



Metro-Inner North Joint Development Assessment Panel Agenda

Meeting Date and Time: Tuesday, 13 June 2023; 9:30am
Meeting Number: MINJDAP/185
Meeting Venue: Town of Cottesloe
109 Broome Street, Cottesloe

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Attendance

DAP Members

Ms Francesca Lefante (Presiding Member)
Ms Lee O'Donohue (Deputy Presiding Member)
Mr John Syme (Third Specialist Member)
Cr Paul MacFarlane (Local Government Member, Town of Cottesloe)
Cr Craig Masarei (Local Government Member, Town of Cottesloe)

Officers in attendance

Mr Matthew Scott (Town of Cottesloe)
Ms Freya Ayliffe (Town of Cottesloe)
Mr Ed Drewett (Town of Cottesloe)
Ms Jacqueline Pilkington (Town of Cottesloe)

Minute Secretary

Ms Sophie Morrison (Town of Cottesloe)

Applicants and Submitters

Ms Bianca Sandri (Urbanista Town Planning)

Members of the Public / Media

Nil.

1. Opening of Meeting, Welcome and Acknowledgement

The Presiding Member declares the meeting open and acknowledges the traditional owners and pay respects to Elders past and present of the land on which the meeting is being held.

2. Apologies

Nil.

3. Members on Leave of Absence

Nil.

4. Noting of Minutes

Signed minutes of previous meetings are available on the [DAP website](#).

5. Declarations of Due Consideration

Any member who is not familiar with the substance of any report or other information provided for consideration at the DAP meeting must declare that fact before the meeting considers the matter.



6. Disclosure of Interests

Nil

7. Deputations and Presentations

- 7.1 Ms Bianca Sandri (Urbanista Town Planning) presenting against the recommendation but in support for the application at Item 10.1. The presentation will address support of the reconsideration of condition and against the recommendation.

The Town of Cottesloe may be provided with the opportunity to respond to questions of the panel, as invited by the Presiding Member.

8. Form 1 – Responsible Authority Reports – DAP Applications

Nil.

9. Form 2 – Responsible Authority Reports – DAP Amendment or Cancellation of Approval

Nil.

10. State Administrative Tribunal Applications and Supreme Court Appeals

10.1 19 (Lot 20) Napoleon Street, Cottesloe

Development Description: Sat Review of Condition (d) Provided in the JDAP Decision for a Mixed-Use Development

Summary of Modifications: Reconsideration of Condition (d) in order to reduce the number of car bays necessitating a cash-in-lieu payment.

Applicant: Urbanista Town Planning

Owner: Stirling Cooper Collective 3 Pty Ltd

Responsible Authority: Town of Cottesloe

DAP File No: DAP/22/02276

Current SAT Applications				
File No. & SAT DR No.	LG Name	Property Location	Application Description	Date Lodged
DAP/21/02136 DR60/2022	City of Nedlands	No. 43 Esplanade, Nedlands	Proposed Mixed Use Development – One consulting room and three multiple dwellings	01/04/2022
DAP/20/01770 DR140/2022	City of Nedlands	97 (Lots 1-4) and 105 (Lot 500) Stirling Highway, Nedlands	Mixed use development comprising of basement car parking, restaurants, offices, motor vehicle sales and multiple dwellings.	23/08/2022



Current SAT Applications				
File No. & SAT DR No.	LG Name	Property Location	Application Description	Date Lodged
DAP/22/02219 DR154/2022	City of Bayswater	589-591 (Lot 160-161) Morley Drive, Morley	Proposed Childcare Centre	14/09/2022
DAP/22/02229 DR172/2022	Town of Cambridge	413 (Lot 11) Vincent Street West, West Leederville	Two-Storey Childcare Centre	04/10/2022
DAP/22/02191 DR192/2022	City of Vincent	No. 391 (Lot: 20) Lord Street, Mount Lawley	Proposed Mixed Use Development	31/10/2022
DAP/22/02218 DR216/2022	City of Subiaco	No. 414 (Lot 27) Rokeby Road, Subiaco	Demolition Of Existing Building and Construction of a Six Storey Mixed Use Development (Ten Multiple Dwellings and Three Office Tenancies)	07/12/2022
DAP/22/02366 DR74/2023	City of Stirling	House Numbers 432, 438 And 440 (Lots 23, 15 And 351) Scarborough Beach Road and House Number 57 (Lot 31) Howe Street, Osborne Park	Additions - Motor Vehicle, Boat or Caravan Sales and Motor Vehicle Repair to existing Automotive Sales	22/05/2023
DAP/22/02364 DR75/2023	City of Bayswater	504A & 504-508 (Lot 30,4) Guildford Road, Bayswater	Proposed service station, fast food outlet and showroom development	23/05/2023
DAP/22/02248	City of Vincent	No. 129 (Lot: 62; D/P: 956) Loftus Street, Leederville	Proposed Child Care Premises	24/05/2023

11. General Business

In accordance with Section 7.3 of the DAP Standing Orders 2020 only the Presiding Member may publicly comment on the operations or determinations of a DAP and other DAP members should not be approached to make comment.

12. Meeting Closure



Presentation Request Form

[Regulation 40\(3\)](#) and [DAP Standing Orders 2020](#) cl. 3.5

Must be submitted at least 72 hours (3 ordinary days) before the meeting

Presentation Request Guidelines

Persons interested in presenting to a DAP must first consider whether their concern has been adequately addressed in the responsible authority report or other submissions. Your request will be determined by the Presiding Member based on individual merit and likely contribution to assist the DAP's consideration and determination of the application.

Presentations are not to exceed **5 minutes**. It is important to note that the presentation content will be **published on the DAP website** as part of the meeting agenda.

Please complete a separate form for each presenter and submit to daps@dplh.wa.gov.au

Presenter Details

Name	Bianca Sandri
Company (if applicable)	Urbanista Town Planning
Please identify if you have any special requirements:	YES ☐ NO ☒ If yes, please state any accessibility or special requirements: Click or tap here to enter text.

Meeting Details

DAP Name	Metro Inner North JDAP
Meeting Date	13/06/23
DAP Application Number	DAP/22/02276
Property Location	19 – 21 Napoleon Street, Cottesloe
Agenda Item Number	10.1

Presentation Details

I have read the contents of the report contained in the Agenda and note that my presentation content will be published as part of the Agenda:	YES ☒
Is the presentation in support of or against the <u>report recommendation</u> ? (<i>contained within the Agenda</i>)	SUPPORT ☐ AGAINST ☒
Is the presentation in support of or against the <u>proposed development</u> ?	SUPPORT ☒ AGAINST ☐
Will the presentation require power-point facilities?	YES ☒ NO ☐ If yes, please attach



Presentation Content*

These details may be circulated to the local government and applicant if deemed necessary by the Presiding Member. Handouts or power points will not be accepted on the day.

Brief sentence summary for inclusion on the Agenda	<i>The presentation will address:</i> <i>In support of the reconsideration of condition and against the recommendation.</i>
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In accordance with Clause 3.5.2 of the [DAP Standing Orders](#), your presentation request must also be accompanied with a written document detailing the content of your presentation.

BACKGROUND

1. The Joint Development Assessment Panel ('JDAP') determined to approve the proposed development DAP/22/02276 at its meeting held on 21 October 2022. The approval included a condition relating to cash-in-lieu payment of car bays, provided below for reference.
2. The provision of cash-in-lieu of 7 car bays calculated in accordance with Part 9A of the Planning and Development (Local Planning Schemes) Regulations 2015 prior to occupation.
3. An appeal was lodged with the SAT for reconsideration of condition (d) in order to reduce the number of car bays necessitating a cash-in-lieu payment and also obtain certainty on the cost per car bay.
4. In accordance with Part 9A of the Planning and Development (Local Planning Schemes) Regulations 2015 ('Regulations') cash in lieu can be applied to a car parking shortfall and that shortfall can be reduced by the JDAP should there be sufficient available car bays or alternative means of transport.

APPLICANT'S SUBMISSION

5. We request that condition (d) be amended as follows:

Payment of \$77,490 to the Town of Cottesloe for cash-in-lieu of three car bays prior to occupation of the development.

6. The amount of \$77,490 is based on three car parking bays at a rate of \$1,722 per sqm and an area of 15m² per car bay. The reduction from seven to three car bays is the result of only applying cash-in-lieu to the office component of the approved development.

CAR PARKING CALCULATION

Restaurant/Small Bar

7. The function of the proposed restaurant/small bar, is that the space is a 'restaurant' during the hours of 6.30am to 3pm and a 'small bar' from 3pm. In accordance with Town's Car Parking Policy, a small bar requires a far greater number of car bays than a restaurant, even though the two land uses are largely the same in the way they operate. Given the discrepancy, the Respondent has determined to use the 'small bar' parking ratios to calculate the required on site car parking.
8. This results in a car parking requirement of 12 car bays for the restaurant/small bar.



9. If the space was calculated based on the restaurant parking requirements only, this space would only require 5 car bays, less than the 6 car bays currently required for the existing shop and restaurant uses on the site. And well less than the 8 car bays required for the current operation of the uses on site as described below.
10. Notwithstanding, the 'Dome' site referenced in the JDAP report was approved with 8 internal seats and car parking requirement of 1 car bays. The shops required 5 car bays. The Town has advised 6 car bays were provided on site.
11. However, the Dome operated with more than 8 internal seats and the current operator operates with 20 internal seats since 2016. Resulting in a car parking requirement of 3 car bays and an overall parking requirement of 8 car bays, resulting in a 2 car bay shortfall onsite.

Office

12. The office component of the development requires a total of 15 car bays based on the gross floor area of this space.

Total Parking Requirements

13. Based on the above, the total number of car bays required for the development are 20 (in accordance with the restaurant calculation) and 27 (in accordance with the small bar calculation).
14. The approved development includes 12 car bays.
15. The approved parking deficiency is 15 car bays in accordance with the small bar calculation and 8 car bays based on the restaurant calculation.

SUFFICIENT CAR PARKING

16. For the following additional reasons, we submit that the reduction in car bays is appropriate in the context of this development and its setting.

Site context ideal for promotion of sustainable transport

17. The subject site is located within a Town Centre Zone which is the ideal context to promote walkability and alternate transport options from the private vehicle. Being located just over 100m from the Cottesloe Station and a high frequency bus route on Stirling Highway, the location contains the appropriate infrastructure and amenities to promote walkability and sustainable transport options.
18. The small bar element of the tenancy will operate from the late afternoons into the evening. A number of visitors to the small bar are likely to consume alcohol, which further encourages utilisation of public transport, ride share services, or car-pooling when attending the site. This results in a reduced need to for parking facilities when compared with other land uses operating within the Town Centre that may attract similar visitor numbers.
19. Furthermore, the café component categorised as 'restaurant' will operate primarily during workday hours providing a service to businesses and locals alike. The venue is not positioned to be a destination venue rather an amenity for the surrounding users of the precinct. Reducing demand of car parking. This is not dissimilar to 'Vans' which operates from No. 1 Napoleon Street, Cottesloe with no car parking onsite with opening hours of 6.30am to 10pm, seven days a week.



