

## APPLICATION TO AMEND A DEVELOPMENT APPROVAL – PART 17 SIGNIFICANT DEVELOPMENT (FORM 17C)

### DELEGATED AUTHORITY

<b>Address</b>	Lot 924 (No. 71) Dandaragan Drive, Dawesville
<b>Local Government Area</b>	City of Mandurah
<b>Applicant</b>	Element Advisory
<b>Land Owner/s</b>	Coles Group Property Developments Ltd
<b>Form 17B Development Approval Details</b>	Proposed Supermarket, Shops, Liquor Store, Child Care Premises and Health Studio (Gym)
<b>Development Approval Date</b>	24 June 2021
<b>Form 17C Amended Application Details</b>	Include a condition to allow for the staging of the development
<b>Form 17C Amended Application Date</b>	6 July 2022
<b>Reporting Officer</b>	Alex Campbell, Senior Planning Officer
<b>Authorising Officer (Delegated Authority)</b>	Paola Di Perna, Planning Director, State Development Assessment Unit
<b>WAPC File No</b>	SDAU-009-20-C
<b>Report Attachments</b>	<ol style="list-style-type: none"> <li>1. Staging Plan</li> <li>2. Updated Construction Programme</li> <li>3. Applicant Amendment Justification</li> <li>4. Contractual Arrangements</li> <li>5. Easement Timeline</li> </ol>

### Officer Recommendation:

That the application to amend development approval reference SDAU-009-20 for Supermarket, Shops, Liquor Store, Child Care Premises and Health Studio (Gym) at Lot 924 (No. 71) Dandaragan Drive, Dawesville is **APPROVED** under delegated authority in accordance with s.279 of the *Planning and Development Act 2005* and the *Instrument of Delegation 2020/02 Delegation to officers of certain powers and functions of the Western Australian Planning Commission* gazetted on 17 July 2020 (as amended), with the following amended condition:

### Amended Conditions:

Condition 2 of the Approval of Form 17B Significant Development Application dated 8 July 2021 (SDAU-009-20) is amended to read:

2. The development shall be undertaken in accordance with the approved plans and documents date-stamped 26 May 2021 and staging plan date-stamped 15 July 2022 attached to this approval, final details of which are to be provided at working drawings stage to the satisfaction of the Western Australian Planning Commission with the following modification:
  - a. The northernmost car parking shade structure be modified to remove the proposed cover over the depicted landscape area and nearby car bays.

Condition 11 of the Approval of Form 17B Significant Development Application dated 8 July 2021 (SDAU-009-20) is amended to read:

11. Prior to the occupation of either building within stage two of the proposed development, whichever occurs first, an access easement shall be placed on the certificate of title of Lot 924, for the benefit of the adjacent Lot 9043 for the purpose of providing vehicular and pedestrian access. The easement shall apply across the portion of two-way access on Lot 924 commencing from Bailey Boulevard, which links at right angle into the single accessway along the southern boundary of Lot 924 connecting to Cocklebidy Gate, to the satisfaction of the Western Australian Planning Commission. The easement shall be established at the owner/developer's expense and lodged with the Registrar of Titles for endorsement on the certificate of titles.

### **Background:**

On 8 July 2021, the Western Australian Planning Commission (WAPC) granted conditional development approval for a Supermarket, Shops, Liquor Store, Child Care Premises and Health Studio (Gym) at Lot 924 (No. 71) Dandaragan Drive, Dawesville (the subject site), under Part 17 of the *Planning and Development Act 2005*. A key factor in the WAPCs consideration of the proposed development was the application was not to be staged.

In July 2021 the applicant submitted a clearance request for building works associated with the shopping centre, specialty tenancies, car parking areas and landscaping of the proposed development on the basis that the subsequent clearing request for the health studio and child care premises would be submitted shortly after. The construction of the shopping centre component is well underway, however, the working drawings for the health studio (gym) and child care premises has not been progressed to the extent as originally anticipated. This has resulted in the need for the application to be staged.

Following discussions with officers of the State Development Assessment Unit (SDAU) the applicant submitted a Form 17C application seeking approval to amend the development approval to allow the proposal to be undertaken in two stages.

