- (c) To allow residential development only where it is a component of commercial development.
- (d) To utilise and strengthen the existing town centres of Busselton and Dunsborough as the primary retail and commercial centres of the City by active discouragement of any new “out of town” shopping centres other than neighbourhood shopping centres, convenience stores and the like.
- (e) The consolidation of land to assemble larger land parcels suitable for integrated development or redevelopment is encouraged and supported. Fragmentation of land, unless it is part of an overall plan for integrated development or redevelopment, will generally not be supported.

In considering the application, the Council needs to consider the ‘Matters to be considered’ set out in clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, particularly relevant considerations in relation to this application are the following –

- (a) *the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;*
- (b) *the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving;*
- (g) *any local planning policy for the Scheme area;*
- (h) *any structure plan, activity centre plan or local development plan that relates to the development;*
- (m) *the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*
- (n) *the amenity of the locality including the following –*
 - (i) *environmental impacts of the development;*
 - (ii) *the character of the locality;*
 - (iii) *social impacts of the development;*
- (u) *the availability and adequacy for the development of the following –*
 - (i) *public transport services;*
 - (ii) *public utility services;*
 - (iii) *storage, management and collection of waste;*
 - (iv) *access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);*
 - (v) *access by older people and people with disability;*
- (w) *the history of the site where the development is to be located;*
- (x) *the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;*

- (y) any submissions received on the application;
- (zb) any other planning consideration the local government considers appropriate.

RELEVANT PLANS AND POLICIES

Assessment of the parking needs for the development has been made based on the *City's Local Planning Policy 8A: Carparking Provisions*. The applicable parking rate for Business Zoned properties in the Busselton and Dunsborough CBD's is 4 car parking bays per 100m² Net Lettable Area (NLA). The NLA does not include service areas, toilets, areas set aside as public space or general thoroughfare areas that are not for the exclusive use of occupiers of a building. The total NLA has been determined to be approximately 300m², which generates the need for 12 bays. The development plan indicates 11 bays onsite, including 1 disabled bay, resulting in a shortfall of 1 on-site parking bay.

The Car Parking Provisions Policy and Scheme 21 include provisions for the option of a payment of cash-in-lieu of the shortfall of parking bays where considered appropriate by the City

The applicant is seeking that the cash-in-lieu be accepted by Council. The City's current cash-in-lieu payment figure is \$10,278.42 per bay.

The City has recently completed Dunsborough townscape upgrade works which have increased parking capacity along Seymour Boulevard.

FINANCIAL IMPLICATIONS

This application may result in financial implications in respect to the payment of cash-in-lieu of required parking bays.

Long-term financial plan implications

Nil

STRATEGIC COMMUNITY OBJECTIVES

The recommendation of this report reflects Community Objectives 2.2 and 3.1 of the Strategic Community Plan 2013, which are –

- 2.2 A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.
- 3.1 A strong, innovative and diversified economy that attracts people to live, work, invest and visit.

RISK ASSESSMENT

An assessment of the potential implications of implementing the Officer Recommendation has been undertaken using the City's risk assessment framework. The assessment identifies 'downside' risks only, rather than 'upside' risks as well. Risks are only identified where the individual risk, once controls are identified, is medium or greater. No such risks were identified.

CONSULTATION

The initial proposal was referred to adjoining landowners of the proposed development site and was also advertised in the local newspaper for a period of 14 days.

A total of 24 submissions have been received from the general public. Issues raised highlight concerns with the proposal for the following reasons -

- Visual appearance of the proposal.
- Detrimental impact of the proposed market on existing businesses.
- Inadequate provision of parking and that the proposal will impact on availability of existing parking in the town centre.
- The proposal is not keeping with the atmosphere and character of Dunsborough
- Concern with impact of the proposal on neighboring residential properties on Chieftain Crescent.
- The potential noise resulting from the proposed development.

Submissions received in support of the proposed development raise the following points -

- The proposed markets will utilise local products and produce.
- Economic opportunities for local producers, suppliers and artisans will be provided.
- The Dunsborough town centre will benefit from further activation.
- Opportunities for varying forms of entertainment will be available.
- The proposed development will be family friendly.

The points raised in the submissions are discussed further below and specific consideration of each of the submissions is given at **Attachment C**.

OFFICER COMMENT

The fundamental questions around land-use and car parking relating to this site and development of a market or similar were addressed and considered when the Council determined an earlier application relating to the site (which was for a conventional structure/building). As that application was approved, there is not seen to be any need to re-assess those considerations in any detail. It is, however, considered clear that a development that consists of a market, including food premises, is fundamentally appropriate on this site.