Significant public parking in the locality

20. Napoleon Street has 32 parking bays whereby 28 of them are restricted to a time limit of one hour and the other four car bays being restricted to 15 minutes. This encourages high turnover of car parking bays along Napoleon Street.
21. Furthermore, there are a total of 440 public parking bays within 200m of the subject site between Jarred Street to the south and Station Street to the north. Most of these bays are ticketed and have a maximum of three hours.
22. All of these parking bays are conveniently located and within walkable distance from the subject site and would provide a suitable option for people visiting the site via private car.

Underutilisation of public parking

23. It is noted that the tenancy is subject to the following operating hours:

Café/Restaurant

Daytime trade:

Monday to Saturday: 6.30am to 3.00pm

Sunday: 6.30am to 1.00pm

Small Bar

Evening trade:

Monday to Saturday: 3.00pm to 11.00pm

Sunday: 1pm to 10.00pm

24. Occupancy rates of public parking bays in four locations were provided by the respondent on 11 April 2023. This information relates to 235 of the 440 public car bays within 200m of the site. Specifically:

Station Street west car park – 54 bays

Station Street east car park – 50 bays

Napoleon Street – 31 bays

Railway Street carpark – 40 bays

25. The data provided by the respondent, is captured in a moment in time and does not account for turnover which happens frequently in these locations as they are time limited. Therefore, the below data provides a snapshot of typical peak periods in parking for four locations, summarised below:

Location	Periods achieving >80% occupancy	Duration
Station Street west car park	9.00am – 3.00pm	6 hours
Station Street east car park	Nil	Nil
Napoleon Street	8.00am – 4.00pm	8 hours
Railway Street car park	10.00am – 12.00pm	2 hours

26. The data indicates a clear trend for higher occupancy rates prior to 3.00pm in these



four locations, however during the peak times there is still parking available in all the parking areas. The Station Street east car park never approaches capacity and is just over 150m walkable distance from the site.

27. Given not all these car parking areas exceed 80% occupancy in a moment in time, the remaining 205 car bays not assessed are available as well.
28. It is noted that the shop and restaurant that currently operates on the site contribute to these figures as they do not provide visitor parking on site.
29. Therefore, there is no shortfall of publicly accessible car bays. In fact, the data provided illustrates significant availability after 3pm which is when the small bar will operate. The café component will be relying on passing trade and local businesses and residents not dissimilar to the current operations.

Reciprocal parking opportunities

30. As the subject site is within the Cottesloe town centre, it is reasonable to expect that patrons of the restaurants and small bar will be visiting other services in the locality. Resulting in efficient use of car parking within the locality and acts as an informal reciprocal arrangement between various land uses within the locality.
31. The land use will only operate as a low intensity local café during the day, with the more intensive small bar only commencing operation in the afternoon (3pm Monday to Saturday and 1pm Sunday). The peak hours of operation for the small bar aligns well with a significant drop in parking occupancy rates in the Town Centre.
32. The development effectively promotes reciprocal use of public parking in the locality, reducing demand during the current peak times and increasing demand when bays are readily available. This results in more effective use of the public car parking and will also provide much needed activation beyond the current peak hours.

Proposed parking on site

33. The subject site has several site constraints including its small lot size and narrowness, and the retention of a heritage building. These constraints required an innovative solution to provide parking on site. Accordingly, a car stacker has been approved maximising the availability of car parking on site. The number of car bays balances the land uses as it provides parking for the offices as this is a new land use approved on the site. The restaurant/small bar type land uses already operate on the site without access to parking at the rear for visitors. Further, the parking solution includes two car bays located at the rear available at all times for visitors.
34. With this, every reasonable effort has been made to satisfy the on-site parking requirement. The parking layout approved, does not impact upon access arrangement, the safety of pedestrians or person as it is access from Clapham Lane.

Existing business operation

35. The existing shop and café operate on site without utilising any of the car bays at the rear and generate a comparable demand to the local café which will operate during the day. In this respect, there is not considered to be any change in the existing parking demand during the current peak hours. As there is still considerable parking available during peak hours under the current operation, it is highly unlikely that there would be any notable impact from the proposed operation.



LOCAL PLANNING FRAMEWORK

Local Planning Policy No. 1 – Parking Matters

36. In accordance with cash in lieu requirements listed in the Town's LPP1, a maximum of 25% of the parking should be converted into a cash-in-lieu payment. It is our view, that the intent of this provision is for 25% of the shortfall to be provided in cash in lieu.
37. Therefore, based on the 'small bar' calculation, 25% of the deficiency (shortfall) is **3.75 car bays** and in accordance with the 'restaurant' calculation, 25% of the deficiency is **2 car bays**.

The Respondent's Assessment

38. A matter in contention is how the Respondent has interpreted their policy and applied the condition. The Respondent has calculated the cash-in-lieu payment based on the total number of car bays required, rather than calculating it based on the actual shortfall being proposed.
39. It is the Applicant's case, that this assessment is incorrect. Whilst we accept that the Respondent's policy is not entirely clear, we must consider the purpose and intent.
40. If the way the Respondent calculated the shortfall was based on total car bays *required*, the cash-in-lieu payment would be the same regardless of whether the development proposed a shortfall of 1 car bay or 25 car bays. The calculation should, and in our opinion *does*, consider the parking provided in the development and formulates the cash-in-lieu payment based on that.
41. On this basis, the applicant submits that based on the intent of the Policy, the cash-in-lieu payment should be 3.75 car bays (based on a 'small bar') or 2 car bays (based on a 'restaurant').
42. Accordingly, and for the reasons provided, we would respectfully request the JDAP amend condition (d) to reflect three (3) car bays at a total amount of \$77,490. It is important that the total dollar amount is provided within condition (d) to provide certainty, which is one of the pillars of a good planning condition.
43. Lastly, we seek the dollar value of the cash in lieu be provided within condition (d) regardless of the JDAP's positions regarding the number of car bays.

19–21 Napoleon Street, Cottesloe

Section 31 - Reconsideration of Condition

The Joint Development Assessment Panel ('JDAP') determined to approve the proposed development DAP/22/02276 at its meeting held on 21 October 2022. The approval included a condition relating to cash-in-lieu payment of car bays, provided below for reference.

d) The provision of cash-in-lieu of 7 car bays calculated in accordance with Part 9A of the Planning and Development (Local Planning Schemes) Regulations 2015 prior to occupation.

An appeal was lodged with the SAT for reconsideration of condition (d) in order to reduce the number of car bays necessitating a cash-in-lieu payment and also obtain certainty on the cost per car bay.

In accordance with Part 9A of the Planning and Development (Local Planning Schemes) Regulations 2015 ('Regulations') cash in lieu can be applied to a car parking shortfall. In accordance with clause 77D(2), Part 9A of the Regulations a local government may:

- (2) The local government must not vary or waive a minimum on-site parking requirement under subclause (1) in relation to development unless the local government is satisfied –
 - (a) that reasonable efforts have been made to comply with the minimum on-site parking requirement without adversely affecting access arrangements, the safety of pedestrians or persons in vehicles, open space, street trees or service infrastructure; and
 - (b) that –
 - (i) in the case of a variation – the lower number of car parking spaces would be adequate for the demands of the development, having regard to the likely use of the car parking spaces, the availability of off-site parking facilities and the likely use of alternative means of transport; or
 - (ii) in the case of a waiver – it is not necessary for car parking spaces to be provided as part of the development, having regard to the availability of off-site parking facilities and the likely use of alternative means of transport.

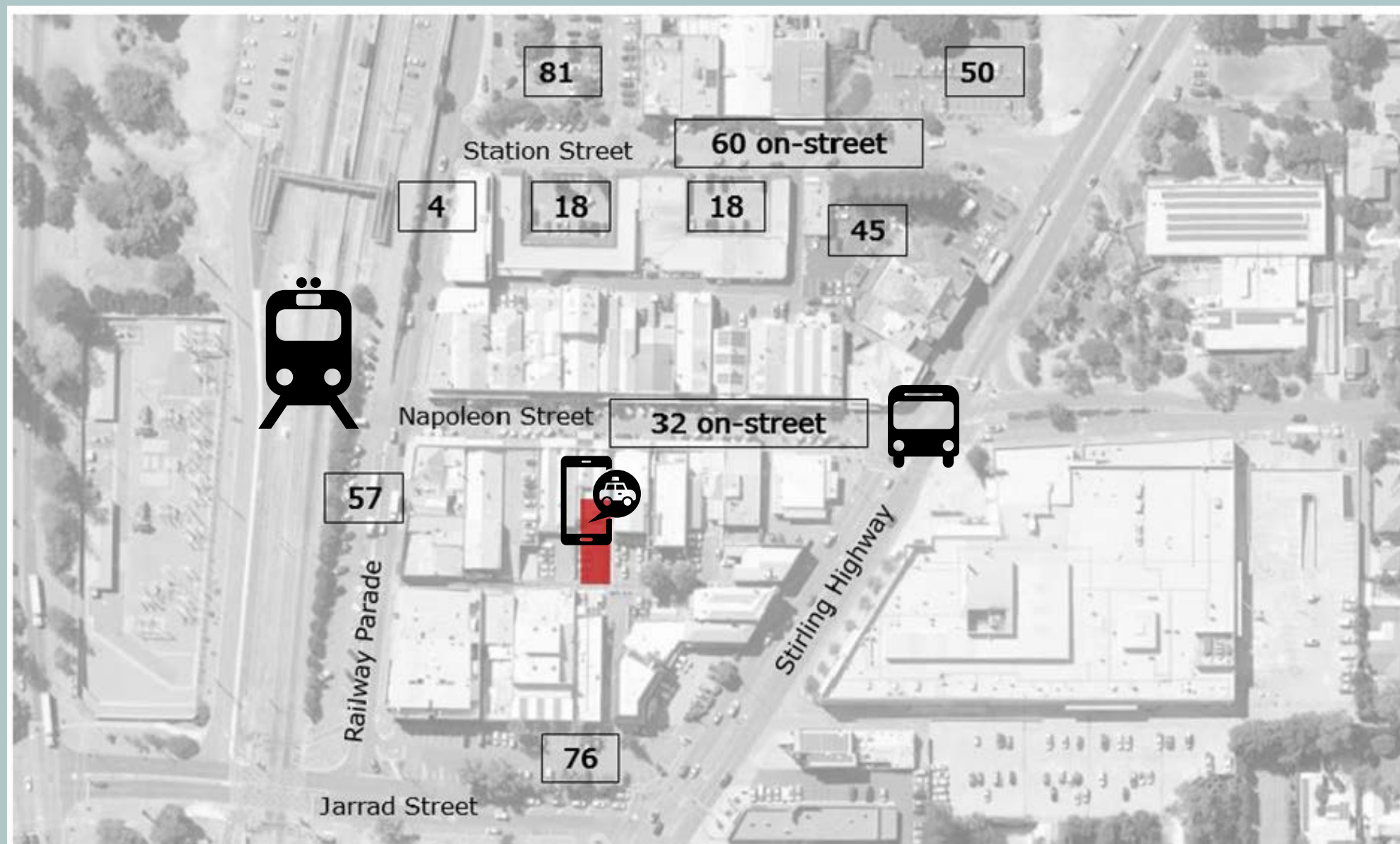
Proposal



Use	Hours	Required	Proposed
Restaurant	6.30am to 3pm	5 car bays	0 car bays
Small Bar	3pm - late	12 car bays	0 car bays
Office	Workday hours	15 car bays	12 car bays

Existing Use	Required	Provided
Restaurant	3 car bays (approved 1 car bay)	1 car bay
Shop	5 car bays	5 car bays

Car Parking Calculation



- ✓ Site context ideal for promotion of sustainable transport
- ✓ Significant public parking in the locality
- ✓ Underutilisation of public parking
- ✓ Reciprocal parking opportunities
- ✓ Proposed parking on site
- ✓ Existing business operations

Sufficient Parking

In accordance with cash in lieu requirements listed in the Town's LPP1, a maximum of 25% of the parking should be converted into a cash-in-lieu payment. It is our view, that the intent of this provision is for 25% of the shortfall to be provided in cash in lieu.