### **Proposal:**

The applicant seeks approval to amend a significant development approval by amending condition 2 of the determination notice which relates to the conformity of plans. The condition will be amended to include a staging plan that was submitted by the applicant on 15 July 2022 (**Attachment 1** – Staging Plan). The proposal seeks to phase the development as follows:

- Stage one: shopping centre, specialty tenancies, car parking areas, road works and landscaping components.
- Stage two: health studio and child care premises.

The applicant has outlined in the documentation submitted with this Form 17C application detailing:

- the challenges faced by the project team in delivering the development as a whole;
- the intended staging of the development through the provision of an updated construction programme (**Attachment 2** – Construction Programme);
- the economic benefit of the development taking into account the delivery of the proposed development in two stages; and
- existing contractual agreements put in place for the delivery of the child care premises and the leasing of the premises to demonstrate the genuine intent to development this component of the proposal (**Attachment 3** – Applicant Cover Letter, **Attachment 4** – Contractual Arrangements).

In light of the proposed staging, all the conditions of the development approval were reviewed to ensure that there would be no unintended consequences. It was identified that Condition 11 could be clarified given the wording of the condition, which reads as follows:

*Prior to the occupation of the development, an access easement shall be placed on the certificate of title of Lot 924, for the benefit of the adjacent Lot 9043 for the purpose of providing vehicular and pedestrian access. The easement shall apply across the portion of two-way access on Lot 924 commencing from Bailey Boulevard, which links at right angle into the single accessway along the southern boundary of Lot 924 connecting to Cocklebiddy Gate, to the satisfaction of the Western Australian Planning Commission. The easement shall be established at the owner/developer's expense and lodged with the Registrar of Titles for endorsement on the certificate of titles.*

### **Legislation:**

The introduction of Part 17 into the *Planning and Development Act 2005* (PD Act) temporarily established the Western Australian Planning Commission (WAPC) as the decision-making authority for applications for significant development, to support the State's economic recovery from the COVID-19 pandemic.

Other than the *Environmental Protection Act 1986*, the WAPC is not bound by any planning or non-planning law, rule or other requirement when determining applications under Part 17. However, the WAPC must have due regard to the purpose and intent of any applicable planning scheme, orderly and proper planning, the preservation of amenity, the need to facilitate development in response to the economic effects of the COVID-19 pandemic, and any relevant State planning policies or policies of the WAPC.

In accordance with s.279 within Part 17, an owner or applicant can apply to the WAPC to:

- amend the substantial commencement period; or
- amend or remove any of the conditions imposed on the approval; or
- amend any part or aspect of the approved development; or
- amend the approval in any other way; or
- cancel the approval.

In accordance with s.279, an application to amend a development approval cannot:

- substantially change the approved development; or
- result in the approved development no longer being significant development.

### **Consultation:**

#### Minister for Planning

Consultation with the Minister for Planning on the amendment application was not undertaken in this instance as the Minister did not provide comments during the previous consultation period and the proposed amendment does not propose any physical changes to the approved development.

#### State Government Agencies

Consultation with regulatory agencies on the amendment application was not undertaken in this instance as the proposed staging of the development does not propose any physical changes to the approved development.

#### Consultation with the Local Government

In accordance with s.276(4) of the PD Act, the application was referred to the City of Mandurah (the City) for comment as they previously raised concern with the development.

The City raised no objection to the recommended amendment to Condition 2 to allow a staging plan to form part of the approved plans. As part of its advice to the SDAU, the City reiterated its concern that the delivery of the development is critical in the creation of a main-street outcome for this part of the precinct and requested assurances that the whole of the development will be delivered in a timely manner.

In response the SDAU advised the City that the applicant submitted a signed letter of intent (LOI) between Coles Group and a building contractor to initiate the works component for the child care premises and the health studio (gym) as well as a signed lease agreement between Coles Group and the future operator of the child care premises. In addition, the applicant provided the City the updated construction programme which specifies an October 2022 start date for state two of the development.

Following a review of this advice the City advised it has no objection to the staging of the development noting that there is broad community expectation that the shopping centre will be open soon.

### Public Consultation

Public consultation on the amended application was not undertaken in this instance as the proposed modification to the condition does not present physical changes to the approved development.

