

12.2 Proposed amendment (time frame extension) to development approval for unlisted use (temporary property sales suite)

Location	Victoria Park
Reporting officer	Sturt McDonald
Responsible officer	Robert Cruickshank
Voting requirement	Absolute Majority
Attachments	<ol style="list-style-type: none"> 1. Subject site - 53 and 55 Canning Hwy - Location map - Aerial photo [12.2.1 - 1 page] 2. Consultation_(Previously approved)_plans_-_55 Canning Highway VICTORIA PA K_-_5.2019.374.1 [12.2.2 - 6 pages] 3. Submission (anonymised) [12.2.3 - 1 page] 4. Site Inspection Photos - 452 - 55 Canning Highway VICTORIA PARK [12.2.4 - 5 pages] 5. 2019 Notice of Approval - letter & plans - 55 Canning Highway VICTORIA PAK - 5.2019.374.1 [12.2.5 - 11 pages]

Landowner	Kingsfort VP Pty Ltd
Applicant	Sheldon Turner – Total Project Management
Application date	10/08/2020
DA/BA or WAPC reference	DA 5.2020.452.1
MRS zoning	Urban Zone and Primary Regional Road Reserve
TPS zoning	Residential
R-Code density	R80
TPS precinct	Precinct Plan P4 – McCallum Precinct
Use class	Unlisted Use (Temporary Property Sales Suite)
Use permissibility	At Council's discretion
Lot area	1,392m ²
Right-of-way (ROW)	Not applicable
Municipal heritage inventory	Not applicable
Residential character study area/weatherboard precinct	Not applicable

Surrounding development

Residential development, located between Canning Highway and McCallum Park and Taylor Reserve. Public carpark in close proximity, at the southern end of McCallum Lane. Street parking also available along Taylor Street and Garland Street. Refer to site aerial at Attachment 1.

Recommendation

That Council approves, by absolute majority, the application for Amendment to Development Approval (DA ref: 5.2020.452.1) submitted by Total Project Management for time extension for Temporary Property Sales Suite (Unlisted Use) and Signage at No. 53 (Lot 31) and No. 55 (Lots 32 and 33) Canning Highway, Victoria Park, in accordance with the provisions of the Town of Victoria Park, Town Planning Scheme No. 1 and the Metropolitan Region Scheme, subject to the following conditions:

- 1.1. Condition No. 1 of development approval DA Reference No. 5.2019.374.1 dated 19 November 2019 being modified to read as follows:

"This development approval is valid until 19 November 2021, after which time the use shall cease operation, unless further development approval is granted. On or prior to the end of this period, the sales suite structure, signage and associated works are to be permanently removed from the Lot.

- 1.2. Remainder of development complying with development application DA Reference No. 5.2019.374.1 approved on 19 November 2019.

Advice Notes

AN1 Advice previously provided in relation to development approval DA Reference No. 5.2019.374.1 dated 19 November 2019 remains applicable.

Purpose

At its meeting of 19 November 2019, Council resolved that a Temporary Property Sales Suite be approved on a time limited basis for 12 months at the above-mentioned property (ie. until 19 November 2020)

The Town has received an application to extend the approval timeframe by a further 12 months.

As the approved development is an 'Unlisted Use (Temporary Property Sales Suite)', the Town's staff do not have the delegation to determine the proposed amendment, and accordingly, the matter is referred to Council for determination.

In brief

- The approval previously issued by Council (DA ref: 5.2019.374.1) relates to a temporary structure at the rear of 53-55 Canning Highway facing McCallum Lane. This structure is used for the purpose of a sales suite for an approved apartment building at the site. Signage was also approved, advertising the apartment development on the site.
- The applicant is seeking an extension to the temporary approval by an additional period of 12 months.
- A temporary property sales suite is not a defined use under the Town's Town Planning Scheme No.1 and is therefore considered as an 'Unlisted Use'.

- Determination of an application for an 'Unlisted Use' (and amendments to an Unlisted Use) is at Council's discretion having regard to the objectives of the zoning and the appropriateness of the land use.
- The application is recommended for approval.

