

30 August 2022

Our Ref: C2285-05

Western Australian Planning Commission
Locked Bag 2506
PERTH WA 6000

Dear Sir/Madam

**EXTENSION OF TIME FOR SUBSTANTIAL COMMENCEMENT
APPROVED RESIDENTIAL AGED CARE FACILITY
LOTS 177-179 (#16-20) DUNCAN STREET, VICTORIA PARK (SDAU-024-20)**

Hidding Urban Planning acts for Burswood Care Pty Ltd (landowner) of Lots 177-179 (#16-20) Duncan Street, Victoria Park (**Subject Land**).

Development Approval was granted by the Western Australian Planning Commission at its meeting held on 25 March 2021 for a proposed Four Storey Residential Aged Care Facility (**Proposed Development**) at the Subject Land (reference no: SDAU-024-20) (**Development Approval**).

A copy of the Development Approval is included at **Annexure 1**.

On behalf of the landowner, we now propose to amend the Development Approval to amend Condition 1 of the Development Approval to increase the time for substantial commencement of the project.

For this purpose, please find **enclosed** a completed and signed Form 17C – Application to Amend/Cancel Approval for Significant Development.

Part 17 of the Planning & Development Act 2005:

1. The State Government recently introduced a Bill to Parliament to re-open the Part 17 pathway from July 2022 to December 2023. This legislation also allows the WAPC to approve an application to extend the substantial commencement period for approved applications. We understand that this Bill was drafted to respond to challenges in the commercial construction market. The Proposed Development has also been affected by the challenges in the construction industry.

Condition 1:

2. Condition 1 of the Development Approval states:

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

3. This condition has the effect of requiring substantial commencement of the project by 25 September 2022.
4. This Application seeks to amend Condition 1 of the Development Approval, by deleting reference to “18 months” and replacing it with “42 months” or “3.5 years”.

5. This has the effect of giving the Proponent an additional 2 years from the current substantial commencement date. This additional 2 years is necessary to navigate the difficult processes in the construction industry but also allow for any unforeseen circumstances that may arise in the coming two years.

Substantial Commencement:

6. Clause 2 of the Second Schedule of the *Planning and Development (Local Planning Schemes) Regulations 2015* which is deemed to form part of the Town's Local Planning Scheme, states:

“Substantially commenced means that some substantial part of work in respect of a development approved under a planning scheme ... has been performed.”

7. The purpose of ‘substantial commencement’ is to require a development to be commenced within a prescribed time because *‘it is undesirable that a developer should have available for an indefinite time an approval in respect of a development which changing patterns of use or changing community attitudes might, over time render inappropriate. It is in the interests of orderly planning that an approval for building or for use, once obtained, should be acted upon or should expire, within a reasonable time.’* **Fazio v City of Fremantle & Ors** (unreported) CIV 2314 at 14.

Relevant Considerations for Extending Time for Substantial Commencement:

8. The Tribunal's decision in the matter of **Georgiou Property 2 Pty Ltd and Presiding Member of the Metro West Joint Development Assessment Panel** [2017] WASAT 138 (**Georgiou**) set out the determinative issues for extending the time for a developer to substantially commence a development.
9. The determinative issues that the Georgiou decision set out for the extension of a development approval's time for substantial commencement are –
 - a) *whether the planning framework has changed substantially since the development approval was granted;*
 - b) *whether the development would likely receive approval now; and*
 - c) *whether the holder of the development approval has actively and relatively conscientiously pursued the implementation of the development approval.'*

Whether the Planning Framework has Changed Substantially Since the Development Approval was Granted?

10. As noted above, the Development Approval was granted by the WAPC on 25 March 2021 (**Approval Date**).
11. The relevant overarching planning framework in issuing the approval was the:
 - a) *Planning and Development Act 2005*; and
 - b) *Planning and Development (Local Planning Schemes) Regulations 2015*.
12. Neither of these documents has been subject to any material change since the Approval Date, and on that basis, there is nothing to suggest that the decision-making process that resulted in the Development Approval would result in a different outcome today.
13. The local planning framework as at the Approval Date was made up of the following relevant documents:
 - a) *Metropolitan Region Scheme*; and
 - b) *Town of Victoria Park Town Planning Scheme No 1 (TPS1)*
14. There has been no material change to either of these documents since the Approval Date, however, the Town has prepared a new Local Planning Scheme No. 2 based on the

recommendations of the Town's Local Planning Strategy (May 2022). This is considered further below.

