

**The meeting resumed at 3:30pm with all members except Mayor Cole and Mr Rowe present.**

**11. Deputations and presentations - Item 13.1**

**11.1 Significant Development Application - Proposed Apartments, Office, Cafe and Public Open Space, East Fremantle (Item 13.1)**

**Presenters: Phillip Gnech - Built Form Projects and Michael Patroni - Space Agency**

Mr Gnech addressed the Western Australian Planning Commission in support of the recommendation at Item 13.1, subject to two modifications. Mr Gnech requested that Condition 1 be amended to 36 months due to ongoing issues with procuring a builder which could take between 6-12 months. Mr Gnech noted that the future management of the community benefits as detailed in Condition 24 would be cleaner if the restricted covenant does not include the vestibule, and that this was never included in the area calculation for public open space. Mr Gnech requested that the words 'in perpetuity' be removed from Condition 35 as it could be considered as heavy

handed as it would be placed on title, and noted that there is the ability for a management document for the public art to be provided for in the future.

Mr Gnech responded to questions from members with regards to the public open space, public art, and the green travel plan. Mr Gnech stated that they are committed to providing the provision and infrastructure for every car bay to access power to charge electric vehicles.

**11.2 Significant Development Application - Proposed Apartments, Office, Cafe and Public OpenSpace, East Fremantle (Item 13.1)**

**Written Deputation: Andrew Malone -Town of East Fremantle**

Members noted the written submission at Item 11.2.

**11.3 Significant Development Application - Proposed Apartments, Office, Cafe and Public Open Space, East Fremantle (Item 13.1)**

**Written Deputation: Ken Perry**

Members noted the written submission at Item 11.3.

**12. Presentation of key issues by the Department of Planning, Lands and Heritage - Item 13.1**

**Presenter: Paola Di Perna - Planning Director, State Development Assessment Unit**

Ms Di Perna, Planning Director of the State Development Assessment Unit presented the key issues and considerations of the application at Item 13.1, and noted that there is a typographical error on Page 134 of the agenda that references 201 car parking bays and that the correct number should be 223 car parking bays.

Ms Di Perna responded to questions from members relating to the public art strategy which identifies locations of proposed public art areas and includes a nature play as an example. Ms Di Perna noted that the part a) of Condition 24 could be deleted as the entrance court is vestibule. Ms Di Perna responded to queries raised by members on the shortfall of 27 car parking bays and reciprocal car bay arrangements and noted the peak operating times and the allocation of bays which will be managed through the management plan and operation plan.

**ITEM FOR DECISION**

**13.1 Significant Development Application - Proposed Apartments, Office, Cafe and Public Open Space, East Fremantle**

**REPORT RECOMMENDATION**

**Moved by Ms Bennett**

**Seconded by Mr McKirdy**

*That the Western Australian Planning Commission resolves to APPROVE development application reference SDAU-023-20 and accompanying plans and documents (date stamped 28 February 2023)*

for the proposed apartments, office, cafe and public open space at Lots 418 (91) and 419 (93) Canning Highway, Lot 81 (70) St Peters Road and Lot 423 King Street, East Fremantle, in accordance with s.274 of the Planning and Development Act 2005, subject to the following conditions:

#### Conditions

##### Approval Timeframe

1. This decision constitutes planning approval only and is valid for a period of 24 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 28 February 2023) attached to this approval, final details of which are to be submitted at working drawings stage to the satisfaction of the Western Australian Planning Commission.
3. Prior to the occupation of the development, arrangements are made for Lots 418 and 419 Canning Highway, Lot 81 St Peters Road and Lot 423 King Street, East Fremantle to be legally amalgamated on one Certificate of Title, or such other alternative, at the expense of the owner to the satisfaction of the Western Australian Planning Commission.
4. Prior to the submission of the relevant building permit application, arrangements are made detailing an acceptable alignment of the large diameter gravity sewer (DN685 Fremantle Main Sewer) satisfying the applicable technical guidelines, including a replacement easement, for asset protection to the satisfaction of the Western Australian Planning Commission, on advice from the Water Corporation.

##### Clearance of Conditions of Approval

5. A copy of the final working drawings (prepared for submission of a building permit application) and all associated plans, reports and information that address the conditions of approval are to be submitted to, and cleared by, the Western Australian Planning Commission.

##### Construction

6. Prior to the commencement of development, a dilapidation report prepared by a suitably qualified professional shall be submitted to, and approved by, the Western Australian Planning Commission on advice of the Town of East Fremantle, detailing the current condition and status of all buildings, surrounding paved areas and ancillary structures located on, but not limited to, the following properties:
  - 59 Canning Highway, East Fremantle
  - 80 Canning Highway, East Fremantle

- 83 Canning Highway, East Fremantle
- 1 Sewell Street, East Fremantle
- 7 Sewell Street, East Fremantle
- 10 Sewell Street, East Fremantle
- 12 Sewell Street, East Fremantle
- 9 King Street, East Fremantle
- 11 King Street, East Fremantle

*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 owners of the reason for the survey and that these steps have failed. Dilapidation reports shall be prepared to the satisfaction of the Western Australian Planning Commission.*

7. *Prior to the submission of the relevant demolition or building permit application, 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 East Fremantle and Main Roads WA, addressing but not limited to:*
  - a) *management of construction traffic, including potential impacts on the local and regional road network;*
  - b) *site access I egress, internal movement and holding of heavy vehicles and contractor parking;*
  - c) *deliveries and storage of construction materials and machinery;*
  - d) *management of construction vibration, dust and erosion;*
  - e) *management of construction noise and other site generated noise;*
  - f) *investigation and management of acid sulphates soils;*
  - g) *management of any site dewatering or stormwater discharge;*
  - h) *temporary fencing, hoardings, gantries and signage;*
  - i) *protection of public realm infrastructure adjacent to the site;*
  - j) *public communication and complaint handling procedures; and*
  - k) *management of pedestrian and cycling access around the site.*