Background

1. On 20 May 2019, a development application for 23 Multiple Dwellings was lodged with the Town for 53-55 Canning Highway, Victoria Park. At its meeting held on 15 August 2019 the Metro Central Joint Development Assessment Panel (JDAP) conditionally approved the proposal.
2. The Town received a proposal for property sales signage and a temporary sales suite in late July 2019. Following the provision of additional information and consultation taking place, Council approved the Temporary Property Sales Suite as an 'Unlisted Use' at its Meeting of 19 November 2019 (DA ref: 5.2019.374.1). This approval was on a time limited basis for 12 months (ie. until 19 November 2020).
3. In March 2020 a viewing platform was erected on site, giving prospective buyers the opportunity to experience indicative views of the yet-to-be-constructed apartment development. In accordance with Local Planning Policy 32 – 'Exemptions from Development Approval' a viewing platform that is in place for less than 90 days does not require development approval. In July 2020, the Town wrote to the applicant outlining that the viewing platform had remained on site for more than 90 days and that the viewing platform was therefore no longer exempt from needing Development Approval.
4. A retrospective application for Development Approval (DA ref: 5.2020.452.1) for the viewing platform was lodged 10 August 2020. Following receipt of this, the applicant was advised that a viewing platform was also an 'Unlisted Use' when considered from a land use perspective. It would therefore be subject to community consultation in accordance with Local Planning Policy 37.
5. It was noted by Officers that the time limited approval for the sales office was within a few months from ending. Advice was sought from the applicant regarding their intentions to either remove the sales office or apply for a timeframe extension. If it were the latter, it would be practical to undertake community consultation on both the viewing platform and the sales office timeframe extension simultaneously.
6. Between August and September 2020, the applicant advised that the viewing platform was being dismantled and removed from the site. It therefore no longer formed part of the application. Furthermore, it was requested that timeframe for the approved sales office be extended by an additional 12 months. Rather than require a separate application be submitted, it was accepted that this could simply form part of the same development application already in the Town's systems (DA ref: 5.2020.452.1).

Application summary

- An existing approval allows for an Unlisted Use (Temporary Property Sales Suite) to operate from the site. This approval is subject to a number of conditions, including hours of operation, landscaping and requirements advised by Main Roads.
- The application received seeks to extend the approval timeframe by a further 12 months. This requires a modification the condition of approval regarding the approval timeframe.

Applicants submission

7. The applicant has provided the following explanation/justification in relation to the extension sought: *"Reason for the extension sought is due to slower than anticipated sales rates due to the property market*

and the ~6 months of Covid impacts earlier this year. The govt stimulus has assisted with sales recently however additional time is required to reach Kingsfort's presales target for senior debt funding."

Relevant planning framework

Legislation	<ul style="list-style-type: none"> • <i>Planning and Development Act 2005</i> • <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> • <i>Town Planning Scheme No.1 (TPS1)</i> • <i>TPS1 Precinct Plan P4 – 'McCallum Precinct'</i>
Local planning policies	<ul style="list-style-type: none"> • <i>Local Planning Policy 3 – Non-Residential Uses In or Adjacent to Residential Areas</i> • <i>Local Planning Policy 32 – Exemptions from Development Approval</i> • <i>Local Planning Policy 37 – Community Consultation on Planning Proposals</i> • <i>Local Planning Policy 38 – Signs</i>

General matters to be considered

Town Planning Scheme No. 1	<p>In assessing this application, Council is to have regard to the following general provisions of the Scheme:</p> <ul style="list-style-type: none"> • Clause 28 'Determination of application for an unlisted use'; and • Clause 30A 'Determination of application for advertisement'.
TPS precinct plan statements	<p>The following statements of intent contained within the Precinct Plan are relevant to consideration of the application:</p> <p><i>"The McCallum Precinct's role as a major node of recreational and leisure activity, with adjacent commercial and residential uses will be enhanced. Further development will also serve to enhance and promote the precinct as a tourist attraction on the basis of its waterfront setting.</i></p> <p><i>Development will be concentrated in two areas. Further commercial development will be encouraged in the area centered around Berwick Street/Canning Highway intersection. Uses such as offices and showrooms are considered to be appropriate. High density, high quality residential uses will be encouraged in the second area which follows the alignment of Canning Highway, and backs onto the Park."</i></p>
Local planning policy objectives	<p>The following objectives of Local Planning Policy 3 – Non-Residential Uses In or Adjacent to Residential Areas are relevant in determining the application.</p> <p><i>(a) to ensure non-residential uses are compatible with the residential character, scale and amenity of surrounding residential properties</i></p> <p><i>(b) to provide for non-residential uses which serve the needs of the community;</i></p> <p><i>(d) to minimise the impacts of non-residential development through appropriate and sufficient management of car parking and traffic generation, noise, visual amenity and any other form of emissions or</i></p>