Through the provision of additional information as requested by Council when consideration of this current application was deferred and through some modifications made to the plans by the applicant, previous concerns regarding the form and layout of the development proposed and noise impacts on neighbouring land have been addressed to an extent such that City officers are now prepared to recommend approval.

The broad concept of a market development, that provides an opportunity for small-scale and start-up enterprises to sell from a site in the Dunsborough Town Centre, and provide some additional vibrancy, especially in the evening, is seen as very desirable, however there have been some concerns raised about the sea container form proposed, on the site in question.

In response to the Council deferring consideration of the proposal and requesting additional information be provided by the applicant prior to being prepared to make a determination on the application, the applicant has provided revised plans showing a reconfigured layout which is more enclosed on the Dunn Bay Road and Chieftain Crescent ends, provides for activation of the Dunn Bay Road and much of the Seymour Boulevard interfaces by kiosks trading toward the street and inclusion of extensive alfresco areas adjacent to the streets, provision of indicative details of the external finishes of containers fronting Dunn Bay Road and Seymour Boulevard and a lowering of the height of the dome roof.

The applicant has also provided a noise impact assessment report with recommendations included to indicate how, with the revised plans, the proposed development is able to comply with the requirements of the *Environmental Protection (Noise) Regulations 1997*. Ongoing implementation of

the recommendations of the noise impact assessment report forms part of the conditions of the officer's recommendation.

The revised plans show 'sea container concepts' to get an idea of the intended treatment possibilities for how the externally exposed parts of the development proposal would provide for a suitable aesthetic appearance from Dunn Bay Road and Seymour Boulevard. A condition is, though, recommended that, prior to commencement of the development, details are submitted and approved of for the final finished appearance of each of the buildings facing (i.e. those that will trade into areas visible from) Dunn Bay Road and Seymour Boulevard; and of all of the externally visible aspects of the development. This is to ensure that the development is compatible with the amenity of its setting.

Similarly to the above, to ensure that development will provide for activation of Dunn Bay Road and Seymour Boulevard it is recommended that those buildings with openings facing onto Dunn Bay Road or Seymour Boulevard must at all times they are open, trade towards the street.

City officers are of the view that the proposed development is not designed to be a long term development. This view has been formed because the development is of a relatively 'pop-up' nature, consisting of relatively low capital investment structures (sea containers and fabric roof) with ongoing maintenance requirements to maintain suitable amenity and aesthetics. This type of development is expected to have one-third to a half of the lifespan of development using normal construction. For these reasons officers do not believe that it is appropriate to provide a permanent approval and instead recommend a time-limited approval. After considering issues such as likely needs for a return on investment, officers recommend a temporary/time-limited approval of ten years.

CONCLUSION

It is recommended that the Council grant a time limited approval to the development, and subject to a range of detailed conditions.

OPTIONS

The Council could:

1. Refuse the proposal, setting out reasons for doing so.
2. Apply additional or different conditions.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

The proponent will be advised of the Council decision within two weeks of the Council meeting.

OFFICER RECOMMENDATION

That the Council resolve:

1. That application DA16/0503 submitted for development at Lot 400 (No.24) Dunn Bay Road, Dunsborough is considered by the Council to be generally consistent with Local Planning Scheme No. 21 and the objectives and policies of the zone within which it is located.
2. That a time-limited Development Approval is issued for the proposal referred to in 1. above subject to the following conditions:

General Conditions:

1. All development is to be in accordance with the approved Development Plan (attached), including any amendments placed thereon by the City and except as may be modified by the following conditions.
2. The development hereby approved is permitted for a period of ten years from the date of this Decision Notice.
3. The placement of all sea containers, roof structure and external finish of sea containers with a street front presentation is to be completed in one stage.
4. Construction of the development hereby approved shall be completed within two years from the date of the first building permit issued pursuant to this approval.