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

#### *Design and Materials*

8. *Prior to the occupation of the development, the applicant shall supply certification of compliance by an architect or engineer confirming that the development has incorporated the Fremantle*

*Inner Harbour Definition Study Buffer Area 2 built form requirements to the satisfaction of the Western Australian Planning Commission.*

9. *The development is to be constructed with high quality and durable external materials and finishes, consistent with the approved Development Plans (other than as amended by conditions of approval), with final details submitted to and approved by the Western Australian Planning Commission, prior to submission of the relevant building permit applications.*
10. *Prior to the occupation of the development, all fencing and blank walls at ground level are to be treated with a non-sacrificial anti-graffiti coating to discourage potential graffiti, to the satisfaction of the Western Australian Planning Commission. The anti-graffiti coating is to be reapplied in the event of any graffiti being removed.*
11. *Prior to the submission of the relevant building permit application, a Wind Assessment Report is to be submitted and approved by the Western Australian Planning Commission. The final plans are to be certified by a qualified engineering consultant confirming the development incorporates the recommendations prior to submission of the relevant building permit application.*

*Landscape and Public Realm*

12. *Prior to the submission of the relevant building permit application, final landscape plans and specifications for the subject site, 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 East Fremantle and Main Roads Western Australia.*
13. *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.*
14. *Prior to the occupation of the development:*
  - a) *public art concept for the subject development to the value of 1.0% of the construction value must be submitted to, and approved by, the Western Australian Planning Commission on advice from the Town of East Fremantle; and*
  - b) *the approved public art shall be installed by the developer and maintained thereafter by the owners of the development, to the satisfaction of the Western Australian Planning Commission.*
15. *Prior to the submission of the relevant building permit application, a Signage Strategy shall be submitted to and approved by the Western Australian Planning Commission, on the advice of the Town of East Fremantle. Once approved, the installation of any external signage must be in accordance with the approved Signage Strategy Plan.*

16. *Prior to the submission of the relevant building permit application, a Lighting Strategy detailing lighting of the building exterior and ground floor public areas to enhance building features, amenity and security is to be submitted to and approved by the Western Australian Planning Commission, and thereafter implemented by the owner and operator of the development.*
17. *Prior to the commencement of development:*
- a) *all retained trees on site and trees within an adjacent road reserve are to be protected from damage throughout any development works with a tree protection zone being established and maintained during the construction period in accordance with the Australian Standard AS4970-2009 - Protection of Trees on Development Sites.*
  - b) *an Arboriculture Report shall be prepared by a suitably qualified professional at the developer/owner's cost providing details of the required tree protection zone and demonstrating how the development will be undertaken to mitigate impacts on trees, with the report being submitted to, and approved by, the Western Australian Planning Commission on advice from the Town of East Fremantle.*

#### Sustainability and Water

18. *Prior to the submission of the relevant building permit application, a Stormwater Management Plan shall be submitted to and approved by the Western Australia Planning Commission, on advice from the Town of East Fremantle and Main Roads Western Australia demonstrating that all stormwater can be retained on site.*
19. *The proposed development to be designed and constructed to achieve a minimum 5-star Green Star rating, or equivalent. Prior to the submission of the relevant building permit application, the applicant is to submit a final sustainability report demonstrating how this is to be achieved and confirming the final strategy. The accepted sustainability initiatives shall be incorporated into the development and thereafter maintained by the owners.*
20. *Prior to the occupation of the development, the final plans shall be verified by a qualified consultant confirming that the development incorporates the measures and recommendations outlined in the approved sustainability report (or equivalent) have been implemented to the satisfaction of the Western Australian Planning Commission.*
21. *Prior to the commencement of development, investigation for soil and groundwater contamination is to be carried out at Lot 418 to determine if remediation is required. Any remediation required shall be completed prior to completion of construction to the satisfaction of the Western Australian Planning Commission, on advice from the Department of Water and Environmental Regulation.*
22. *Prior to commencement of development, the applicant is to submit a Sediment and Erosion Control Plan to the satisfaction of the*

*Western Australian Planning Commission, on advice from the Department of Water and Environmental Regulation. Once approved, the Sediment and Erosion Control Plan shall be thereafter implemented as part of the development and works.*

23. *No pool water/backwash from the swimming pool or water feature is to be discharged onto the land or into the river or local government drainage system.*

*Community Benefit*

24. *Prior to the occupation of the development, the owner shall register on the Certificate of Title for the lot(s) a restrictive covenant, to the benefit of the local government, for all proposed lot(s) that contain a local community benefit being the public open space, pedestrian access including the entrance court (labelled as vestibule on the plans) on the ground floor, advising of the existence of a restriction on use of the land. The restrictive covenant is to state:*

- a) details of the community benefits of the public open space, pedestrian access including the entrance court (labelled as vestibule on the plans) on the ground floor, and*
- b) that use of the public open space is restricted to the approved community benefit, unless otherwise approved.*

25. *Prior to the occupation of the development, a Community Benefits Management Plan shall be developed, for the public open space, pedestrian access including the entrance court (labelled as vestibule on the plans), addressing the following matters:*

- a) The hours of public accessibility;*
- b) The manner that these benefits are made available to the public in perpetuity for the life of the development;*
- c) ongoing maintenance and public liability; and*
- d) Any other matter deemed relevant.*

*The Plan shall be submitted to the Western Australian Planning Commission for approval, be implemented and adhered to all times and shall be distributed to nearby landowners and occupiers for information purposes, to the satisfaction of the Western Australian Planning Commission on advice from the Town of East Fremantle.*