	<p><i>activities that may be incompatible with surrounding residential uses;</i></p> <p><i>(e) to ensure that the appearance and design of non-residential development is compatible with surrounding residential properties and the streetscape in terms of building size and scale, the provision of adequate landscaping treatments, the retention of existing mature trees and the suitable design and location of advertising signage;</i></p> <p><i>(f) to maintain and enhance the amenity of residential environments through ensuring appropriate landscaping treatments, location of car parking and vehicular access legs, and the protection of visual privacy when considering applications for non-residential development;</i></p>
<p>Deemed clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015</p>	<p>The following are relevant matters to be considered in determining the application:</p> <p><i>(a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;</i></p> <p><i>(g) any local planning policy for the Scheme area;</i></p> <p><i>(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development</i></p> <p><i>(n) the amenity of the locality including the following -</i></p> <p><i>(i) environmental impacts of the development;</i></p> <p><i>(ii) the character of the locality;</i></p> <p><i>(iii) social impacts of the development.</i></p> <p><i>(s) the adequacy of -</i></p> <p><i>(i) the proposed means of access and egress from the site; and;</i></p> <p><i>(ii) arrangements for the loading, unloading, manoeuvring of vehicles;</i></p> <p><i>(y) any submissions received on the application</i></p>

Planning assessment

A planning assessment was undertaken as part of the previous development application (DA ref: 5.2019.374.1). The considerations applicable to the 12 month extension are broadly the same as those applicable to the original assessment.

The table below summarises the planning assessment of the proposal against the provisions of the Town of Victoria Park Town Planning Scheme No.1, the Town's local planning policies and other relevant documents, as applicable. In each instance where the proposal requires the discretion of Council, the relevant planning element is discussed in the detailed assessment section following from this table.

Non-residential development		
Planning element	Permissibility/deemed-to-comply	Requires the discretion of the Council
Land use		X
Plot ratio	X	

Building height	X	
Street setback		X
Side setback	X	
Car parking		X
Vehicle access	X	
Signs		X

Based upon the above table, the following development standards require the discretion of Council.

Element	Requirement	Proposed	Variation
Street Setback	1m	Minimum 0.3m	0.6m
			Supported

8. The proposed street setback variation is supported for the following reasons:
- The minimum 0.3m measurement is to the universal access ramp and decking only. The majority of the sales suite (i.e. verandah) is located 1.9m from the property boundary to McCallum Lane. The minor setback variation is considered to be appropriate for its location. This was supported by Council in its approval in 2019.
 - The structure is being considered on a temporary basis only.

Element	Requirement	Proposed	Variation
Car parking	Council discretion	3 car bays	N/A
			Supported

9. No parking standard exists within Local Planning Policy 23 – Parking for temporary sales suite. This matter is therefore subject to a judgment call of what is considered appropriate.
10. Town staff view the provision of three car bays as appropriate.

One car bay was originally proposed by the applicant back in 2019. The provision of one bay was considered to be insufficient to cater for the car parking demand for the proposed land use. This was subsequently addressed via a condition of development approval and now three bays are provided – two for the exclusive use of customers and one for the exclusive use of staff.

Element	Requirement	Proposed	Variation
Signs	One sign per lot	Two signs on one lot	One additional sign
			Supported

11. The sales office features two signs facing Canning Highway in lieu of one. Clause 30A 'Determination of application for advertisement' is discussed in further detail in the Officer Comments section. This was supported by Council in its approval in 2019.

Element	Permissibility	Recommendation
Land use	<p>A Temporary Property Sales Suite is not listed in Town Planning Scheme No.1 and is therefore classified as an 'Unlisted Use'.</p> <p>Approval of an Unlisted Use is at the Council's discretion having regard to the objectives of the zoning and the appropriateness of the land use.</p>	Supported

12. The 'Unlisted Use' of a Temporary Property Sales Office is supported on the basis that it is inoffensive, temporary and ultimately assists in facilitating the development of the high-quality apartment building that will positively contribute to the area. The land use and recommended conditions relating to the amenity of the locality, was considered and supported by Council in its approval in 2019.