Based on the 'small bar' calculation, 25% of the deficiency (shortfall) is 3.75 car bays and in accordance with the 'restaurant' calculation, 25% of the deficiency is 2 car bays.

June 2023

Conclusion



Accordingly, and for the reasons provided, we would respectfully request the JDAP amend condition (d) to reflect three (3) car bays at a total amount of \$77,490. It is important that the total dollar amount is provided within condition (d) to provide certainty, which is one of the pillars of a good planning condition.



We seek the dollar value of the cash in lieu be provided within condition (d) regardless of the JDAP's positions regarding the number of car bays.

Thank you



NAPOLEON STREET, 19 (LOT 20) COTTESLOE – SAT REVIEW OF CONDITION (D) PROVIDED IN THE JDAP DECISION FOR A MIXED-USE DEVELOPMENT

State Administrative Tribunal Reconsideration – Responsible Authority Report (Regulation 12)

DAP Name:	Metro Inner-North JDAP
Local Government Area:	Town of Cottesloe
Summary of Modifications:	Reconsideration of Condition (d) in order to reduce the number of car bays necessitating a cash-in-lieu payment.
Applicant:	Urbanista Town Planning
Owner:	Stirling Cooper Collective 3 Pty Ltd
Value of Development:	\$2.5 million ☐ Mandatory (Regulation 5) ☒ Opt In (Regulation 6)
Responsible Authority:	Town of Cottesloe
Authorising Officer:	Freya Ayliffe, Director Development & Regulatory Services
LG Reference:	4294
DAP File No:	DAP/22/02276
SAT File No (DR reference):	DR 194/2022
Date of Decision under Review:	21 October 2022
Application for Review Lodgement Date:	4 November 2022
Attachment(s):	1. Applicant's letter dated 5 May 2023 2. Applicant's letter dated 26 May 2023 3. Draft 'Payment in Lieu of Parking Plan'
Is the Responsible Authority Recommendation the same as the Officer Recommendation?	☒ Yes Complete Responsible Authority Recommendation section
	☐ No Complete Responsible Authority and Officer Recommendation sections

Responsible Authority Recommendation

That the Metro Inner North Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 194 of 2022, resolves to:

Reconsider its decision dated 27 October 2022 and **AFFIRM** its decision for DAP Application reference DAP/22/02276 and accompanying plans in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the Town of Cottesloe Local Planning Scheme No. 3, for the following reason:

Reason

1. The proposal to amend Condition (d) does not satisfy Part 9A, Clause 77D(2) in the *Planning and Development (Local Planning Schemes) Regulations 2015* as a lower number of car parking spaces would not be adequate for the demands of the development, having regard to the proposed uses, the availability of off-site parking facilities, and the likely use of alternative means of transport.

Advice Notes

1. The Town has no objection to rewording the existing Condition (d) in the DAP decision letter of 27 October 2022 to read:

Prior to the commencement of development, payment of \$180,810 shall be made to the Town of Cottesloe for Payment in Lieu of 7 car parking bays which have not been provided on site or in a shared parking arrangement.

Details: outline of development application

Region Scheme	Metropolitan Region Scheme
Region Scheme Zone/Reserve	Urban
Local Planning Scheme	Local Planning Scheme No. 3 (LPS 3)
Local Planning Scheme Zone/Reserve	Town Centre/R100
Structure Plan/Precinct Plan	Draft Cottesloe Village Precinct Plan
Structure Plan/Precinct Plan Land Use Designation	To be determined
Use Class (proposed) and permissibility:	Office: P - use (<i>means a use that is permitted in the zone if it complies with any relevant development standards and requirements of the Scheme</i>); Restaurant & Small Bar: D - use (<i>means a use that is not permitted in the zone unless the local government has exercised its discretion by granting development approval</i>)
Lot Size:	511m ²
Net Lettable Area (NLA):	887m ² (approx.)
Number of Dwellings:	N/A
Existing Land Use:	Shop & Restaurant/cafe
State Heritage Register	No
Local Heritage	☐ N/A ☒ Heritage List ☐ Heritage Area
Design Review	☒ N/A ☐ Local Design Review Panel ☐ State Design Review Panel ☐ Other
Bushfire Prone Area	No
Swan River Trust Area	No

Proposal:

To modify Condition (d) of the JDAP approval issued 27 October 2022 as follows:

Existing condition

- (d) *The provision of cash-in-lieu of 7 car bays calculated in accordance with Part 9A of the Planning and Development (Local Planning Schemes) Regulations 2015 prior to occupation.*

Proposed condition

- (d) *Payment of \$77,490 to the Town of Cottesloe for cash-in-lieu of three car bays prior to occupation of the development.*

Proposed Land Use	• Office • Restaurant • Small Bar
Proposed Net Lettable Area	887m ² (approx.).
Proposed No. Storeys	4
Proposed No. Dwellings	N/A

Background:History of Application26 July 1990

Council approved a change of use from Office to 'Shop/Dining Room'.

21 October 2022

The JDAP approved a four-storey office building with rooftop terrace, and a change of use of the existing ground floor to 'Restaurant and Small Bar'.

Context

The lot is approximately 511m², rectangular in shape, and has frontages to Napoleon Street to the north and Clapham Lane to the south. It is currently occupied by two tenancies, the western side called 'Up Town Coffee & Food' and the eastern side by a retail shop called 'Shiraz', the latter which is included in the Town's Heritage List. The lot is in one title.

The lot slopes down approximately 1.5m from its south-eastern corner to the north-western corner. It is located approximately 53m from Railway Street and 85m from Stirling Highway, and is within approximately 100m of the Cottesloe train station and a major bus route making it easily accessible to public transport.

Clapham Lane at the rear is a dedicated right-of-way which is 3m in width. Its eastern end is restricted to no trucks and one-way only onto Stirling Highway as it is too tight to exit and vertical clearance obstructions exist.

Application to the State Administrative Tribunal

The application for review was forwarded to the Town by the applicant on 7 November 2022.

Mediation was held at the State Administrative Tribunal (SAT) on 9 March & 11 April 2023.

On 11 April 2023, the SAT issued Orders which included:

3. *The applicant is to provide additional information as discussed at mediation to the applicant by 28 April 2023.*
4. *Pursuant to s 31 (1) of the State Administrative Tribunal Act 2004 (WA) the respondent is invited to reconsider the decision on or before 16 June 2023.*
5. *The matter is listed for a directions hearing, to be conducted by teleconference, at 9.30am on 23 June 2023.*

On 1 May 2023, the Tribunal issued the following orders by consent:

1. *The time for compliance with Order 3 of the orders dated 11 April 2023, namely that the Applicant provide additional information as discussed at mediation, is extended to 5 May 2023.*
2. *The time for compliance with Order 4 of the orders dated 11 April 2023, namely that the Respondent is invited to reconsider the decision, is extended to 23 June 2023.*
3. *The directions hearing listed for 23 June 2023 is vacated.*
4. *The matter is listed to a directions hearing, to be conducted by teleconference, at 9.30am on 30 June 2023.*

On 8 May 2023, the Town received the additional information required in Order 1 of the SAT orders. This was 3 days after it was due.

The additional information submitted by the applicant requests that Condition (d) be amended so that the payment of cash-in-lieu be reduced from 7 carbays (\$180,810) to 3 car bays (\$77,490).

The State Administrative Tribunal (SAT) has made orders inviting the decision-maker (JDAP), under Section 31 of the *State Administrative Tribunal Act 2004* (SAT Act) to reconsider its decision. The decision-maker may:

- affirm the previous decision,
- vary the decision, or
- set aside the decision and substitute a new decision.

Legislation and Policy:

Legislation

- *Planning and Development Act 2005*

- *Metropolitan Region Scheme*
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- *Planning and Development (Development Assessment Panel) Regulations 2011*
- *Local Planning Scheme No. 3 (LPS 3)*
- *Town of Cottesloe Heritage List*
- *Town of Cottesloe Municipal Inventory*

State Government Policies

State Planning Policy 7.0: Design of the Built Environment

Structure Plans/Activity Centre Plans

Draft Cott Village Precinct Plan (sub-precinct 1)

Local Policies

- *Town Centre Design Guidelines*
- *Local Planning Policy No. 1 – Parking Matters*
- *Draft Payment in Lieu of Parking Plan*

Consultation:

Public Consultation

The original approved development was advertised from 15 August 2022 to 31 August 2022. No further advertising is considered necessary in respect to this appeal.

Referrals/consultation with Government/Service Agencies

No referrals or consultation with Government/Services Agencies has been considered necessary in respect to this appeal.

Design Review Panel Advice

The original approved development was referred to the Town's Design Review Panel on 25 May 2022. No further referral was considered necessary in respect to this appeal.

Other Advice

No other advice has been provided.

Planning Assessment:

The applicant has advised that the cash-in-lieu rate of \$1722/m² as provided in the Town's draft *'Payment in Lieu of Parking Plan'* is acceptable. However, they consider that the number of bays required should be reduced from 7 car bays to 3 car bays.

The JDAP approval issued 27 October 2022 was conditioned to require a minimum 12 on-site car bays and provision of cash-in-lieu for 7 car bays. This resulted in an 8 car bays shortfall, which was waived by the JDAP.

If the JDAP had only calculated the proposed office and restaurant use, rather than for the Small Bar use, then the parking requirement would have been reduced to 20 car bays, resulting in a shortfall of 8 car bays. However, the applicant had nominated to use the parking requirements for the Small Bar, possibly in recognition that a Small Bar is likely to generate a higher demand for parking as they anticipate it attracting up to 96 customers and staff at the premises, compared to up to 40 customers and staff for the proposed restaurant use.