26. *Prior to the commencement of development, A photographic archival record of the place is to be prepared by a suitably qualified heritage consultant, to the satisfaction of the Western Australian Planning Commission.*

*Transport, Access, and Parking*

27. *Prior to the occupation of the development a Parking and Operational Management Plan addressing the shared arrangement of non-residential parking bays, visitor parking access and allocation, and management of deliveries is to be submitted to and approved by the Western Australian Planning Commission, on advice from the Town of East Fremantle and the Department of*

*Transport. 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.*

- 28. Prior to the occupation of the development a green travel plan outlining strategies to encourage alternative forms of transport such as ride-sharing and electric bike/scooter, electric vehicle charging implementation and the maintenance and management of end of trip facilities including the provision of a minimum of two lockers per bicycle bay for staff, is to be provided to the satisfaction of the Western Australian Planning Commission, on advice from the Town of East Fremantle and the Department of Transport.*
- 29. Prior to the occupation of the development, all car parking spaces, access aisles, loading bays and bicycle parking shall be designed, constructed and marked to the specifications of the Town of East Fremantle and in accordance with the Australian Standard for Off-street Car Parking (AS/NZS2890.1 2004), Parking Facilities On-Street Parking (AS/NZ 2890.5), Off-street Parking for People with Disabilities (AS/NZS2890.6 2009), Off-street Commercial Vehicle Facilities (AS2890.2:2002) and Off-street carparking - Bicycles (AS2890.3) and thereafter maintained by the owners of the development, to the satisfaction of the Western Australian Planning Commission.*
- 30. Prior to the occupation of the development, suitable arrangements are made for the footpaths on Canning Highway, Sewell Street, St Peters Road and the dual use path on the eastern boundary to be upgraded and the proposed on-street parking bays to be constructed at the developer's cost to the satisfaction of the Western Australian Planning Commission on the advice and specification of Main Roads Western Australia and the Town of East Fremantle.*

#### Noise and Operational Management

- 31. All of the recommended measures included in the Acoustic Report prepared by Stantec Australia, date stamped 28 February 2023 (Ref: 301250644), are to be implemented in full, with the final plans being certified by a qualified acoustic consultant to confirm the development incorporates the recommendations prior to submission of the relevant building permit application.*
- 32. Prior to 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.*
- 33. Prior to the commencement of the Restaurant/Cafe land use, a final Acoustic Report is to be submitted to and approved by the Western Australian Planning Commission, on the advice from the Town of East Fremantle and Main Roads WA. The recommendations outlined in the approved Acoustic Report is to be implemented and maintained accordingly.*



34. *Prior to the submission of the relevant building permit application, the Waste Management Plan prepared by Encyle Consulting date stamped 28 February 2023 shall be updated to address in greater detail the location of bin services, hours of operation and management of waste to the satisfaction of the Western Australian Planning Commission on advice from the Town of East Fremantle. 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*

Notifications on Title

35. *Prior to the occupation of the development, the owner shall register on the Certificate of Title(s) notifications pursuant to Section 70A of the Transfer of Land Act 1893. Notice of these notifications is to be included on the diagram or plan of survey (deposited plan). The notifications are to state as follows:*

- a) *The lots are situated in the vicinity of a transport corridor and are currently affected, or may in the future be affected, by transport noise.*
- b) *The property is located within Area 2 of the Fremantle Port Buffer Zone where noise, odour, light spill and other factors might arise from the normal operations of a 24-hour working port; and*
- c) *All public art is to be maintained in perpetuity.*

*The notifications are to be registered at the applicant/owner's expense, to the satisfaction of the Western Australian Planning Commission.*

Other

36. *Any proposed air-conditioning condensers, external building plant, piping, ducting, transformers and fire control rooms shall be integrated into the design of the buildings and located or screened to minimise any visual and noise impact on nearby residents, businesses and the 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, prior to the submission of the relevant building permit application.*

37. *External clothes drying facilities shall be screened from view from the street or any other public place.*

Advice Notes

- a. *This constitutes 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.*
- b. *Anyone proposing to carry out construction or excavation works must contact 'Dial Before You Dig' ([www.1100.com.au](http://www.1100.com.au)) to determine the location of buried gas infrastructure. Refer to ATCO*

document AGA-O&M-PR24- Additional Information for Working Around Gas Infrastructure <https://www.atco.com/en-au/for-homelnatural-gas/wa-gas-network/working-around-gas.html>.

- c. With regard to condition 3, the applicant/landowner is advised that any future freehold or strata subdivision is to account for the road widening requirement of the Canning Highway Primary Regional Road Reserve affecting Lots 418 and 419 Canning Highway, as shown on the plan 201232-0159-1. Any road widening areas are to be set out on a plan of survey (deposited plan) and may be required to be ceded free of cost on advice from Main Roads WA.
- d. With regard to condition 7(g), in the event it is proposed to dewater effluent either directly or indirectly (e.g. via the stormwater system) to the river, a dewatering management plan, demonstrating that the dewatering effluent discharge standards contained within Department of Biodiversity, Conservation and Attractions Policy Statement 50: Planning for dewatering affecting the Swan Canning Development Control Area will be met, is to be approved by the Department of Biodiversity, Conservation and Attractions. The applicant is advised that the Department of Biodiversity, Conservation and Attractions is unlikely to support the connection of subsoil drains, if required, to the local government stormwater system and the river without treatment onsite prior to discharge.
- e. With regard to condition 12, the applicant is advised that any landscaping located within the current and proposed Canning Highway Primary Regional Road Reservation, as shown in plan 201232-0159-1, must ensure temporary landscaping is limited and maintained to a mature height of 1 metre, and sight lines are maintained at all times to ensure driver and pedestrian safety.