Prior to Commencement of Any Works Conditions:

5. The development hereby approved, or any works required to implement the development, shall not commence until the following plans or details have been submitted to the City and have been approved in writing:
 - 5.1 A Construction Management Plan.
 - 5.2 Details for the final finished appearance of each of the buildings facing (i.e. those that will trade into areas visible from) Dunn Bay Road and Seymour Boulevard, and of all of the externally visible aspects of the development, to ensure the development is compatible with the amenity of its setting, and in this context that it represents a high architectural standard, the details should include:
 - external cladding of the buildings (sea containers) - the materials, colours, textures and projections to be used – verandas may be provided extending over the footpath road verge;
 - activation of Dunn Bay Road and Seymour Boulevard frontages through the use of facing windows, doorways, lighting, and artwork;
 - external signage – location and dimensions.
 - 5.3 A Drainage Management Plan setting out details of stormwater and surface water drainage works. The Plan shall include but not be limited to the following:
 - 5.1.1 Stormwater to be retained for use and/or infiltration within the lot at a rate of 1m³ per 40m² of impervious area;
 - 5.1.2 Kerbing or grade changes for paved areas;
 - 5.1.3 installing and maintaining stormwater collection systems, such as bio-retention gardens and soak wells to intercept roof and general runoff;
 - 5.1.4 establishing soaks that collect and permit infiltration of stormwater.
 - 5.4 Details of the finished treatment of all hard surfaced areas to be used for the construction of the parking and manoeuvring areas and pedestrian footpaths as shown on the Approved Development Plans;
 - 5.5 Details of the bicycle parking facilities. The details shall include, as a minimum, the location, design and materials to be used in their construction.
 - 5.6 Details of bin storage and collection arrangements, including confirmation that bin storage areas can and will be screened from public view at all times, other than when refuse collection is taking place. The Bin Storage Area is to be not to be less than 10m² in area or 1m² per bin (whichever is greater) with a minimum internal dimension of 3.5m.

- 5.7 Details of bin wash facilities to be provided.
 - 5.8 A Landscape Plan providing details of onsite landscaping works.
 - 5.9 A plan detailing, footpaths and other hard landscaping elements, to be undertaken on street verges adjacent the site.
6. The development hereby approved, or any works required to implement the development, shall not commence until the following contributions have been paid to the City:
 - 6.1 A contribution of \$10,278.42 to the City associated in lieu of a shortfall of one on-site parking bay.

Prior to Occupation/Use of the Development Conditions:

7. The development hereby approved shall not be occupied or used until all plans, details of works required by Conditions(s) 1, 3 and 5 have been implemented and the following conditions have been complied with:
 - 7.1 Landscaping and reticulation shall be implemented in accordance with the approved Landscape Plan and shall thereafter be maintained to the satisfaction of the City. Unless otherwise first agreed in writing, any trees or plants which, within a period of five years from first planting, are removed, die or, are assessed by the City as being seriously damaged, shall be replaced within the next available planting season with others of the same species, size and number as originally approved.
 - 7.2 A minimum number of 11 car parking bays (including 1 disabled bay) shall be provided on site. The parking area(s), driveway(s) and point(s) of ingress and egress [including crossover(s)] shall be designed, constructed, sealed, drained and marked.
 - 7.3 The development being connected to a reticulated water supply.
 - 7.4 The development being connected to reticulated sewerage.

On-going Conditions:

8. The works undertaken to satisfy Condition(s) 1, 5.1-5.8 and 7 shall be subsequently maintained for the life of the development and subject to the following condition:
 - 8.1 Recommendations in the approved Noise Impact Assessment shall be implemented in accordance with the approval details.
9. Buildings with openings facing onto Dunn Bay Road or Seymour Boulevard must at all times they are open, trade towards the street.
10. No more than one vendor is permitted to sell alcohol.
11. Permitted opening hours are Monday – Sunday 7am -10pm.
12. All buildings and structures are to be removed from the site, by the owner or his successor, within 6 months of the expiry of the operation and the condition of the land made good.

Note: Officers provided Councillors with an Amended Recommendation, that would reword condition 5.2, renumber conditions 5.3, include an additional condition in 5.4 and reword condition 10.
Councillor Bennett proposed an Alternative Motion for Council consideration that would defer consideration of DA16/0503.

Council Decision and Alternative Motion**C1612/162** Moved Councillor R Bennett, seconded Councillor J McCallum

That consideration of DA16/0503 be deferred until we have a clearer idea of how noise will be cushioned so it does not have a detrimental effect on the resort next door.

CARRIED 5/4

Voting:

For the motion: Councillor R Bennett, Mayor G Henley, Councillor J McCallum, Councillor C Tarbotton and Councillor R Reekie.

Against the motion: Councillor T Best, Councillor G Bleechmore, Councillor P Carter and Councillor R Paine.

Reasons for Change to Officers Recommendation:

I believe there is too big a difference in the findings of the two companies providing noise assessment advice to make an informed and quick decision.

Note: As Councillor Bennett's Alternative Motion was carried, the Alternative Officer Recommendation was not presented for Council Consideration.