The table below summarises the parking calculations based Local Planning Scheme No. 3 and Local Planning Policy No. 1 – *Parking Matters*:

Provision	Requirement	Proposal	Assessment	Maximum 25% cash-in-lieu	JDAP approval
Local Planning Scheme No. 3	- Office – 15 car bays - Small Bar – 12 car bays (for 96 persons) - Restaurant – 5 car bays (for 40 persons).	12 on-site car bays (stacker arrangement at rear).	27 Car bays required (Shortfall = 15 car bays based on only Office & Small Bar uses).	27 bays x 25% = 7 car bays.	12 car bays to be provided on-site & provision of cash-in-lieu for 7 car bays.

The applicant is contesting the Town/JDAP's interpretation of the Town's Local Planning Policy No. 1 – *Parking Matters* as the applicant considers that the maximum amount that may be granted as cash-in-lieu should be 25% of the parking deficiency, rather than 25% of the total parking requirement. However, the Policy advises that it is the maximum percentage of the total parking requirement that Council may grant as cash-in-lieu (ie: 7 car bays).

If the shortfall of parking amounted to less than 25% of the total parking requirement then Council would only charge for the actual shortfall. However, if the Town calculated 25% of the deficiency of parking, as suggested by the applicant, then this may result in the full shortfall not being able to be provided as cash-in-lieu.

It should also be noted that the applicant's submission of 5 May 2023 refers to 15 car bays being provided on-site and therefore their calculations are based on a shortfall of 12 car bays. However, this is not consistent with the plans approved by the JDAP which only show 12 on-site car bays with a shortfall of 15 on-site car bays.

Planning and Development (Local Planning Schemes) Regulations 2015 – Provisions about car parking.

Notwithstanding the reference to the Town's Local Planning Scheme No. 3 and Local Planning Policy No. 1 – *Parking Matters* above, the provisions about car parking are

now only to be considered under Part 9A of the deemed provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations). The provisions in the Scheme and Policy have been made redundant, except where referred to as *Interim parking provisions* (see below).

Relevant clauses in the Regulations are provided below:

Clause 77D – ‘Variations of minimum on-site parking requirement in relation to development’

(1) The local government may –

(a) Vary a minimum on-site parking requirement that applies to development so that the minimum number of car parking spaces that must be provided as part of the development is a lower number; or

(b) Waive a minimum on-site parking requirement that applies to development.

(2) The local government must not vary or waive a minimum on-site parking requirement under subclause (1) in relation to development unless the local government is satisfied –

(a) That reasonable efforts have been made to comply with the minimum on-site parking requirement without adversely affecting access arrangements, the safety of pedestrians or persons in vehicles, open space, street trees or service infrastructure; and

(b) that –

(i) in the case of a variation – the lower number of car parking spaces would be adequate for the demands of the development, having regard to the likely use of the car parking spaces, the availability of off-site parking facilities and the likely use of alternative means of transport; or

(ii) in the case of a waiver – it is not necessary for car parking spaces to be provided as part of the development, having regard to the availability of off-site parking facilities and the likely use of alternative means of transport.

Payment in lieu of parking

Under clause 77E of the *Planning & Development (Local Planning Schemes) Regulations 2015*, if the development does not comply with the applicable minimum on-site parking requirement then a payment in lieu of parking and/or a shared parking arrangements condition must be imposed.

Interim parking provisions

Clause 5.8.3 in LPS 3 permits Council to accept cash-in-lieu of parking spaces where a development will result in a parking shortfall. The Scheme provisions are considered as ‘interim parking provisions’ until a ‘*Payment in Lieu of Parking Plan*’ has been adopted, or up until 1 July 2023.

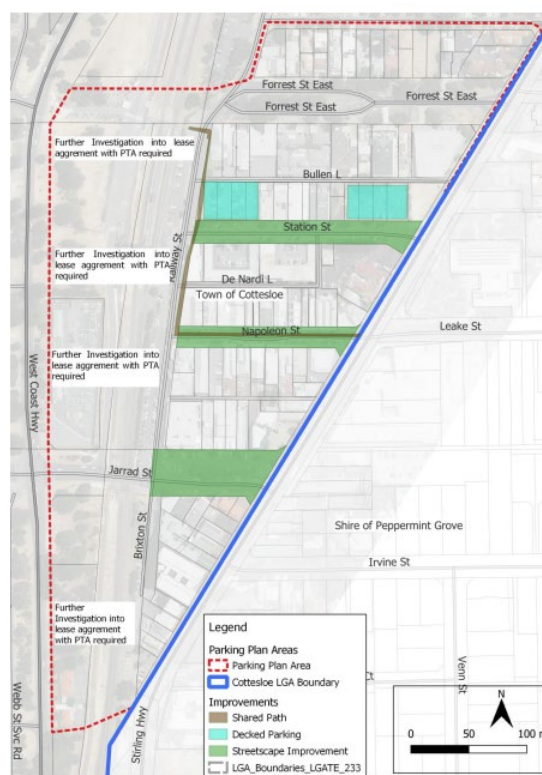
Officer Comment

On 21 October 2022, the JDAP varied the minimum on-site parking requirement for the proposed development by 8 car bays, therefore the shortfall of parking was reduced to 7 car bays. The JDAP then imposed a payment in lieu of parking condition for the 7 car bays shortfall.

Payment in Lieu of Parking Plan

On 26 April 2023, Council resolved to adopt for the purpose of advertising a '*Payment in Lieu of Parking Plan*' (the Plan) in accordance with Section 77K of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

The Plan finishes advertising on 6 June 2023 and so should be given due regard in the determination of this application as the site is located within the proposed Plan boundary.



Above: Parking Plan Area in draft Payment in Lieu of Parking Plan

Once Council has adopted the *Payment in Lieu of Parking Plan*, the development will not be able to be approved unless the approval is granted subject to a condition requiring either payment in lieu of parking and/or a shared parking arrangement if it does not comply with the minimum on-site parking requirement.

Any further reduction of carbays would likely result in inadequate parking for the development as the proposed restaurant/small bar is likely to generate additional parking demand due to its increased capacity, particularly in Napoleon Street, where there is only limited timed on-street parking available.



Above: Google view showing high occupancy of on-street car bays outside 19 Napoleon Street.

The existing shop 'Shiraz' required approximately 5 car bays based on its gross floor area, and the previous 'Dome' café required 1 car bay, based on 8 internal seats that were shown on the approved plan. The uses therefore required a total of 6 car bays which are currently provided at the rear of the lot. The proposed development removes the parking at the rear and does not propose to provide any replacement on-site parking for the restaurant/small bar.



Above: Aerial photo showing existing availability of on-site car parking at rear of 19 Napoleon Street which is to be removed in the proposed development.

Whilst the site is in close proximity to alternative means of transport such as the Perth-Fremantle trainline and Stirling Highway bus routes, it is apparent from observations and parking meter data that the car bays in the area are still in high demand for most of the day.

Furthermore, the Council's proposed *Payment in Lieu of Parking Plan* is close to adoption and this will enable developments to be conditioned for a cash-in-lieu payment where the minimum required number of on-site car bays are not provided.

The Plan will facilitate the provision and development of adequate parking facilities within the town centre and ensure that parking does not create an adverse impact on the public realm.

Conclusion:

The applicant's calculations used in their letter dated 5 May 2023 for justifying the cash-in-lieu payment to be reduced to 3 bays, instead of 7 bays, appears incorrect as it is based on the provision of 15 on-site car bays, whereas the approved plans and JDAP condition only refer to 12 on-site car bays.

The correct calculation should be that the car bay shortfall is 15 bays and the maximum amount that could be taken as cash-in-lieu under LPS 3 and the Local Planning Policy No. 1 - *Parking Matters* is 7 car bays.

The Town's *Payment in Lieu of Parking Plan* is due to have completed advertising on 6 June 2023 and it is anticipated that it will be referred to Council on 27 June 2023 for adoption.

Cash-in-lieu payments for non-residential development in the town centre with insufficient on-site parking has previously been implemented by way of condition on development approvals, and the proposed *Payment in Lieu of Parking Plan* will assist the Town in facilitating adequate parking facilities within the town centre in the future.

The Town's own observations and data shows that on-street parking bays are in high demand throughout most of the day and any reduction in the cash-in-lieu contribution is not justified.

5 May 2023

Zachary Clifford
Solicitor
State Solicitor's Office

By email: z.clifford@sso.wa.gov.au

CC: csp@cottesloe.wa.gov.au

Dear Mr Clifford,

**DR 194/2022 – SECTION 31
STERLING COOPER COLLECTIVE 3 PTY LTD V METRO INNER-NORTH JOINT
DEVELOPMENT ASSESSMENT PANEL**

Urbanista Town Planning is the Applicant on behalf of Sterling Cooper Collective being the landowner of Nos. 19-21 Napoleon Street, Cottesloe, in the State Administrative Tribunal ('SAT') matter DR 194/2022.

The SAT orders issued on 11 April 2023 required the applicant to provide additional information as discussed at mediation to the applicant by 28 April 2023, and this was later extended to 5 May 2023 through minute of consent orders filed on 27 April 2023. This letter is intended to address this requirement and provide the further information sought.

BACKGROUND

The Joint Development Assessment Panel ('JDAP') determined to approve the proposed development DAP/22/02276 at its meeting held on 21 October 2022. The approval included a condition relating to cash-in-lieu payment of car bays, provided below for reference.

- d) *The provision of cash-in-lieu of 7 car bays calculated in accordance with Part 9A of the Planning and Development (Local Planning Schemes) Regulations 2015 prior to occupation.*

An appeal was lodged with the SAT for reconsideration of condition (d) in order to reduce the number of car bays necessitating a cash-in-lieu payment and also obtain certainty on the cost per car bay.

In accordance with Part 9A of the *Planning and Development (Local Planning Schemes) Regulations 2015* ('**Regulations**') cash in lieu can be applied to a car parking shortfall. In accordance with clause 77D(2), Part 9A of the Regulations a local government may:

- (2) *The local government must not vary or waive a minimum on-site parking requirement under subclause (1) in relation to development unless the local government is satisfied –*
 - (a) *that reasonable efforts have been made to comply with the minimum on-site parking requirement without adversely affecting access arrangements, the safety of pedestrians or persons in vehicles, open space, street trees or service infrastructure; and*
 - (b) *that —*
 - (i) *in the case of a variation — the lower number of car parking spaces would be adequate for the demands of the development, having regard to the likely use of the car parking spaces, the availability of off-site parking facilities and the likely use of alternative means of transport; or*
 - (ii) *in the case of a waiver — it is not necessary for car parking spaces to be provided as part of the development, having regard to the availability of off-site parking facilities and the likely use of alternative means of transport.*

Therefore, a local government, and in this case, the JDAP can reduce the minimum car parking should there be sufficient availability of off-site parking facilities and the likely use of alternative means of transport.