Landscaping on the Stirling Highway boundary is to be relocated to be entirely within the property boundaries.

- f. With regard to condition 17, the tree management and protection plan is to incorporate the recommendations outlined in section 7 of the Stage 1: Preliminary Tree Survey Report (dated November 2021) prepared by The Arbor Centre Consultancy.
- g. With regard to condition 18, the applicant is advised the stormwater management system shall be designed to prevent mobilisation of sediment, nutrients and contaminants from the site into the river system. Stormwater from the proposed development should be managed in accordance with Department of Biodiversity, Conservation and Attractions Policy Statement 49: Planning for Stormwater Management Affecting the Swan Canning Development Control Area, the Department of Water and Environmental Regulation's Stormwater Management Manual for Western Australia (2004-2007) and Decision Process for Stormwater Management in Western Australia (2017) and water-sensitive urban-design principles. It is recommended that the biofilters are designed in accordance with the: Adoption Guidelines for Stormwater Biofiltration Systems (Payne et al. 2015) and the

*Vegetation Guidelines for Stormwater Biofilters in the South-West of Western Australia (Monash University 2014).*

*Stormwater runoff from constructed impervious surfaces generated by small rainfall events (i.e. the first 15 mm of rainfall) must be retained and/or detained at-source as much as practical and will not be permitted to enter the river untreated.*

- h. With regard to condition 21, the applicant is advised:*
- i. investigations and remediation are to be carried out in compliance with the Contaminated Sites Act 2003 and current Department of Water and Environmental Regulation contaminated sites guidelines.*
  - ii. in accordance with regulation 31(1)(c) of the Contaminated Sites Regulations 2006, a mandatory auditor's report, prepared by an accredited contaminated sites auditor, will need to be submitted to the Department of Water and Environmental Regulation as evidence of compliance. A current list of accredited auditors is available from [www.dwer.wa.gov.au](http://www.dwer.wa.gov.au).*

*The auditor may submit, as appropriate, interim reports throughout the construction process, with the final report being submitted prior to the commencement of use.*

- i. With regards to condition 22, the applicant shall submit a Sediment and Erosion Plan to the Department of Biodiversity, Conservation and Attractions for approval at least 30 days prior to commencement of works. The Sediment and Erosion Control Plan shall describe how the authorised works will be appropriately managed and implemented to minimise the risk of sedimentation or environmental impacts on nearby water bodies and/or reserves during the work.*
- j. In relation to condition 25, the plan is to capture the that the community benefits are to be protected by easement to provide unconstrained public access and suitable public liability, or an such alternative that achieves an equivalent outcome.*
- k. With regard to condition 27, the Parking and Operational Management Plan is to include details on the following, and be reflected in the working drawings, where applicable:*
  - i. Access to the Level 1 basement for commercial and residential visitors' parking bays is not restricted or prevented at any time;*
  - ii. The identification of any ACROD bays;*
  - iii. The management of reciprocal car bays between commercial tenancy and residential visitor parking bays;*
  - iv. The allocation and management of parking bays for the commercial tenancies;*
  - v. Effective and safe management of traffic movements in, out and within the car parking areas;*

- vi. *The designation of parking, loading, delivery and waste management areas;*
  - vii. *Procedures for the delivery of goods and services to the commercial tenancies; and*
  - viii. *security and noise management for the operation of the commercial tenancies.*
- l. With regard to condition 30, the applicant must be in receipt of works within the road reserve approval from Main Roads WA and/or the Town of East Fremantle (as relevant) prior to undertaking any works within the reserve:*
- m. *Disabled access is required to be achieved from the ultimate road design (widened road reserve) to the building in accordance with the Disability Discrimination Act 1992. This advice note has been included to ensure the applicant/landowner and building certifier are aware that disabled access is required to be achieved from the widened road reserve and associated altered ground level surfaces. This matter shall be addressed at the Building Application stage.*
  - n. *The applicant is advised that all stockpiled material is to be suitably bunded or covered, or similar, to prevent sediment-laden run-off from entering the river, waterway or stormwater system.*
  - o. *The applicant is advised that in the event that the development reaches the water table during development works, a groundwater management plan shall be submitted to the satisfaction of the Western Australian Planning Commission, on the advice of the Town of East Fremantle and the Department of Biodiversity, Conservation and Attractions.*
  - p. *The applicant is advised that any redundant crossovers and kerbs are to be removed, and the verge reinstated.*
  - q. *The existing verge levels at the property boundary and trees within the road reserve shall not be altered without prior approval of the Town of East Fremantle.*
  - r. *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.*

## **AMENDING MOTION**

### **REASON:**

Members discussed the applicants request to amend the timeframe for substantial commencement of Condition 1 from 24 months to 36 months, due to the ongoing known delays in the construction industry and moved to amend Condition 1 to 36 months.

**Moved by** Ms Bennett

**Seconded by** Cr Knight

*Approval Timeframe*

1. *This decision constitutes planning approval only and is valid for a period of 36 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 amending motion was put and carried**

#### **AMENDING MOTION**

##### **REASON:**

Members moved a motion amend Condition 24 and 24a) to remove the words *"including the entrance court (labelled as vestibule on the plans)"*

**Moved by Ms Bennett**

**Seconded by Ms Craigie**

24. *Prior to the occupation of the development, the owner shall register on the Certificate of Title for the lot(s) a restrictive covenant, to the benefit of the local government, for all proposed lot(s) that contain a local community benefit being the public open space, pedestrian access on the ground floor, advising of the existence of a restriction on use of the land. The restrictive covenant is to state:*

- a) *details of the community benefits of the public open space, pedestrian access on the ground floor; and*
- b) *that use of the public open space is restricted to the approved community benefit, unless otherwise approved.*

**The amending motion was put and carried**

#### **AMENDING MOTION**

##### **REASON:**

Members moved a motion to amend Condition 35 to remove point c) *"All public art is to be maintained in perpetuity"*.