Strategic alignment

Environment	
Strategic outcome	Intended public value outcome or impact
EN01 - Land use planning that puts people first in urban design, allows for different housing options for people with different housing need and enhances the Town's character.	The proposed land use facilitates the financing and subsequent construction of an apartment development on the site of which the Town's Design Review Panel commented that <i>"the design is an elegant solution to a difficult site"</i> .

Engagement

External engagement	
Stakeholders	Owners and occupiers of surrounding properties
Period of engagement	8 October 2020 – 29 October 2020 (21 days)
Level of engagement	2. Consult
Methods of engagement	Written submissions, notification signage on-site and Your Thoughts (the Town's online engagement tool)
Advertising	<p>Advertising of the proposal comprised of letters being sent to owners and occupiers of surrounding properties (within 100m radius) and signage installed on the site.</p> <p>LPP 37 indicates that an Unlisted Use should also be advertised by way of</p>

	public notices being placed in the Southern Gazette newspaper. In this instance, it was considered that letters to directly surrounding property owners and occupiers, supplemented by a sign on-site was sufficient.
Submission summary	One (1) submission was received, requesting additional car parking and that the site be tidied of rubbish.
Key findings	One (1) submitter requests additional car parking and that the site be tidied of rubbish. It is noted this submission did not state an objection to the proposed timeframe extension.

Risk management considerations

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	N/A	-	-	-	-	-
Environmental	N/A	-	-	-	-	-
Health and Safety	N/A	-	-	-	-	-
Infrastructure/ICT systems/Utilities	N/A	-	-	-	-	-
Legislative compliance	The proponent has a right of review to the State Administrative Tribunal against Council's decision, including any conditions.	Moderate	Likely	High	Low	Accept
Reputation	Negative public perception towards the Town may result if the sign is approved or refused depending upon their perspective	Moderate	Possible	Medium	Low	Accept
Service delivery	Approval may set a precedent for	Moderate	Possible	Medium	Medium	Accept

similar future temporary sales office proposals to be submitted to the Town.

Financial implications

Current budget impact	Should the applicant be aggrieved by the Council’s decision they have a right of review to the State Administrative Tribunal. If the applicant were to exercise this right, then there may be financial implications for the Town in terms of representation to defend Council’s decision.
Future budget impact	Not applicable.

Analysis

13. The recommendation for approval and the approval issued by Council in 2019 both reflect a view that the variations to planning requirements were considered to be reasonable and appropriate. The considerations applicable to the 12 month extension of the land use are broadly the same as those applicable to the original assessment.

Land Use

14. In determining an application for an Unlisted Use, Council is to exercise its discretion to determine if the use meets the objectives and purposes of the zoning, with consideration to the matters outlined within deemed clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015.
15. The proposed land use is considered to be inoffensive in nature, not resulting in adverse impacts to the area or adjoining neighbours in terms of noise, traffic generation (noting the proposal outlines that weekday activities would be by appointment only), emissions or other activities that would may be incompatible with surrounding residential areas. The proposal is therefore consistent with the requirements of Local Planning Policy 3.
16. Display and information/sales suites are commonly developed as part of large residential projects. The proposed temporary use of a temporary property sales suite will assist in gaining pre-sales to facilitate the redevelopment of the site, as per the approved apartment development.
17. In relation to the above, it is noted that the land use is proposed to be in place for an additional 12 months (a total period of 24 months).

Signage

18. The proposal as originally submitted in July 2019 sought to erect many more signs on site. The applicant was subsequently advised that this number of signs were unlikely to be supported under the policy.
19. The applicant amended their proposed signage in 2019 to be limited to only the two signs in a ‘v’ shape
20. The following table contains an assessment of the signage against the considerations listed within Clause 30A of the Town Planning Scheme.