Subsequent to the JDAP's determination, in October 2022 clarification was sought from the Town in respect of the cost per car bay, and the Town of Cottesloe advised the rate of approximately \$1000/m². The area required per car bay is accepted as 15m² (as per Western Australian Planning Commission ('WAPC') policy statement), and therefore the total payment required to meet condition (d) was anticipated to be \$105,000.

Following mediation in November 2022, the Respondent advised that the rate for cash-in-lieu of car parking had increased to \$1,722m² as per their draft '*Payment in lieu of Parking Plan*', which would increase the total cash-in-lieu payment for seven car bays to \$184,000.

This was reaffirmed by the Town of Cottesloe at its Ordinary Council Meeting held on 26 April 2023, where the draft Parking Plan with an infrastructure cost of \$1,722 per sqm for car parking. was considered and endorsed for community consultation. The Council resolution was as follows:

THAT Council adopt for the purpose of advertising the 'Payment in Lieu of Parking Plan' in accordance with Section 77K of the Planning and Development (Local Planning Schemes) Regulations 2015.

The revised cash-in-lieu rate per car bay provided by the respondent is accepted by the applicant, however the number of car bays remains contested. Accordingly, it was agreed between parties that further information would be provided in respect of the following:

1. Clarification on the specific modifications sought to condition (d).
2. Justification to support any requested reduction to the cash-in-lieu of car bays.

APPLICANT'S SUBMISSION

We request that condition (d) be amended as follows:

- *Payment of \$77,490 to the Town of Cottesloe for cash-in-lieu of three car bays prior to occupation of the development.*

The amount of \$77,490 is based on three car parking bays at a rate of \$1,722 per sqm and an area of 15m² per car bay. The reduction from seven to three car bays is the result of only applying cash-in-lieu to the office component of the approved development.

The basis for the reduction to three car bays is discussed below.

Car Parking Calculation

Restaurant/Small Bar

The function of the proposed restaurant/small bar, is that the space is a 'restaurant' during the hours of 6.30am to 3pm and a 'small bar' from 3pm. In accordance with Town's Car Parking Policy, a small bar requires a far greater number of car bays than a restaurant, even though the two land uses are largely the same in the way they operate. Given the discrepancy, the Respondent has determined to use the 'small bar' parking ratios to calculate the required on site car parking. This is resulting in car parking requirement of 12 car bays for the restaurant/small bar. If the space was calculated based on the restaurant parking requirements only, this space would only require 5 car bays, less than the 6 car bays currently required for the existing shop and restaurant uses on the site.

The significant difference in the car parking calculations for two land uses that operate in a similar manner, is in our opinion a flaw in the planning framework.

Office

The office component of the development requires a total of 15 car bays based on the gross floor area of this space.

Total Parking Requirements

Based on the above, the total number of car bays required for the development are 20 (in accordance with the restaurant calculation) and 27 (in accordance with the small bar calculation).

The approved development includes 15 car bays.

The approved parking deficiency is 12 car bays in accordance with the small bar calculation and 5 car bays based on the restaurant calculation.

Local Planning Framework

Local Planning Policy No. 1 – Parking Matters

In accordance with cash in lieu requirements listed in the Town's LPP1, a maximum of 25% of the parking should be converted into a cash-in-lieu payment. It is our view, that the intent of this provision is for 25% of the shortfall to be provided in cash in lieu.

Therefore, based on the 'small bar' calculation, 25% of the deficiency (shortfall) is **3 car bays** and in accordance with the 'restaurant' calculation, 25% of the deficiency is **1.25 car bays**.

The Respondent's Assessment

A matter in contention is how the Respondent has interpreted their policy and applied the condition. The Respondent has calculated the cash-in-lieu payment based on the total number of car bays required, rather than calculating it based on the actual shortfall being proposed.

It is the Applicant's case, that this assessment is incorrect. Whilst we accept that the Respondent's policy is not entirely clear, we must consider the purpose and intent.

If the way the Respondent calculated the shortfall was based on total car bays *required*, the cash-in-lieu payment would be the same regardless of whether the development proposed a shortfall of 1 car bay or 25 car bays. The calculation should, and in our opinion *does*, consider the parking provided in the development and formulates the cash-in-lieu payment based on that.

On this basis, the applicant submits that based on the intent of the Policy, the cash-in-lieu payment should be 3 car bays (based on a 'small bar') or 1.25 car bays (based on a 'restaurant').

Additional Justification

Notwithstanding, the Applicant's position above, if the JDAP were of the view that the Respondent's calculation is correct, it is noted that decision maker has the discretion to apply any (if any) cash in lieu payment that they determine is appropriate.

For the following additional reasons, we submit that the reduction to 3 car bays is appropriate in the context of this development and its setting.

1. Site context ideal for promotion of sustainable transport

The subject site is located within a Town Centre Zone which is the ideal context to promote walkability and alternate transport options from the private vehicle. Being located just over 100m from the Cottesloe Station and a high frequency bus route on Stirling Highway, the location contains the appropriate infrastructure and amenities to promote walkability and sustainable transport options.

The small bar element of the tenancy will operate from the late afternoons into the evening. A number of visitors to the small bar are likely to consume alcohol, which further encourages utilisation of public transport, ride share services, or car-pooling when attending the site. This results in a reduced need to for parking facilities when compared with other land uses operating within the Town Centre that may attract similar visitor numbers.

Furthermore, the café component categorised as ‘restaurant’ will operate primarily during workday hours providing a service to businesses and locals alike. The venue is not positioned to be a destination venue rather an amenity for the surrounding users of the precinct. Reducing demand of car parking. This is not dissimilar to ‘Vans’ which operates from No. 1 Napoleon Street, Cottesloe with no car parking onsite with opening hours of 6.30am to 10pm, seven days a week.

2. Significant public parking in the locality

Napoleon Street has 32 parking bays whereby 28 of them are restricted to a time limit of one hour and the other four car bays being restricted to 15 minutes. This encourages high turnover of car parking bays along Napoleon Street.

Furthermore, there are a total of 440 public parking bays within 200m of the subject site between Jarrod Street to the south and Station Street to the north. Most of these bays are ticketed and have a maximum of three hours.



Illustration prepared by FLYT as part of the TIS

All of these parking bays are conveniently located and within walkable distance from the subject site and would provide a suitable option for people visiting the site via private car.

3. Underutilisation of public parking

It is noted that the tenancy is subject to the following operating hours:

Café/Restaurant

Daytime trade:

- Monday to Saturday: 6.30am to 3.00pm
- Sunday: 6.30am to 1.00pm

Small Bar

Evening trade:

- Monday to Saturday: 3.00pm to 11.00pm
- Sunday: 1pm to 10.00pm

Occupancy rates of public parking bays in four locations were provided by the respondent on 11 April 2023. This information relates to 235 of the 440 public car bays within 200m of the site. Specifically:

- Station Street west car park – 54 bays
- Station Street east car park – 50 bays
- Napoleon Street – 31 bays
- Railway Street carpark – 40 bays

The data provided by the respondent, is a captured in a moment in time and does not account for turnover which happens frequently in these locations as they are time limited. Therefore, the below data provides a snapshot of typical peak periods in parking for four locations, summarised below:

Location	Periods achieving >80% occupancy	Duration
Station Street west car park	9.00am – 3.00pm	6 hours
Station Street east car park	Nil	Nil
Napoleon Street	8.00am – 4.00pm	8 hours
Railway Street car park	10.00am – 12.00pm	2 hours

The data indicates a clear trend for higher occupancy rates prior to 3.00pm in these four locations, however during the peak times there is still parking available in all the parking areas. The Station Street east car park never approaches capacity and is just over 150m walkable distance from the site.

Given not all these car parking areas exceed 80% occupancy in a moment in time, the remaining 205 car bays not assessed are available as well.

It is noted that the shop and restaurant that currently operates on the site contribute to these figures as they do not provide visitor parking on site.

Therefore, there is no shortfall of publicly accessible car bays. In fact, the data provided illustrates significant availability after 3pm which is when the small bar will operate. The café component will be relying on passing trade and local businesses and residents not dissimilar to the current operations.

4. Reciprocal parking opportunities

As the subject site is within the Cottesloe town centre, it is reasonable to expect that patrons of the restaurants and small bar will be visiting other services in the locality. Resulting in efficient use of car parking within the locality and acts as an informal reciprocal arrangement between various land uses within the locality.

The land use will only operate as a low intensity local café during the day, with the more intensive small bar only commencing operation in the afternoon (3pm Monday to Saturday and 1pm Sunday). The peak hours of operation for the small bar aligns well with a significant drop in parking occupancy rates in the Town Centre.

The development effectively promotes reciprocal use of public parking in the locality, reducing demand during the current peak times and increasing demand when bays are readily available. This results in more effective use of the public car parking and will also provide much needed activation beyond the current peak hours.

5. Proposed parking on site

The subject site has several site constraints including its small lot size and narrowness, and the retention of a heritage building. These constraints required an innovative solution to provide parking on site. Accordingly, a car stacker has been approved maximising the availability of car parking on site. The number of car bays balances the land uses as it provides parking for the offices as this is a new land use approved on the site. The restaurant/small bar type land uses already operate on the site without access to parking at the rear for visitors. Further, the parking solution includes two car bays located at the rear available at all times for visitors.

With this, every reasonable effort has been made to satisfy the on-site parking requirement. The parking layout approved, does not impact upon access arrangement, the safety of pedestrians or person as it is access from Clapham Lane.

6. Existing business operation

The existing shop and café operate on site without utilising any of the car bays at the rear and generate a comparable demand to the local café which will operate during the day. In this respect, there is not considered to be any change in the existing parking demand during the current peak hours. As there is still considerable parking available during peak hours under the current operation, it is highly unlikely that there would be any notable impact from the proposed operation.

Accordingly, and for the reasons provided, we would respectfully request the JDAP amend condition (d) to reflect three (3) car bays at a total amount of \$77,490. It is important that the total dollar amount is provided within condition (d) to provide certainty, which is one of the pillars of a good planning condition.

Lastly, we seek the dollar value of the cash in lieu be provided within condition (d) regardless of the JDAP's positions regarding the number of car bays.

Should you have any question in relation to the details provided in this submission, please contact Bianca Sandri on 6444 9171 or bianca@urbanistaplanning.com.au.

Yours sincerely,



Bianca Sandri
Director

26 May 2023

Zachary Clifford
Solicitor
State Solicitor's Office

By email: z.clifford@sso.wa.gov.au

CC: csp@cottesloe.wa.gov.au

Dear Mr Clifford,

**DR 194/2022 – SECTION 31
STERLING COOPER COLLECTIVE 3 PTY LTD V METRO INNER-NORTH JOINT
DEVELOPMENT ASSESSMENT PANEL**

Urbanista Town Planning is the Applicant on behalf of Sterling Cooper Collective being the landowner of Nos. 19-21 Napoleon Street, Cottesloe, in the State Administrative Tribunal ('SAT') matter DR 194/2022.