**Moved by Ms Bennett**

**Seconded by Mr McKirdy**

35. *Prior to the occupation of the development, the owner shall register on the Certificate of Title(s) notifications pursuant to Section 70A of the Transfer of Land Act 1893. Notice of these notifications is to be included on the diagram or plan of survey (deposited plan). The notifications are to state as follows:*

- a) *The lots are situated in the vicinity of a transport corridor and are currently affected, or may in the future be affected, by transport noise; and*
- b) *The property is located within Area 2 of the Fremantle Port Buffer Zone where noise, odour, light spill and other factors might arise from the normal operations of a 24-hour working port.*

*The notifications are to be registered at the applicant/owner's expense, to the satisfaction of the Western Australian Planning Commission.*

## **The amending motion was put and carried**

### **SUBSTANTIVE RESOLUTION**

Members noted the comfort in supporting the application at Item 13.1 and approval given the compliance of the proposal and intersection with the East Fremantle Town Planning Scheme, the housing diversity for the site, community benefit and the importance of the redevelopment in a key location and resolved to approve the development.

*That the Western Australian Planning Commission resolves to APPROVE development application reference SOAU-023-20 and accompanying plans and documents (date stamped 28 February 2023) for the proposed apartments, office, cafe and public open space at Lots 418 (91) and 419 (93) Canning Highway, Lot 81 (70) St Peters Road and Lot 423 King Street, East Fremantle, in accordance with s.274 of the Planning and Development Act 2005, subject to the following conditions:*

#### *Conditions*

##### *Approval Timeframe*

- 1. This decision constitutes planning approval only and is valid for a period of 36 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 28 February 2023) attached to this approval, final details of which are to be submitted at working drawings stage to the satisfaction of the Western Australian Planning Commission.*
- 3. Prior to the occupation of the development, arrangements are made for Lots 418 and 419 Canning Highway, Lot 81 St Peters Road and Lot 423 King Street, East Fremantle to be legally amalgamated on one Certificate of Title, or such other alternative, at the expense of the owner to the satisfaction of the Western Australian Planning Commission.*
- 4. Prior to the submission of the relevant building permit application, arrangements are made detailing an acceptable alignment of the large diameter gravity sewer (ON685 Fremantle Main Sewer) satisfying the applicable technical guidelines, including a replacement easement, for asset protection to the satisfaction of the Western Australian Planning Commission, on advice from the Water Corporation.*

##### *Clearance of Conditions of Approval*

- 5. A copy of the final working drawings (prepared for submission of a building permit application) and all associated plans, reports and information that address the conditions of approval are to be*

*submitted to, and cleared by, the Western Australian Planning Commission.*

**Construction**

6. *Prior to the commencement of development, a dilapidation report prepared by a suitably qualified professional shall be submitted to, and approved by, the Western Australian Planning Commission on advice of the Town of East Fremantle, detailing the current condition and status of all buildings, surrounding paved areas and ancillary structures located on, but not limited to, the following properties:*

- 59 Canning Highway, East Fremantle*
- 80 Canning Highway, East Fremantle*
- 83 Canning Highway, East Fremantle*
- 1 Sewell Street, East Fremantle*
- 7 Sewell Street, East Fremantle*
- 10 Sewell Street, East Fremantle*
- 12 Sewell Street, East Fremantle*
- 9 King Street, East Fremantle*
- 11 King Street, East Fremantle*

*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 owners of the reason for the survey and that these steps have failed. Dilapidation reports shall be prepared to the satisfaction of the Western Australian Planning Commission.*

7. *Prior to the submission of the relevant demolition or building permit application, 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 East Fremantle and Main Roads WA, addressing but not limited to:*

- a) management of construction traffic, including potential impacts on the local and regional road network;*
- b) site access I egress, internal movement and holding of heavy vehicles and contractor parking;*
- c) deliveries and storage of construction materials and machinery;*
- d) management of construction vibration, dust and erosion;*
- e) management of construction noise and other site generated noise;*
- f) investigation and management of acid sulphates soils;*
- g) management of any site dewatering or stormwater discharge;*

- h) temporary fencing, hoardings, gantries and signage;*
- i) protection of public realm infrastructure adjacent to the site;*
- j) public communication and complaint handling procedures; and*
- k) management of pedestrian and cycling access around the site.*

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

#### *Design and Materials*

- 8. Prior to the occupation of the development, the applicant shall supply certification of compliance by an architect or engineer confirming that the development has incorporated the Fremantle Inner Harbour Definition Study Buffer Area 2 built form requirements to the satisfaction of the Western Australian Planning Commission.*
- 9. The development is to be constructed with high quality and durable external materials and finishes, consistent with the approved Development Plans (other than as amended by conditions of approval), with final details submitted to and approved by the Western Australian Planning Commission, prior to submission of the relevant building permit applications.*
- 10. Prior to the occupation of the development, all fencing and blank walls at ground level are to be treated with a non-sacrificial anti-graffiti coating to discourage potential graffiti, to the satisfaction of the Western Australian Planning Commission. The anti-graffiti coating is to be reapplied in the event of any graffiti being removed.*
- 11. Prior to the submission of the relevant building permit application, a Wind Assessment Report is to be submitted and approved by the Western Australian Planning Commission. The final plans are to be certified by a qualified engineering consultant confirming the development incorporates the recommendations prior to submission of the relevant building permit application.*

#### *Landscape and Public Realm*

- 12. Prior to the submission of the relevant building permit application, final landscape plans and specifications for the subject site, 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 East Fremantle and Main Roads Western Australia.*
- 13. 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.*
- 14. Prior to the occupation of the development:*
  - a) public art concept for the subject development to the value of 1.0% of the construction value must be submitted to, and*