### **Assessment:**

The proposed amendments to the development approval have been assessed against the key considerations for the determination of applications under the PD Act Part 17, as follows:

### The Purpose and Intent of the Local Planning Scheme

#### *Scheme Objectives*

The development application was initially assessed against the City's now superseded Local Planning Scheme No. 3 (LPS 3). The LPS 3 objectives that were relevant at the time of assessment included:

- (a) to provide the framework for the management of land use and development processes for land within the district.*
- (b) to secure the amenity and health of the inhabitants living within, and visitors to, the district. To secure effective provision of services and infrastructure for the inhabitants of, and visitors to, the City of Mandurah....*

At the time of determination LPS 12 was considered a seriously entertained planning proposal and was given regard in the assessment of the application. LPS 12 was gazetted on 11 April 2022 and includes the relevant purposes:

- (d) control and guide development including processes for the preparation of structure plans and local development plans; and*
- (e) set out procedures for the assessment and determination of development applications...*

The zoning of the land has changed from 'Urban Development' under LPS3 to 'Neighbourhood Centre' under LPS 12. Under both these zones development is guided by the provisions of the Florida Outline Development Plan (ODP).

The proposed staging of the development will not alter the previously approved works or land use. In this regard, the assessment against the Florida ODP and other scheme requirements have largely remained unchanged, noting that the car parking assessment of the child care premises was based on the provisions of the then draft LPS 12.

In light of the above, the proposed amendment is considered to meet the purpose and intent of the LPS 12.

### Orderly and Proper Planning and Preservation of Amenity

#### *Condition 2 – Staging Plan*

The proposed amendment does not alter the approved development. The applicant has submitted a staging plan that shows the development being completed in two separate stages (**Attachment 1**). The first stage includes the development of the shopping centre, parking areas, road works, landscaping and improvements to the surrounding road network. The second stage relates to the health studio and child care premises. To allow for the inclusion of the staging plan it is recommended that the wording of Condition 2 be revised as follows:

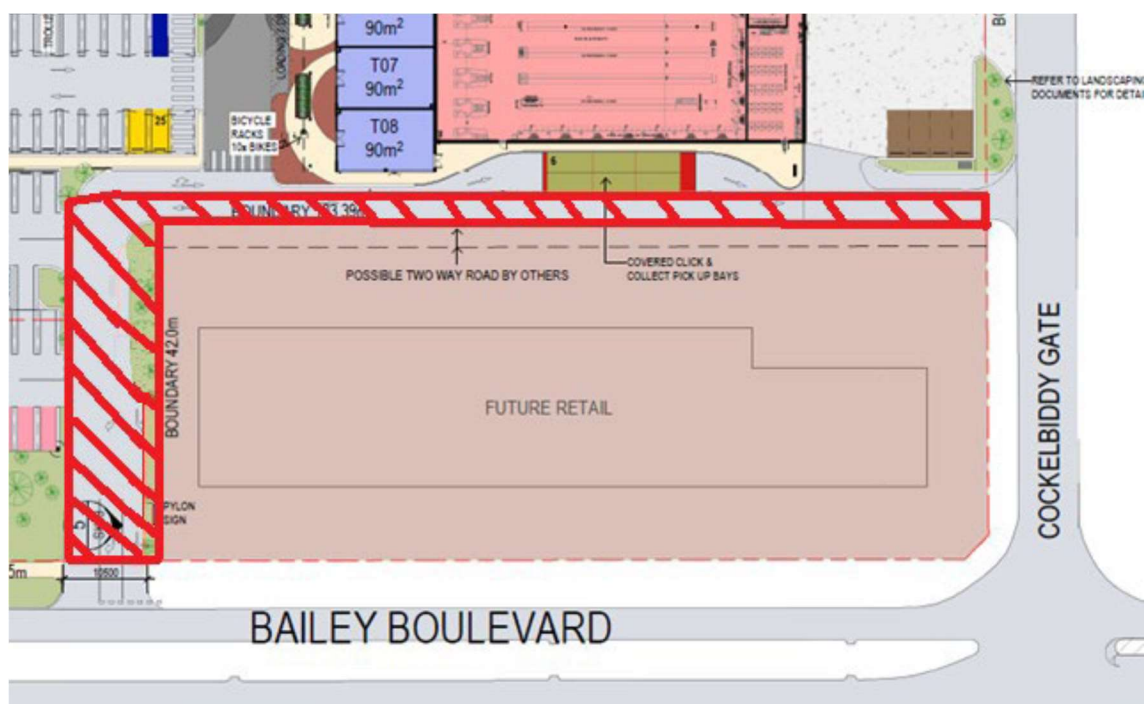
2. *The development shall be undertaken in accordance with the approved plans and documents date-stamped 26 May 2021 and the staging plan date stamped 15 July 2022 attached to this approval, final details of which are to be provided at working drawings stage to the satisfaction of the Western Australian Planning Commission with the following modification:*
  - a. *The northernmost car parking shade structure be modified to remove the proposed cover over the depicted landscape area and nearby car bays.*

The associated advice note will remain unchanged.