The SAT orders issued on 11 April 2023 required the applicant to provide additional information as discussed at mediation to the applicant by 28 April 2023, and this was later extended to 5 May 2023 through minute of consent orders filed on 27 April 2023. This letter is intended to address this requirement and provide the further information sought.

BACKGROUND

The Joint Development Assessment Panel ('JDAP') determined to approve the proposed development DAP/22/02276 at its meeting held on 21 October 2022. The approval included a condition relating to cash-in-lieu payment of car bays, provided below for reference.

- d) *The provision of cash-in-lieu of 7 car bays calculated in accordance with Part 9A of the Planning and Development (Local Planning Schemes) Regulations 2015 prior to occupation.*

An appeal was lodged with the SAT for reconsideration of condition (d) in order to reduce the number of car bays necessitating a cash-in-lieu payment and also obtain certainty on the cost per car bay.

In accordance with Part 9A of the *Planning and Development (Local Planning Schemes) Regulations 2015* ('**Regulations**') cash in lieu can be applied to a car parking shortfall. In accordance with clause 77D(2), Part 9A of the Regulations a local government may:

- (2) *The local government must not vary or waive a minimum on-site parking requirement under subclause (1) in relation to development unless the local government is satisfied –*
 - (a) *that reasonable efforts have been made to comply with the minimum on-site parking requirement without adversely affecting access arrangements, the safety of pedestrians or persons in vehicles, open space, street trees or service infrastructure; and*
 - (b) *that —*
 - (i) *in the case of a variation — the lower number of car parking spaces would be adequate for the demands of the development, having regard to the likely use of the car parking spaces, the availability of off-site parking facilities and the likely use of alternative means of transport; or*
 - (ii) *in the case of a waiver — it is not necessary for car parking spaces to be provided as part of the development, having regard to the availability of off-site parking facilities and the likely use of alternative means of transport.*

Therefore, a local government, and in this case, the JDAP can reduce the minimum car parking should there be sufficient availability of off-site parking facilities and the likely use of alternative means of transport.

Subsequent to the JDAP's determination, in October 2022 clarification was sought from the Town in respect of the cost per car bay, and the Town of Cottesloe advised the rate of approximately \$1000/m². The area required per car bay is accepted as 15m² (as per Western Australian Planning Commission ('WAPC') policy statement), and therefore the total payment required to meet condition (d) was anticipated to be \$105,000.

Following mediation in November 2022, the Respondent advised that the rate for cash-in-lieu of car parking had increased to \$1,722m² as per their draft '*Payment in lieu of Parking Plan*', which would increase the total cash-in-lieu payment for seven car bays to \$180,810.

This was reaffirmed by the Town of Cottesloe at its Ordinary Council Meeting held on 26 April 2023, where the draft Parking Plan with an infrastructure cost of \$1,722 per sqm for car parking. was considered and endorsed for community consultation. The Council resolution was as follows:

THAT Council adopt for the purpose of advertising the 'Payment in Lieu of Parking Plan' in accordance with Section 77K of the Planning and Development (Local Planning Schemes) Regulations 2015.

The revised cash-in-lieu rate per car bay provided by the respondent is accepted by the applicant, however the number of car bays remains contested. Accordingly, it was agreed between parties that further information would be provided in respect of the following:

1. Clarification on the specific modifications sought to condition (d).
2. Justification to support any requested reduction to the cash-in-lieu of car bays.

APPLICANT'S SUBMISSION

We request that condition (d) be amended as follows:

- *Payment of \$77,490 to the Town of Cottesloe for cash-in-lieu of three car bays prior to occupation of the development.*

The amount of \$77,490 is based on three car parking bays at a rate of \$1,722 per sqm and an area of 15m² per car bay. The reduction from seven to three car bays is the result of only applying cash-in-lieu to the office component of the approved development.

The basis for the reduction to three car bays is discussed below.

Car Parking Calculation

Restaurant/Small Bar

The function of the proposed restaurant/small bar, is that the space is a 'restaurant' during the hours of 6.30am to 3pm and a 'small bar' from 3pm. In accordance with Town's Car Parking Policy, a small bar requires a far greater number of car bays than a restaurant, even though the two land uses are largely the same in the way they operate. Given the discrepancy, the Respondent has determined to use the 'small bar' parking ratios to calculate the required on site car parking. This is resulting in car parking requirement of 12 car bays for the restaurant/small bar. If the space was calculated based on the restaurant parking requirements only, this space would only require 5 car bays, less than the 6 car bays currently required for the existing shop and restaurant uses on the site.

The significant difference in the car parking calculations for two land uses that operate in a similar manner, is in our opinion a flaw in the planning framework.

Office

The office component of the development requires a total of 15 car bays based on the gross floor area of this space.

Total Parking Requirements

Based on the above, the total number of car bays required for the development are 20 (in accordance with the restaurant calculation) and 27 (in accordance with the small bar calculation).

The approved development includes 12 car bays.

The approved parking deficiency is 15 car bays in accordance with the small bar calculation and 8 car bays based on the restaurant calculation.

Local Planning Framework

Local Planning Policy No. 1 – Parking Matters

In accordance with cash in lieu requirements listed in the Town's LPP1, a maximum of 25% of the parking should be converted into a cash-in-lieu payment. It is our view, that the intent of this provision is for 25% of the shortfall to be provided in cash in lieu.

Therefore, based on the 'small bar' calculation, 25% of the deficiency (shortfall) is **3.75 car bays** and in accordance with the 'restaurant' calculation, 25% of the deficiency is **2 car bays**.

The Respondent's Assessment

A matter in contention is how the Respondent has interpreted their policy and applied the condition. The Respondent has calculated the cash-in-lieu payment based on the total number of car bays required, rather than calculating it based on the actual shortfall being proposed.

It is the Applicant's case, that this assessment is incorrect. Whilst we accept that the Respondent's policy is not entirely clear, we must consider the purpose and intent.

If the way the Respondent calculated the shortfall was based on total car bays *required*, the cash-in-lieu payment would be the same regardless of whether the development proposed a shortfall of 1 car bay or 25 car bays. The calculation should, and in our opinion *does*, consider the parking provided in the development and formulates the cash-in-lieu payment based on that.

On this basis, the applicant submits that based on the intent of the Policy, the cash-in-lieu payment should be 3.75 car bays (based on a 'small bar') or 2 car bays (based on a 'restaurant').

Additional Justification

Notwithstanding, the Applicant's position above, if the JDAP were of the view that the Respondent's calculation is correct, it is noted that decision maker has the discretion to apply any (if any) cash in lieu payment that they determine is appropriate.

For the following additional reasons, we submit that the reduction in car car bays is appropriate in the context of this development and its setting.

1. Site context ideal for promotion of sustainable transport

The subject site is located within a Town Centre Zone which is the ideal context to promote walkability and alternate transport options from the private vehicle. Being located just over 100m from the Cottesloe Station and a high frequency bus route on Stirling Highway, the location contains the appropriate infrastructure and amenities to promote walkability and sustainable transport options.

The small bar element of the tenancy will operate from the late afternoons into the evening. A number of visitors to the small bar are likely to consume alcohol, which further encourages utilisation of public transport, ride share services, or car-pooling when attending the site. This results in a reduced need to for parking facilities when compared with other land uses operating within the Town Centre that may attract similar visitor numbers.

Furthermore, the café component categorised as ‘restaurant’ will operate primarily during workday hours providing a service to businesses and locals alike. The venue is not positioned to be a destination venue rather an amenity for the surrounding users of the precinct. Reducing demand of car parking. This is not dissimilar to ‘Vans’ which operates from No. 1 Napoleon Street, Cottesloe with no car parking onsite with opening hours of 6.30am to 10pm, seven days a week.

2. Significant public parking in the locality

Napoleon Street has 32 parking bays whereby 28 of them are restricted to a time limit of one hour and the other four car bays being restricted to 15 minutes. This encourages high turnover of car parking bays along Napoleon Street.

Furthermore, there are a total of 440 public parking bays within 200m of the subject site between Jarrod Street to the south and Station Street to the north. Most of these bays are ticketed and have a maximum of three hours.



Illustration prepared by FLYT as part of the TIS

All of these parking bays are conveniently located and within walkable distance from the subject site and would provide a suitable option for people visiting the site via private car.

3. Underutilisation of public parking

It is noted that the tenancy is subject to the following operating hours:

Café/Restaurant

Daytime trade:

- Monday to Saturday: 6.30am to 3.00pm
- Sunday: 6.30am to 1.00pm

Small Bar

Evening trade:

- Monday to Saturday: 3.00pm to 11.00pm
- Sunday: 1pm to 10.00pm

Occupancy rates of public parking bays in four locations were provided by the respondent on 11 April 2023. This information relates to 235 of the 440 public car bays within 200m of the site. Specifically:

- Station Street west car park – 54 bays
- Station Street east car park – 50 bays
- Napoleon Street – 31 bays
- Railway Street carpark – 40 bays

The data provided by the respondent, is a captured in a moment in time and does not account for turnover which happens frequently in these locations as they are time limited. Therefore, the below data provides a snapshot of typical peak periods in parking for four locations, summarised below:

Location	Periods achieving >80% occupancy	Duration
Station Street west car park	9.00am – 3.00pm	6 hours
Station Street east car park	Nil	Nil
Napoleon Street	8.00am – 4.00pm	8 hours
Railway Street car park	10.00am – 12.00pm	2 hours

The data indicates a clear trend for higher occupancy rates prior to 3.00pm in these four locations, however during the peak times there is still parking available in all the parking areas. The Station Street east car park never approaches capacity and is just over 150m walkable distance from the site.

Given not all these car parking areas exceed 80% occupancy in a moment in time, the remaining 205 car bays not assessed are available as well.

It is noted that the shop and restaurant that currently operates on the site contribute to these figures as they do not provide visitor parking on site.

Therefore, there is no shortfall of publicly accessible car bays. In fact, the data provided illustrates significant availability after 3pm which is when the small bar will operate. The café component will be relying on passing trade and local businesses and residents not dissimilar to the current operations.

4. Reciprocal parking opportunities

As the subject site is within the Cottesloe town centre, it is reasonable to expect that patrons of the restaurants and small bar will be visiting other services in the locality. Resulting in efficient use of car parking within the locality and acts as an informal reciprocal arrangement between various land uses within the locality.

The land use will only operate as a low intensity local café during the day, with the more intensive small bar only commencing operation in the afternoon (3pm Monday to Saturday and 1pm Sunday). The peak hours of operation for the small bar aligns well with a significant drop in parking occupancy rates in the Town Centre.

The development effectively promotes reciprocal use of public parking in the locality, reducing demand during the current peak times and increasing demand when bays are readily available. This results in more effective use of the public car parking and will also provide much needed activation beyond the current peak hours.