*approved by, the Western Australian Planning Commission on advice from the Town of East Fremantle; and*

*b) the approved public art shall be installed by the developer and maintained thereafter by the owners of the development, to the satisfaction of the Western Australian Planning Commission.*

*15. Prior to the submission of the relevant building permit application, a Signage Strategy shall be submitted to and approved by the Western Australian Planning Commission, on the advice of the Town of East Fremantle. Once approved, the installation of any external signage must be in accordance with the approved Signage Strategy Plan.*

*16. Prior to the submission of the relevant building permit application, a Lighting Strategy detailing lighting of the building exterior and ground floor public areas to enhance building features, amenity and security is to be submitted to and approved by the Western Australian Planning Commission, and thereafter implemented by the owner and operator of the development.*

*17. Prior to the commencement of development:*

*a) all retained trees on site and trees within an adjacent road reserve are to be protected from damage throughout any development works with a tree protection zone being established and maintained during the construction period in accordance with the Australian Standard AS4970-2009 - Protection of Trees on Development Sites.*

*b) an Arboriculture Report shall be prepared by a suitably qualified professional at the developer/owner's cost providing details of the required tree protection zone and demonstrating how the development will be undertaken to mitigate impacts on trees, with the report being submitted to, and approved by, the Western Australian Planning Commission on advice from the Town of East Fremantle.*

#### *Sustainability and Water*

*18. Prior to the submission of the relevant building permit application, a Stormwater Management Plan shall be submitted to and approved by the Western Australia Planning Commission, on advice from the Town of East Fremantle and Main Roads Western Australia demonstrating that all stormwater can be retained on site.*

*19. The proposed development to be designed and constructed to achieve a minimum 5-star Green Star rating, or equivalent. Prior to the submission of the relevant building permit application, the applicant is to submit a final sustainability report demonstrating how this is to be achieved and confirming the final strategy. The accepted sustainability initiatives shall be incorporated into the development and thereafter maintained by the owners.*

*20. Prior to the occupation of the development, the final plans shall be verified by a qualified consultant confirming that the development incorporates the measures and recommendations outlined in the*

*approved sustainability report (or equivalent) have been implemented to the satisfaction of the Western Australian Planning Commission.*

- 21. Prior to the commencement of development, investigation for soil and groundwater contamination is to be carried out at Lot 418 to determine if remediation is required. Any remediation required shall be completed prior to completion of construction to the satisfaction of the Western Australian Planning Commission, on advice from the Department of Water and Environmental Regulation.*
- 22. Prior to commencement of development, the applicant is to submit a Sediment and Erosion Control Plan to the satisfaction of the Western Australian Planning Commission, on advice from the Department of Water and Environmental Regulation. Once approved, the Sediment and Erosion Control Plan shall be thereafter implemented as part of the development and works.*
- 23. No pool water/backwash from the swimming pool or water feature is to be discharged onto the land or into the river or local government drainage system.*

#### *Community Benefit*

- 24. Prior to the occupation of the development, the owner shall register on the Certificate of Title for the lot(s) a restrictive covenant, to the benefit of the local government, for all proposed lot(s) that contain a local community benefit being the public open space, pedestrian access on the ground floor, advising of the existence of a restriction on use of the land. The restrictive covenant is to state:
  - a) details of the community benefits of the public open space, pedestrian access on the ground floor; and*
  - b) that use of the public open space is restricted to the approved community benefit, unless otherwise approved.**
- 25. Prior to the occupation of the development, a Community Benefits Management Plan shall be developed, for the public open space, pedestrian access including the entrance court (labelled as vestibule on the plans), addressing the following matters:
  - a) The hours of public accessibility;*
  - b) The manner that these benefits are made available to the public in perpetuity for the life of the development;*
  - c) ongoing maintenance and public liability; and*
  - d) Any other matter deemed relevant.**

*The Plan shall be submitted to the Western Australian Planning Commission for approval, be implemented and adhered to all times and shall be distributed to nearby landowners and occupiers for information purposes, to the satisfaction of the Western Australian Planning Commission on advice from the Town of East Fremantle.*

- 26. Prior to the commencement of development, A photographic archival record of the place is to be prepared by a suitably qualified*

*heritage consultant, to the satisfaction of the Western Australian Planning Commission.*

*Transport, Access, and Parking*

- 27. Prior to the occupation of the development a Parking and Operational Management Plan addressing the shared arrangement of non-residential parking bays, visitor parking access and allocation, and management of deliveries is to be submitted to and approved by the Western Australian Planning Commission, on advice from the Town of East Fremantle and the Department of Transport. 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.*
- 28. Prior to the occupation of the development a green travel plan outlining strategies to encourage alternative forms of transport such as ride-sharing and electric bike/scooter, electric vehicle charging implementation and the maintenance and management of end of trip facilities including the provision of a minimum of two lockers per bicycle bay for staff, is to be provided to the satisfaction of the Western Australian Planning Commission, on advice from the Town of East Fremantle and the Department of Transport.*
- 29. Prior to the occupation of the development, all car parking spaces, access aisles, loading bays and bicycle parking shall be designed, constructed and marked to the specifications of the Town of East Fremantle and in accordance with the Australian Standard for Off-street Car Parking (AS/NZS2890.1 2004), Parking Facilities On-Street Parking (AS/NZ 2890.5), Off-street Parking for People with Disabilities (AS/NZS2890.6 2009), Off-street Commercial Vehicle Facilities (AS2890.2:2002) and Off-street carparking - Bicycles (AS2890.3) and thereafter maintained by the owners of the development, to the satisfaction of the Western Australian Planning Commission.*
- 30. Prior to the occupation of the development, suitable arrangements are made for the footpaths on Canning Highway, Sewell Street, St Peters Road and the dual use path on the eastern boundary to be upgraded and the proposed on-street parking bays to be constructed at the developer's cost to the satisfaction of the Western Australian Planning Commission on the advice and specification of Main Roads Western Australia and the Town of East Fremantle.*