TPS1 – Clause 30A considerations	Officer comment
(a) the impact of the sign on the quality of the streetscape where it is to be displayed and more generally of the	The proposed signs are not considered to adversely impact the amenity of the locality. It is noted that

district;	Canning Highway is a traffic oriented corridor.
(b) whether the size of the sign appropriately relates to the architectural style, design and size of a building on which the sign is to be displayed, and in measuring the size of a sign a polygon shall be taken immediately around the text, graphics or image of the sign and not the entire background, except where the finish or colour of the background differs substantially from the background against which the sign is to be displayed.	The size of the signs is considered to be appropriately proportional to the size of the property and existing structures on site.
(c) whether the colour scheme and materials of the sign are compatible with the architectural style and design of a building on which the sign is to be displayed;	Not applicable. The sign is freestanding rather than affixed to a building.
(d) whether the colour scheme and materials of the sign are compatible with the overall architectural style and design of the area or precinct in which the sign is to be displayed; and	The colours and materials of the sign are considered to be appropriate to the area and are generally inoffensive.
(e) how many signs are on the land where the sign will be displayed.	<p>While two signs are proposed, the majority of the people who are likely to view the signs (motorists) will generally see only one sign at any given time.</p> <p>The two signs proposed are arguably comparable to a double-sided single sign, and do not constitute a 'proliferation of signage' which is something the Town would seek to avoid as outlined within <i>Local Planning Policy 38 – Signs</i></p>

Car parking

21. No local planning policy prescribes an applicable car parking ratio requirement for this proposed land use. In the absence of policy prescription, but car parking remaining a valid consideration in terms of impacts of the proposed land use on the locality, Council must consider the proposal on its merits.
22. It is considered that one bay is insufficient to cater for the demand on car parking posed by the given land use. While it could be argued that an equivalent "Office" land use under Local Planning Policy 23 – Car Parking requires only 1 bay per 40m² of office space, it should be noted that one real estate agent could be tending to multiple prospective buyers at any given time. Assuming each party drove to the site, the land use results in a demand of at least 3 bays.
23. It is noted that both the Ellam Street carpark (at the southern end of McCallum Lane) and street-parking along Taylor Street and Garland Street are in close proximity to the site. While an application for a land use should not solely rely on public car parking, its availability and proximity is a relevant factor for Council to consider when evaluating the proposed operation (and/or likely impact) of a land use in a location
24. In 2019 when community consultation was undertaken in relation to the original application (DA ref: 5.2019.374.1), two submissions were received. Both contended that insufficient carparking was proposed. The community consultation more recently undertaken for the 12 month extension currently under consideration (DA ref: 5.2020.452.1) yielded only one submission. This submission requested the provision of additional parking, but did not object to the timeframe extension.
25. The abovementioned submission requested that the universal access bay be replaced with two standard bays – as these would be more frequently used. The Town will not direct the applicant to do this, as such a course of action would be contrary to the Disability Discrimination Act.

26. The abovementioned submission indicated that the sales office staff member uses the customer bay rather than the staff bay located behind the sales office. The applicant has been advised that this is contrary to the conditions of approval and that the two customer parking bays are for the exclusive use by customers. This reminder has reportedly been passed onto the sales office operator.
27. Council Officers are of a view that, subject to the staff correctly parking in their allocated bay, car parking for this land use is adequately provided for.

Building appearance

28. Assessment of the original application (DA ref: 5.2019.374.1) placed great scrutiny in design of the structure and the amenity of the locality. No objections or concerns have been received by submitters in 2020 regarding the appearance of the structure and a site visit has confirmed that the appearance of the sales suite is far superior to the "Sea-Container" like appearance that had previously been feared.
29. Concerns in relation to litter on site raised by the submitter have been relayed to the applicant. No current conditions of development approval relate to this.

Setback

30. The minor setback variation is considered to be appropriate for its location. This was supported by Council in its approval in 2019 and the structure is being considered on a temporary basis only.

Relevant documents

Town of Victoria Park Town Planning Scheme No. 1 - <https://www.victoriapark.wa.gov.au/Build-and-develop/Planning/Policy-regulation-and-legislation#section-2>

Local Planning Policy 3 – Non-Residential Use in or Adjacent to Residential Areas - <https://www.victoriapark.wa.gov.au/Build-and-develop/Planning/Policy-regulation-and-legislation#section-6>

Local Planning Policy 23 – Parking Policy - <https://www.victoriapark.wa.gov.au/Build-and-develop/Planning/Policy-regulation-and-legislation#section-6>

Local Planning Policy 37 – Community Consultation on Planning Proposals - <https://www.victoriapark.wa.gov.au/Build-and-develop/Planning/Policy-regulation-and-legislation#section-6>