5. Proposed parking on site

The subject site has several site constraints including its small lot size and narrowness, and the retention of a heritage building. These constraints required an innovative solution to provide parking on site. Accordingly, a car stacker has been approved maximising the availability of car parking on site. The number of car bays balances the land uses as it provides parking for the offices as this is a new land use approved on the site. The restaurant/small bar type land uses already operate on the site without access to parking at the rear for visitors. Further, the parking solution includes two car bays located at the rear available at all times for visitors.

With this, every reasonable effort has been made to satisfy the on-site parking requirement. The parking layout approved, does not impact upon access arrangement, the safety of pedestrians or person as it is access from Clapham Lane.

6. Existing business operation

The existing shop and café operate on site without utilising any of the car bays at the rear and generate a comparable demand to the local café which will operate during the day. In this respect, there is not considered to be any change in the existing parking demand during the current peak hours. As there is still considerable parking available during peak hours under the current operation, it is highly unlikely that there would be any notable impact from the proposed operation.

Accordingly, and for the reasons provided, we would respectfully request the JDAP amend condition (d) to reflect three (3) car bays at a total amount of \$77,490. It is important that the total dollar amount is provided within condition (d) to provide certainty, which is one of the pillars of a good planning condition.

Lastly, we seek the dollar value of the cash in lieu be provided within condition (d) regardless of the JDAP's positions regarding the number of car bays.

Should you have any question in relation to the details provided in this submission, please contact Bianca Sandri on 6444 9171 or bianca@urbanistaplanning.com.au.

Yours sincerely,



Bianca Sandri
Director

Payment in Lieu of Parking Plan

Payment in Lieu of Parking Plan	
Responsible Business Unit:	Development and Regulatory Services
Date of Adoption:	Date Revised:

1. Introduction

1.1 Regulatory compliance

This Payment in Lieu of Parking Plan (the Plan) has been created under Schedule 2, Part 9A of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) and has been prepared in the Manner and Form approved by the Western Australian Planning Commission (WAPC).

1.2 Purpose

This Plan, together with the Regulations, governs the application of payments in lieu of providing car parking for development in the areas identified in this Plan. This Plan outlines the purposes for which payment in lieu of car parking will be used in the areas identified and how money collected will be administered.

1.3 Operational dates

The Plan commenced operation on (xx-xx-2023).

The Plan will cease operation on (insert date), being xx-xx-2033, being 10 years from the operational date, unless extended in writing by the WAPC prior to the expiry date.

1.4 Amendments to the Plan

Amendments to the Plan shall be made in accordance with clause 77M of the Regulations and the current version shall be published in accordance with clause 77L.

A record of amendments to the Plan shall be maintained in the table below:

Amendment No.	Date	Comment

1.5 Objectives of the Plan

The Plan has the following objectives:

- To facilitate the provision and development of adequate parking facilities within the town centre and foreshore precinct which reflects the planning intent for a mixed use, urban, vibrant and accessible locality.
- To provide the optimal balance of parking, which recognises and supports the desired planning intent for an accessible town centre and foreshore by all modes of transport.
- To ensure that parking does not create an adverse impact upon the planned public realms of the town centre and the foreshore precinct.
- To support access by public transport, walking and cycling, as well as private vehicles.

1.6 Linkages to relevant adopted planning documents

The Plan supports the implementation of the following documents and the Integrated Planning and Reporting framework:

- *Local Planning Scheme No. 3*
- *Local Planning Policy No.1 – Parking Matters*
- *Local Planning Strategy*
- *Draft Cott Village Precinct Structure Plan*
- *Corporate Business Plan 2020 - 2024*
- *Foreshore Masterplan*
- *Strategic Community Plan 2013-2023*

2. Terms used

The terms used in the Plan have the same meaning as in the Regulations.

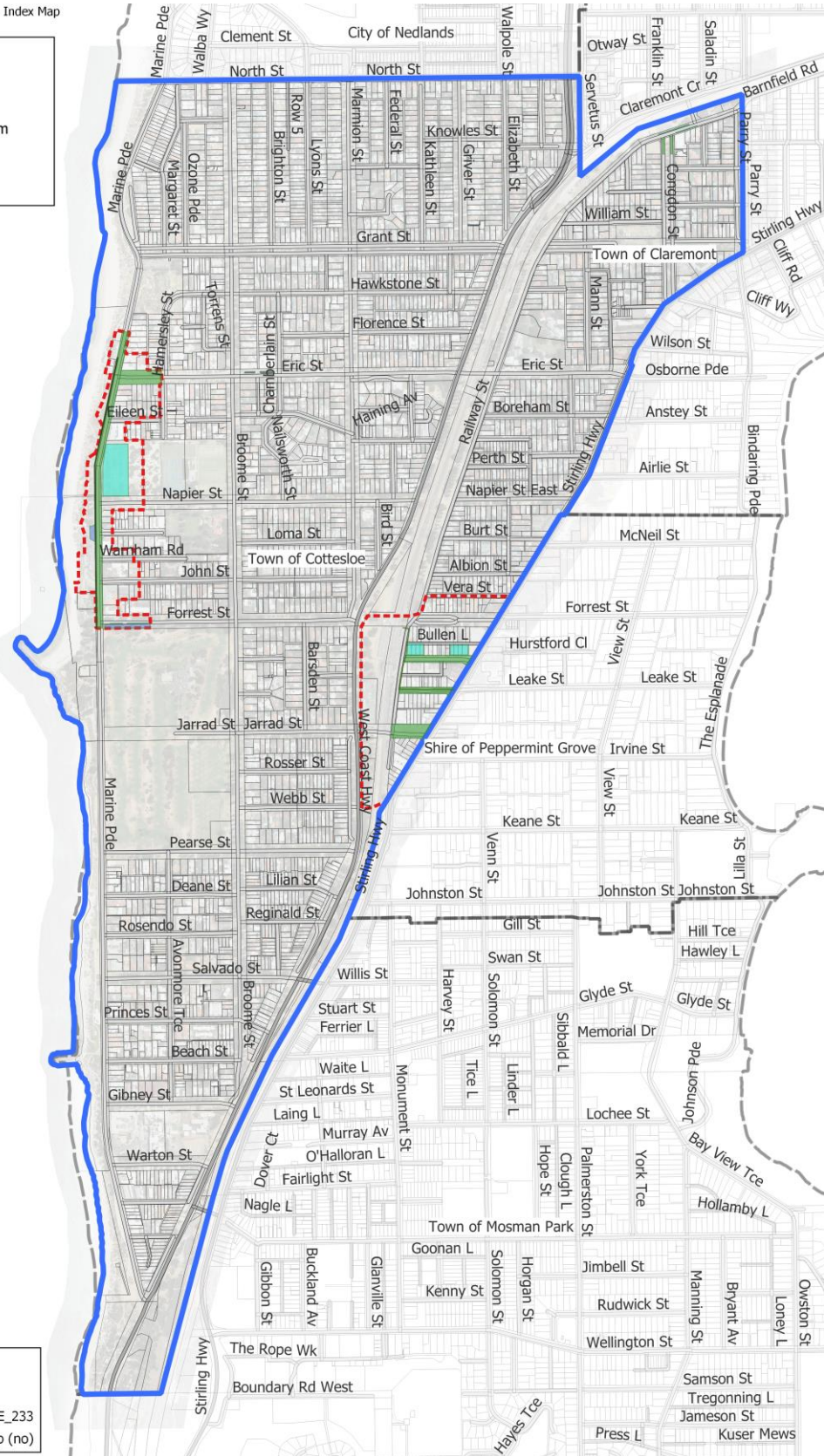
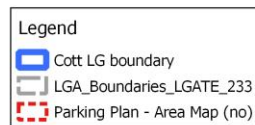
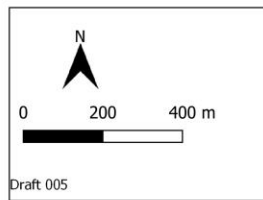
3. Parking Plan application and area

This Plan relates to the area specified in Section 3.1. Moneys collected within the Plan area must be spent in the Plan area.