*Noise and Operational Management*

- 31. All of the recommended measures included in the Acoustic Report prepared by Stantec Australia, date stamped 28 February 2023 (Ref: 301250644), are to be implemented in full, with the final plans being certified by a qualified acoustic consultant to confirm the development incorporates the recommendations prior to submission of the relevant building permit application.*
- 32. Prior to 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.*

*33. Prior to the commencement of the Restaurant/Cafe land use, a final Acoustic Report is to be submitted to and approved by the Western Australian Planning Commission, on the advice from the Town of East Fremantle and Main Roads WA. The recommendations outlined in the approved Acoustic Report is to be implemented and maintained accordingly.*

*34. Prior to the submission of the relevant building permit application, the Waste Management Plan prepared by Encyle Consulting date stamped 28 February 2023 shall be updated to address in greater detail the location of bin services, hours of operation and management of waste to the satisfaction of the Western Australian Planning Commission on advice from the Town of East Fremantle. 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*

#### *Notifications on Title*

*35. Prior to the occupation of the development, the owner shall register on the Certificate of Title(s) notifications pursuant to Section 70A of the Transfer of Land Act 1893. Notice of these notifications is to be included on the diagram or plan of survey (deposited plan). The notifications are to state as follows:*

- a) The lots are situated in the vicinity of a transport corridor and are currently affected, or may in the future be affected, by transport noise; and*
- b) The property is located within Area 2 of the Fremantle Port Buffer Zone where noise, odour, light spill and other factors might arise from the normal operations of a 24-hour working port.*

*The notifications are to be registered at the applicant/owner's expense, to the satisfaction of the Western Australian Planning Commission.*

#### *Other*

*36. Any proposed air-conditioning condensers, external building plant, piping, ducting, transformers and fire control rooms shall be integrated into the design of the buildings and located or screened to minimise any visual and noise impact on nearby residents, businesses and the 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, prior to the submission of the relevant building permit application.*

*37. External clothes drying facilities shall be screened from view from the street or any other public place.*

*Advice Notes*

- a. *This constitutes 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.*
- b. *Anyone proposing to carry out construction or excavation works must contact 'Dial Before You Dig' ([www.1100.com.au](http://www.1100.com.au)) to determine the location of buried gas infrastructure. Refer to ATCO document AGA-O&M-PR24- Additional Information for Working Around Gas Infrastructure <https://www.atco.com/en-au/for-home/natural-gas/wa-gas-network/working-around-gas.html>.*
- c. *With regard to condition 3, the applicant/landowner is advised that any future freehold or strata subdivision is to account for the road widening requirement of the Canning Highway Primary Regional Road Reserve affecting Lots 418 and 419 Canning Highway, as shown on the plan 201232-0159-1. Any road widening areas are to be set out on a plan of survey (deposited plan) and may be required to be ceded free of cost on advice from Main Roads WA.*
- d. *With regard to condition 7(g), in the event it is proposed to dewater effluent either directly or indirectly (e.g. via the stormwater system) to the river, a dewatering management plan, demonstrating that the dewatering effluent discharge standards contained within Department of Biodiversity, Conservation and Attractions Policy Statement 50: Planning for dewatering affecting the Swan Canning Development Control Area will be met, is to be approved by the Department of Biodiversity, Conservation and Attractions. The applicant is advised that the Department of Biodiversity, Conservation and Attractions is unlikely to support the connection of subsoil drains, if required, to the local government stormwater system and the river without treatment onsite prior to discharge.*
- e. *With regard to condition 12, the applicant is advised that any landscaping located within the current and proposed Canning Highway Primary Regional Road Reservation, as shown in plan 201232-0159-1, must ensure temporary landscaping is limited and maintained to a mature height of 1 metre, and sight lines are maintained at all times to ensure driver and pedestrian safety.*

*Landscaping on the Stirling Highway boundary is to be relocated to be entirely within the property boundaries.*
- f. *With regard to condition 17, the tree management and protection plan is to incorporate the recommendations outlined in section 7 of the Stage 1: Preliminary Tree Survey Report (dated November 2021) prepared by The Arbor Centre Consultancy.*
- g. *With regard to condition 18, the applicant is advised the stormwater management system shall be designed to prevent mobilisation of sediment, nutrients and contaminants from the site into the river system. Stormwater from the proposed development should be managed in accordance with Department of Biodiversity, Conservation and Attractions Policy Statement 49: Planning for*

*Stormwater Management Affecting the Swan Canning Development Control Area, the Department of Water and Environmental Regulation's Stormwater Management Manual for Western Australia (2004-2007) and Decision Process for Stormwater Management in Western Australia (2017) and water-sensitive urban-design principles. It is recommended that the biofilters are designed in accordance with the: Adoption Guidelines for Stormwater Biofiltration Systems (Payne et al. 2015) and the Vegetation Guidelines for Stormwater Biofilters in the South-West of Western Australia (Monash University 2014).*

*Stormwater runoff from constructed impervious surfaces generated by small rainfall events (i.e. the first 15 mm of rainfall) must be retained and/or detained at-source as much as practical and will not be permitted to enter the river untreated.*