15. The Subject Land is still zoned "Urban" under the Metropolitan Region Scheme (**MRS**) and fronts a "Primary Regional Road" reserve (Shepparton Road).
16. The Subject Land is still zoned "Residential R40" under the Town of Victoria Park TPS1 and the approved Residential Aged Care Facility is still an "AA" (Discretionary) use in this zone under TPS1.
17. At the 16 August 2022 Ordinary Council Meeting, Council resolved to endorse the draft Local Planning Scheme No. 2 (**Draft LPS2**) for advertising. Before the Town can proceed to advertising, the Town must seek advice from the Western Australian Planning Commission (WAPC) to confirm that Draft LPS2 is suitable for advertising. This process can take up to 90 days (or potentially, longer). At the same time, Draft LPS2 will be referred to the Environmental Protection Authority (EPA) to determine whether Draft LPS2 needs to undergo an Environmental Assessment. If the EPA does not require an assessment and if the WAPC supports advertising, then Draft LPS2 can be formally advertised for consultation.
18. At the time of writing, Draft LPS2 is not a seriously entertained planning proposal, as Draft LPS2 has not been advertised for public consultation.
19. However, for the benefit of the SDAU and any interested stakeholders, we will outline any material proposed changes under Draft LPS2 that may have the potential to inform the Approved Development.
20. Under Draft LPS2, the zoning of the land will remain Residential R40, notwithstanding that the site remains within a Train Station Precinct. The zoning under Draft LPS2 is shown in Figure 1 below.

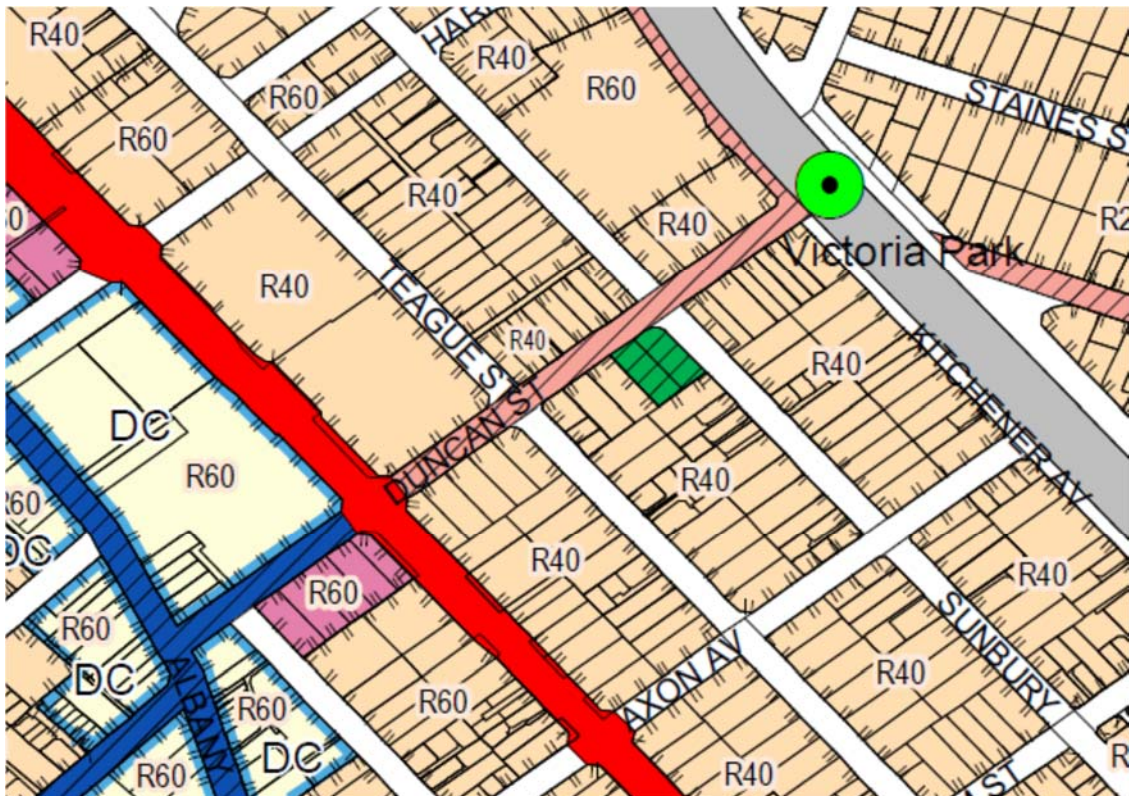


Figure 1 – Scheme Map Extract from Draft LPS2

21. Under Draft LPS2, the land use of "Residential Aged Care Facility" will be a "D" (Discretionary) use in the "Residential" zone, meaning the use will continue to be capable of approval.
22. There are no relevant development controls under Draft LPS2 that would affect the Approved Development.

23. Accordingly, there is nothing under Draft LPS2 that would detrimentally affect the Approved Development.

Whether the Development Would Likely Receive Approval Now?

24. In the absence of any material change to the Planning Framework since the Approval Date, the proposal that is subject of the Development Approval remains as appropriate now, as it was when considered by the WAPC and when the Development Approval was granted.
25. It is therefore, considered that the proposed development, consistent with its previous approval would be approved under the current legislation and Planning Framework.
26. It is also considered that the Approved Development would be approved under Draft LPS2 if it was a seriously entertained planning proposal at the time of approval.