The amendments do not present any changes to traffic, noise, overshadowing or other local amenity considerations to that which were considered with the development approval. The proposed amendment to stage the development is therefore considered consistent with orderly and proper planning.

#### *Condition 11 – Easement*

Condition 11 established the provision of an easement on the certificate of title of Lot 924, for the benefit of the adjacent Lot 9043 to secure vehicle and pedestrian access in the areas depicted in the image below.



The current condition 11 was intended to be satisfied prior to occupation of the development as a whole. With the introduction of a staging plan through the amendment to condition 2, the timing and execution of the easement is no longer bound to the whole of the development. The applicant has provided a timeline outlining the correspondence between Coles Group and the landowners of Lot 9043 demonstrating that meaningful and ongoing efforts to finalise the easement documents required for condition 11 (**Attachment 5 – Easement Timeline**).

The inclusion of the easement on the title is not considered fundamental to the operation of the development of stage one, as such, it is considered reasonable to defer the execution of the condition to stage two of the development. In this regard, it is recommended that condition 11 be modified to require the registration of the easement prior to the occupation of the buildings associated with stage two of the development.

#### State Planning Policies and Policies of the WAPC

The inclusion of a staging plan does not change the development and does not require a reassessment against relevant State Planning Policies as these have been considered as part of the initial assessment.

#### Response to the Economic Effects of the COVID-19 Pandemic

The initial economic assessment estimated the development will:

- Create approximately 250 jobs during construction.
- Create more than 120 ongoing operational jobs associated with the supermarket, health studio and childcare tenancies, with additional opportunities within the supporting specialty retail tenancies.
- Represent \$19.425 million of direct investment during the construction phase.

The applicant provided an updated economic assessment for the supermarket which includes:

- 100 of the total ongoing operational jobs to the proposed Coles supermarket, which would be supplemented by additional opportunities within the associated specialty retail tenancies; and
- \$14 million of the total construction cost to the main shopping centre building and associated car parking and servicing areas, which far exceeds the minimum \$5 million threshold for consideration under Part 17 of the PD Act.

The above figures represented over 83 percent of the total ongoing job creation and over 70 percent of the total direct investment by Coles that was originally considered by the WAPC. Since the approval was issued, the applicant notes that these figures have been updated to show that:

- The supermarket will employ 120 staff the Coles, including 60 from the local community, and
- Construction cost of the shopping centre has increased by approximately \$500,000 from the initial estimates.

By contrast, the applicant contends that the childcare and health studio (gym) components are expected to result in only 20-30 additional jobs and approximately \$6.5 million of direct investment by Coles, which represents a relatively small portion of the total economic contribution that will be realised through the project.

The justification provided by the applicant is considered reasonable given the significant challenges faced by the construction industry due to supply chain issues, material shortages and lack of available trades.

While the City's concerns on the timing of the delivery of stage two are acknowledged, the applicant has demonstrated through the provisions of existing contractual arrangements that stage two will be delivered within a reasonable timeframe and still represent a shovel ready proposal that will contribute to the Covid-19 economic recovery.

**Conclusion:**

The application to amend a significant development approval proposes a modification to the wording of condition 2 to allow for the inclusion of a staging plan. In addition, it is recommended that the wording of condition 11 be amended to require the registration of an easement on title prior to the occupancy of stage two. The proposed amendments do not modify any aspect of the proposal that could be considered fundamental to the WAPC's determination of the development application.


As detailed above, the application to amend condition 2 and condition 11 is considered to be in accordance with the relevant considerations of Part 17 of the *Planning and Development Act 2005* and is therefore recommended for conditional approval.



Reporting Officer  
Senior Planning Officer

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Paola Di Perna  
Planning Director  
State Development Assessment Unit

Officer exercising delegated  
authority:



05/ 08/ 2022

Director General

☒ Approved  
☐ Not approved  
☐ Noted