- h. With regard to condition 21, the applicant is advised:*
  - i. investigations and remediation are to be carried out in compliance with the Contaminated Sites Act 2003 and current Department of Water and Environmental Regulation contaminated sites guidelines.*
  - ii. in accordance with regulation 31(1)(c) of the Contaminated Sites Regulations 2006, a mandatory auditor's report, prepared by an accredited contaminated sites auditor, will need to be submitted to the Department of Water and Environmental Regulation as evidence of compliance. A current list of accredited auditors is available from [www.dwer.wa.gov.au](http://www.dwer.wa.gov.au).*

*The auditor may submit, as appropriate, interim reports throughout the construction process, with the final report being submitted prior to the commencement of use.*

- i. With regards to condition 22, the applicant shall submit a Sediment and Erosion Plan to the Department of Biodiversity, Conservation and Attractions for approval at least 30 days prior to commencement of works. The Sediment and Erosion Control Plan shall describe how the authorised works will be appropriately managed and implemented to minimise the risk of sedimentation or environmental impacts on nearby water bodies and/or reserves during the work.*
- j. In relation to condition 25, the plan is to capture the that the community benefits are to be protected by easement to provide unconstrained public access and suitable public liability, or an such alternative that achieves an equivalent outcome.*
- k. With regard to condition 27, the Parking and Operational Management Plan is to include details on the following, and be reflected in the working drawings, where applicable:*
  - i. Access to the Level 1 basement for commercial and residential visitors' parking bays is not restricted or prevented at any time;*
  - ii. The identification of any ACROD bays;*

- iii. *The management of reciprocal car bays between commercial tenancy and residential visitor parking bays;*
  - iv. *The allocation and management of parking bays for the commercial tenancies;*
  - v. *Effective and safe management of traffic movements in, out and within the car parking areas;*
  - vi. *The designation of parking, loading, delivery and waste management areas;*
  - vii. *Procedures for the delivery of goods and services to the commercial tenancies; and*
  - viii. *security and noise management for the operation of the commercial tenancies.*
- l. With regard to condition 30, the applicant must be in receipt of works within the road reserve approval from Main Roads WA and/or the Town of East Fremantle (as relevant) prior to undertaking any works within the reserve:*
- m. *Disabled access is required to be achieved from the ultimate road design (widened road reserve) to the building in accordance with the Disability Discrimination Act 1992. This advice note has been included to ensure the applicant/landowner and building certifier are aware that disabled access is required to be achieved from the widened road reserve and associated altered ground level surfaces. This matter shall be addressed at the Building Application stage.*
  - n. *The applicant is advised that all stockpiled material is to be suitably bunded or covered, or similar, to prevent sediment-laden run-off from entering the river, waterway or stormwater system.*
  - o. *The applicant is advised that in the event that the development reaches the water table during development works, a groundwater management plan shall be submitted to the satisfaction of the Western Australian Planning Commission, on the advice of the Town of East Fremantle and the Department of Biodiversity, Conservation and Attractions.*
  - p. *The applicant is advised that any redundant crossovers and kerbs are to be removed, and the verge reinstated.*
  - q. *The existing verge levels at the property boundary and trees within the road reserve shall not be altered without prior approval of the Town of East Fremantle.*
  - r. *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.*

**14. State Administrative Tribunal applications**

**14.1 Amendment to Approved Residential Aged Care Development - Lots 10 and 11 Betty St and Lots 18 and 19 Doonan Rd, Nedlands**

The Chairman noted that the circular on the Amendment to the Approved Residential Aged Care Development was provided to Commission members.

**15. Reports for noting**

**15.1 Western Australian Planning Commission - Part 17 Delegated Authority Decisions**

**Moved by** Ms Arnold

**Seconded by** Cr Knight

*That the Western Australian Planning Commission resolves to:*

- a. *NOTE the report summary of Western Australian Planning Commission decisions made pursuant to Part 17 of the Planning and Development Act 2005 by a delegated officer from 17 July 2020 to 31 March 2023.*
- b. *ENDORSE the presentation of a report summary of Western Australian Planning Commission decisions made pursuant to Part 17 of the Planning and Development Act 2005 by a delegated officer on a quarterly basis, or the next scheduled Part 17 Commission meeting (whichever occurs first).*

**The motion was put and carried**

**16. General business**

Nil.

**17. Meeting closure**

The Chairman made the following closing statement:

In closing this meeting, I would like to comment on and note the context of the decisions taken today and to acknowledge the varied interests in the proposals and matters raised by local community members, the broader general public and the relevant local governments.

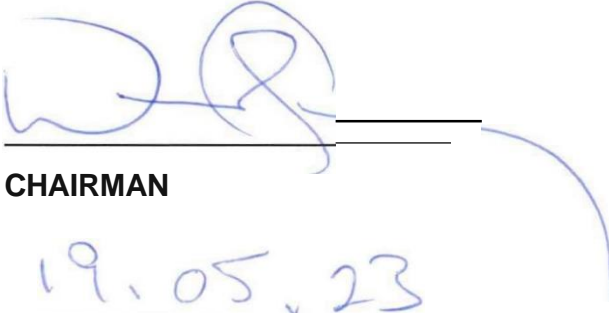
All submissions received during the advertising of these proposals were given due regard in the assessment of the matters and have been shared with Commission members for consideration in determining the application. The Commission has concluded that these concerns have been appropriately addressed in the three reports of the SDAU to the Commission.

Commission members have today resolved that the applications before them are proposals that achieve the intent and objectives of the various planning instruments and the Commission is of the view that the applications address the purpose and intent of the relevant planning frameworks. Notwithstanding current supply chain issues as far as materials and labour are concerned, the projects are 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* and that is why the Commission has approved the three applications.

There being no further business before the Board, the Chairman thanked members for their attendance and declared the meeting closed at 4:00pm.



A handwritten signature in blue ink, consisting of a large 'W' followed by a stylized 'R' and a flourish that extends to the right. Below the signature is a horizontal line.

**CHAIRMAN**

19.05.23

DATE