Whether the Holder of the Development Approval has Actively and Relatively Conscientiously Pursued the Implementation of the Development Approval?

27. The Proponent has actively and conscientiously pursued the implementation of the Development Approval however, has been affected by the challenges experienced in the construction industry.
28. A summary of aspects of the project that the Project Team has been actively undertaking since the Development Approval is outlined below:

31/05/2021 – Kickstart – project briefing documentation transmitted to Jaxon /Doric

01/06/2021 – Meeting with client, Project Manager, Design team and builder at 54 Gwentyfred Road, South Perth

01/06/2021 - Detailed documentation started

04/06/2021 - Structural engineer (Fozdar) engaged for Design Development phase

15/06/2021 – Reverse Brief developed by Jaxon & Maarch

21/06/2021 - Acoustic Consultant (George Watts) engaged for Design Development

28/06/2021 – Design Review and PPR Zoom Meeting with Builder, Client, and Architect

27/07/2021 – Document preparation for lot amalgamation at 16, 18 & 20 Duncan Street , Victoria Park

12/08/2021 – Engagement of Fire Engineer (Strategic Fire Daren Wong) by PM

12/08/2021 – Engagement of Combined Services (mechanical, electrical, hydraulic, wet fire, ESD & vertical transport) LCI for Design Development phase by PM

13/08/2021 - Engagement of Traffic Consultancy Services (DVC) for Design Development phase by PM

13/08/2021 - Engagement of Acoustic consultant (HAS Acoustic – George Watts) for Design Development phase by PM

14/08/2021 - Engagement of Landscape architect and Irrigation(TDL) for Design Development phase by PM

19/08/2021 - Engagement of BCA Consultant (Resolve Group) for Design Development phase by PM

08/09/2021 – Schematic design 30% completed

Liquidation of Jaxon in September 2021 put the project on hold for several months.

09/11/2021 – Start of Negotiation process, Tender for new D&C Builder

13/01/2022 – Re -start of Design Development

16/02/2022 – Engagement of Electrical Services Consulting (Mark Chisholm) for design and documentation for the application of undergrounding of the existing Western Power overhead lines.

28/02/2022 – Design Development 60 % completed

01/03/2022 – Condition Compliance process started. All necessary condition documentation required prior to submission of building permit application was submitted between March-May 2022

15/03/2022 – Asbestos Survey Report completed

21/03/2022 – Design Development 70% (For Pricing package completed)

24/03/2022 - Western Power overhead lines application submitted to Western Power, Main Roads & Town of Victoria Park have been approached to comment prior the submission of the application.

19/04/2022 – Design Development 80% Building Permit Completed, Forward Works Package Completed.

19/05/2022 – WAPC Approval of Amalgamation of Lots granted to satisfy Condition 4 of the Approval

23/05/2022 – Dilapidation Report

01/06/2022 – Interior design details & joinery details development, Structural plan details 1: 10 development.

11/08/2022 – Application for Forward Works Building Permit made to the Town of Victoria Park

29. It is evident on this basis, that the Proponent has actively pursued the implementation of the approval.

30. The Proponent has been hampered by the effects of the construction industry, including the liquidation of Jaxon, which was the Proponent's initial builder for the project.

Other Issues:

31. The other issue affecting commencement of the Approved Development is the existing mental health facility operation. The Proponent is in the process of building a purpose-built facility in Midland to relocate the 31 mental health residents.

32. The Midland facility has suffered significant construction delays due to material shortages and labour supply. The Midland facility was originally planned for completion in the first quarter of 2022, however this is now planned to be completed by April 2023 (as demonstrated in the Gantt Chart supplied to the SDAU).

33. Therefore, only after April 2023 can the existing mental health facility be demolished and construction commenced. The mental health residents require an approved facility to reside in, so they cannot be temporarily relocated. There are, of course, stringent requirements for a facility like this to operate. The Proponent has little choice therefore, but to wait for the construction of the Midland facility to be completed before relocating the residents.

Conclusion:

34. Amending Condition 1 of the Development Approval so that substantial commencement of the proposal is required by 25 September 2024 maintains a definite timeframe and would not detract from the purpose of that provision (as described in **Fazio** above).

35. The scale of the proposal and the support of the planning framework means it is the correct decision to approve the Application and amend Condition 1 of the Development Approval to extend the requirement for substantial commencement.

36. The circumstances of the proposal, together with the significant issues being experienced in the construction industry, and considerable scope of the works required to commence the development means that it would be reasonable to extend the time for substantial commencement by a further 2 years (i.e. to 25 September 2024).

Extension of Time Request (SDAU-024-20)

C2385appln05

Approved Residential Aged Care Facility – 16-20 Duncan Street, Victoria Park

Should you wish to discuss any part of this Application, please do not hesitate to contact Nik Hidding on 0424 651 513.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nik Hidding', with a stylized flourish at the end.

Nik Hidding
Director

HIDDING URBAN PLANNING