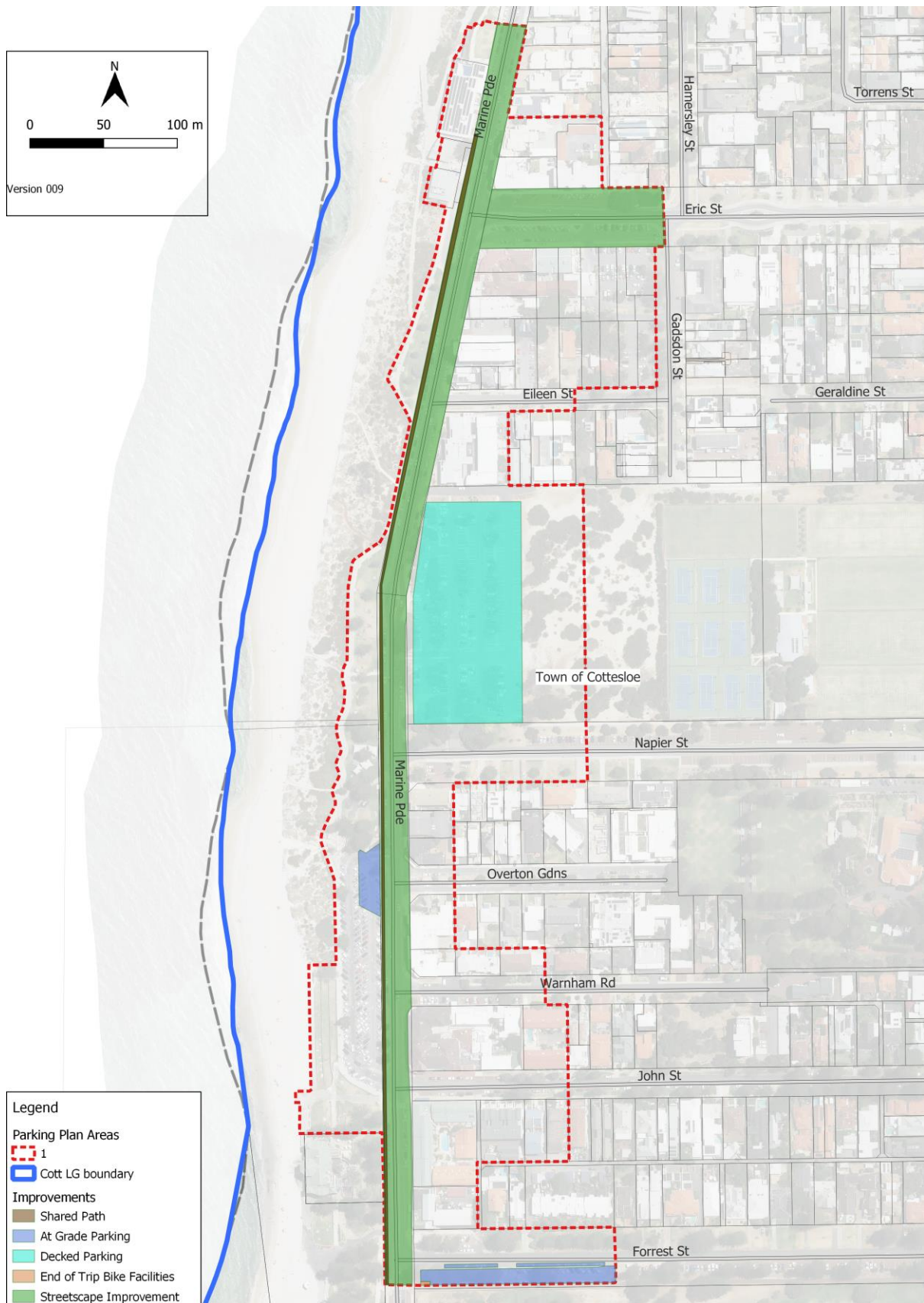
3.1 Maps

3.1.1 Index Map

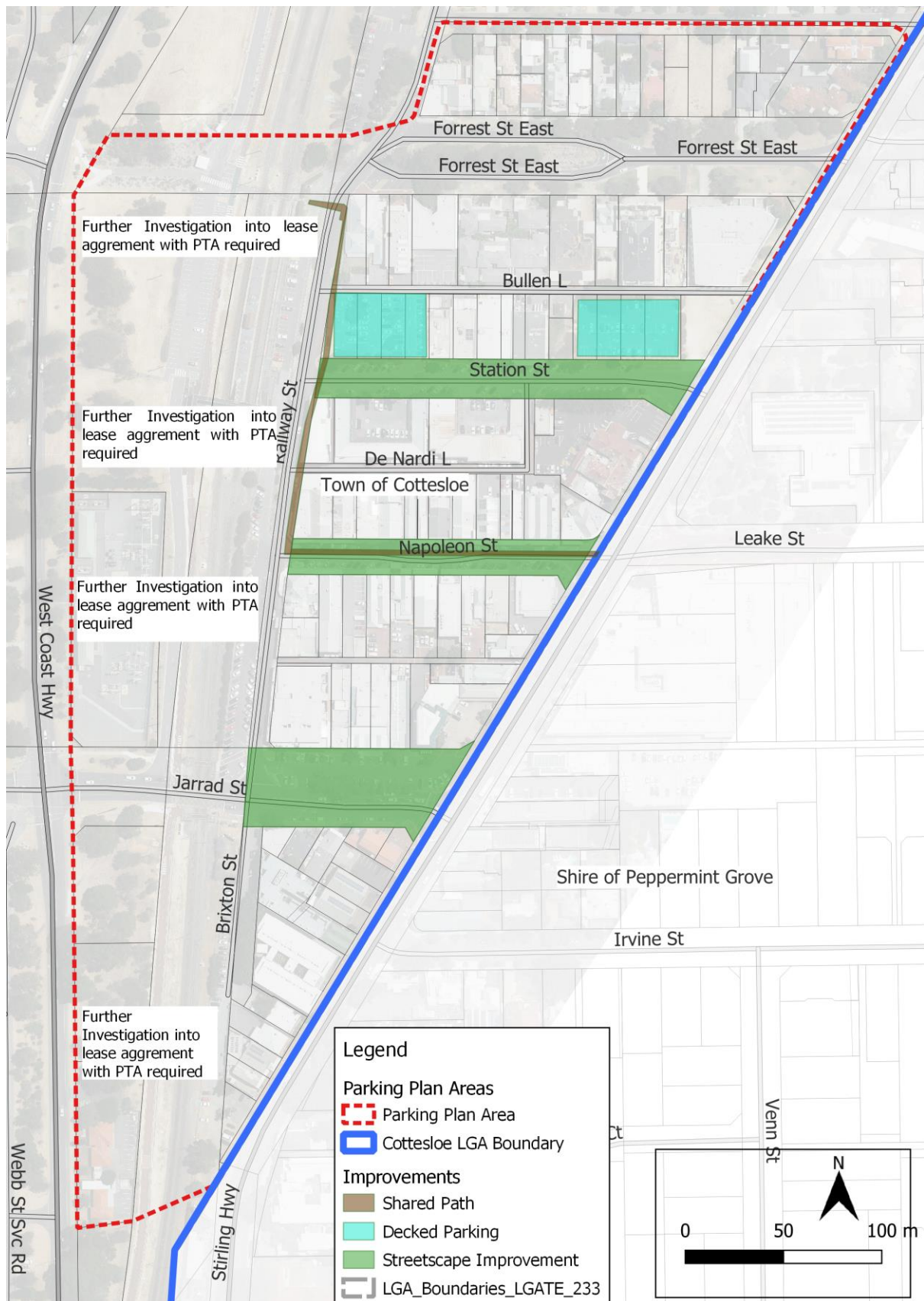
Payment in Lieu of Parking Plan - Index Map



3.1.2 Parking Plan Area 1 – Foreshore



3.1.3 Parking Plan Area 2 – Draft Cottesloe Precinct Structure Plan Area



4. Reasonable estimate of costs for payment in lieu

4.1 Calculation of reasonable estimate of costs

The reasonable estimate of costs in this Plan are based on the WAPC's approved method(s) of calculation, in accordance with clause 77H(4) and (5) of the Regulations. The approved method of calculation is accessible via the web link at:

<https://www.wa.gov.au/system/files/2021-08/PD-Clause-77H-4-Method-of-calculation.pdf>

The approved method of calculation bases the calculation upon an infrastructure cost per m², which is indexed annually.

Clause 5.8.3 (b) in Local Planning Scheme No. 3 advises:

the construction standard for the purposes of estimating the cash in lieu shall be assumed to be in the form of a decked structure (full civil works, including lighting, signage, line marking and landscaping) but only included in the calculation for the first level of parking;

The current estimate of infrastructure cost in accordance with clause 5.8.3 (b) is \$1722 per m² (2023).

4.2 Revisions to reasonable estimate of costs

The Reasonable Estimate of Costs in this Plan can be revised by a Local Government from time to time using the method(s) approved by the WAPC (as published in the Gazette). Revised Estimates of Cost are to be published in the updated version of the Plan in Section 4.1, together with a note confirming the date of inclusion of the revised estimate.

4.3 Attribution of costs

The Plan recognises that the cost for different types of items do not have to be applied equally across the Plan area. Costs can be attributed depending on variables such as locational factors and the mix of items proposed in the Plan.

5. Purpose for which payment-in-lieu will be applied

In accordance with clause 77I(2) of the Regulations, money collected under the Plan must be applied for the purposes set out below:

Infrastructure	Cost
Decked parking as stated in Local Planning Scheme No. 3, clause 5.8.3 (b)	\$1722 per m ²
At grade parking	\$260 per m ²
Car park improvements (such as parking meters, technology to increase efficiency and turnover)	\$9900 each
Streetscape improvements: – street trees – street lighting – security cameras (base prepare, pole supply and installation) – End of trip bike facilities	\$1000 each \$12665 each \$8800 each \$5200 each
Bike path: – within road – within verge	\$224 per m² \$417 per m²
Bike shelter	\$3056 per m ²
Electrical charging facilities	\$100 000 each

6. Other information required by the WAPC

No further information has been required by the WAPC.

7. Operation

7.1 Operational requirements

The Plan shall operate in accordance with Part 9A of the Regulations.

7.2 Triggers for payments to be made

Payment of money shall be made to the Town to satisfy a payment in lieu of car parking condition validly applied to a development approval for development located in the area subject to the Plan. The payment in lieu of car parking condition applied to

the development approval shall specify when the Town requires payment of monies to be made.

Where it is intended to condition the payment in lieu of parking and a shared parking arrangement, the Town shall give the applicant a notice of apportionment (see Attachment 1) in accordance with clause 77F(1)(b) of the Regulations. This confirms the number of car parking spaces which the payment in lieu is being applied to and the number of car parking spaces which form part of a shared parking arrangement.

7.3 Payment in lieu of parking condition

“Prior to the commencement of development, payment of \$<Insert total amount> shall be made to the Town of Cottesloe for Payment in Lieu of <Insert number of car parking bays> car parking bays which have not been provided on site or in a shared parking arrangement. This condition has been imposed under the requirements of the Town of Cottesloe’s Payment in Lieu of Parking Plan and Schedule 2, clause 77H of the Planning and Development (Local Planning Schemes) Regulations 2015.”

The Town may provide further information by way of an advice note to confirm its expectations for when payment should be made, which could relate to the building permit stage, where applicable.

7.4 Decision making on development applications using this Plan

Decision makers are to have due regard to the Plan when making decisions on development applications that seek or require consideration of payment in lieu of car parking under the Plan.

8. Financial administration (clause 77I of the Regulations)

8.1 Reserve account to be established and maintained

The Town has established and maintains a Reserve Account for money collected under the Plan (clause 77I (1) of the Regulations). The Reserve Account has been established under the provisions of the *Local Government Act 1995*, Section 6.11 and operates in accordance with the *Local Government (Financial Management) Regulations 1996*.

8.2 Interest earned

Interest earned on the Reserve Account under the Plan shall be treated in accordance with clause 77I of the Regulations.

8.3 Records to be kept

Records of income and expenditure for the Reserve Account established under the Plan shall be maintained by the Town until all funds have been expended or repaid.

8.4 Reporting

Report of the Reserve Account shall be provided in accordance with the requirements of the *Local Government (Financial Management) Regulations 1996*.

8.5 Invoice for payment of money

In addition to a payment-in-lieu of parking condition applied to a development approval under clause 77H of the Regulations, the Town shall issue an invoice to the payer at the appropriate time to enable the payer to satisfy the condition of development approval. The invoice shall specify the method and timing for payment of the money required to satisfy the payment in-lieu of parking development approval condition.

8.6 Money held in the Reserve Account at the expiry of the Plan

Money held in the Town's Reserve Account at the expiry of the Plan will be treated in accordance with clauses 77I (5), (6) and (7) of the Regulations.

Attachment 1



NOTICE OF APPORTIONMENT

Clause 77F(1)(b)(i) and (ii)
of the *Planning and
Development (Local
Planning Schemes)
Regulations 2015*

Version: 1.0 (June 2021)

Date of Notice: [insert date of notice]

Issuing Authority: [insert name of Local Government]

Notice is hereby given that the car parking space shortfall for the
[insert development type]

at [insert address]

is _____.
insert total number of car parking spaces shortfall on site

Apportionment

Payment In Lieu of Parking

For the purposes of imposing a payment in lieu of parking condition in accordance with
clause 77H, the number of car parking spaces for which payment in lieu is required is

_____.
insert number of car spaces subject to payment in lieu

Shared Parking Arrangement

For the purposes of imposing a shared parking arrangement condition in accordance with
clause 77Q, the number of car parking spaces for which a shared parking arrangement
condition is imposed is _____.

insert number of car spaces subject to a shared parking arrangement

Signed: _____

Name: _____

Position: _____

VERSION CONTROL Date initially adopted:

Date(s) amended :