

Town Planning Considerations for Submission to the Town of Cottesloe

Rowe Group is pleased to contribute to the preparation of a submission to the Town of Cottesloe in support of a proposal to construct a pier and associated amenities at Cottesloe Beach.

The proposed development will be subject to various State and Local Government regulations and policies. These include the Metropolitan Region Scheme (MRS) and the Town of Cottesloe Local Planning Scheme, policies prepared by the Western Australian Planning Commission (WAPC) for coastal development, and legislation governing the use and leasing of Crown land and jetties. The proposed development will also require various approvals, leases and/or licenses from a number of Government agencies, including the WAPC, Town of Cottesloe, Environmental Protection Authority, Department of Lands and Department of Transport.

In recognition of the above, we understand that a comprehensive project team involving a range of disciplines has already been assembled to assist with the proposal.

The approval processes associated with a development proposal of this nature vary from case to case having regard to matters such as location, zoning, land tenure, the existence of vesting orders and/or management responsibilities etc. Consequently, discussions will need to be undertaken with the Department of Lands, in the first instance, along with the Department of Transport, the WAPC, the Town of Cottesloe, the Environmental Protection Authority and relevant service agencies prior to any formal submission being made for the granting of approvals, leases and licenses in relation to the development proposal. We understand discussions with a number of these key agencies have already been initiated and that the feedback received has been positive.

The following has been prepared to provide a broad overview of the various statutory considerations relevant to a development of this nature.

Tenure

The proposed pier extends from the existing Cottesloe groin and into the Indian Ocean. The groin and adjoining foreshore form part of an "A" class reserve (Reserve No. 6896) which is set aside for the purposes of recreation. The reserve is vested with the Town of Cottesloe.

Class "A" reserves afford the greatest degree of protection for reserves of Crown land created under the *Land Administration Act 1997* (LAA). The "A" classification is used solely to protect areas of high conservation or high community value.

The water into which the proposed development will extent is classified as "Unallocated" (or "Vacant") Crown Land under the LAA. The waterway is partially administrated by the Department of Lands on behalf of the State.

Importantly, the land's tenure does not provide any impediment to the approval of the proposed development or the granting of relevant licenses and leases.

Zoning

Metropolitan Region Scheme

The existing groin and adjoining foreshore are reserved under the provisions of the Metropolitan Region Scheme (MRS) for "Parks and Recreation". The off-shore area is incorporated within the MRS as a reserve for "Waterways" purposes.

"Parks and Recreation" reserves are loosely defined by the WAPC as "*land of regional significance for ecological, recreation or landscape purposes*" and "Waterways" reserves are loosely defined as "*permanent inland and coastal waters including many rivers and resources*".

The land's reservation as a 'Waterway' and 'Parks and Recreation' Reserve under the MRS is typical of its location and does not provide any impediment to the approval of the proposed development or the granting of relevant licenses and leases.

Town of Cottesloe Local Planning Scheme

MRS reservations are reflected in the Town of Cottesloe Town Planning Scheme No. 2 (TPS2) and draft Local Planning Scheme No. 3 (Draft LPS3). Accordingly, the existing groin and adjoining foreshore are shown as regional reserves for "Parks and Recreation" and the off-shore area is shown as a regional reserve for "Waterways" purposes. Land reserved under the MRS is not land reserved under TPS2.

The municipal boundary of the Town of Cottesloe includes the groin and adjoining foreshore but does not include the waterway. Again, this is not unusual given the site's location and does not present an impediment to the proposed development being approved or relevant licenses and lease granted.

Planning Approval under the MRS

The MRS requires that approval to commence development is obtained for all development except for the following:

- (a) the erection of a boundary fence on land reserved by the scheme;
- (b) the use of reserved land owned by or vested in a public authority for the purpose for which the land is reserved, for which it has lawfully been used before the coming into effect of the scheme, or for any other purpose for which the land may lawfully be used by the public authority;
- (c) on land zoned by the scheme, the erection of a single dwelling house on a lot or the carrying out of works in, on, over, or under a street or road by a public authority pursuant to the provisions of any Act, provided the land is not the subject of a notice under clause 32 of the MRS and not included in a planning control area; and

- (d) permitted development that does not involve the clearing of regionally significant vegetation on a site specified as a Bush Forever site in the Bush Forever final report published by the WAPC in December 2000; or
- (e) expressly authorised under an Act to be commenced or carried out without the approval of the WAPC.

Development on reserved land owned by or vested in a public authority (as is the case with Reserve No. 6896) may be commenced or carried out without the written approval of the WAPC if the development is:

- (a) permitted development that does not involve the clearing of regionally significant vegetation on a site specified as a *Bush Forever* site; or
- (b) expressly authorised under an Act to be commenced or carried out without the approval of the WAPC.

Notwithstanding the above, reserved land that is owned by or vested in a public authority may be used or developed for any other purpose approved by the WAPC with or without conditions. In this regard, the WAPC maintains the ability to approve the form of development proposed.

As previously mentioned, the proposed pier extends from the existing Cottesloe groin and into the Indian Ocean. The groin and adjoining foreshore form part of an "A" class reserve (Reserve No. 6896) which is set aside for the purposes of recreation and vested with the Town of Cottesloe. Any development on Reserve No. 6896 will therefore be subject to the provisions outlined above.

The water into which the proposed development will extent is classified as "Unallocated" (or "Vacant") Crown Land under the LAA. The MRS provides that for reserved land that is not owned by or vested in a public authority, the approval of the WAPC is required.

The approval of the WAPC may be subject to such conditions as the WAPC considers necessary having regard to the purpose for which the land is reserve.

Legislation

Planning and Development Act 2005

The *Planning and Development Act 2005* (PDA) is the primary piece of legislation governing development and subdivision in Western Australia and is the enabling legislation for most of the tasks undertaken by the WAPC, the Department of Planning and local government.

The Crown is bound by the provisions of the PDA and the MRS.

Land Administration Act 1997

The LAA is an act that provides for the disposition and management of State land, including the use and leasing of Crown land. This LAA is administered by the Minister for Lands and the Department of Lands.

Jetties Act 1926

The *Jetties Act 1926* (Jetties Act) controls the development and use of jetty/pier structures and the like and is administered by the Department of Transport.

Planning Policies

State Planning Policies

State Planning Policies ('SPPs') are prepared and adopted by the WAPC under statutory procedures set out in the PDA and deal with a range of matters, including residential subdivision, basic raw materials and coastal planning. The WAPC and local governments must have 'due regard' to the provisions of SPPs when preparing or amending local planning schemes and when making decisions on planning matters.

SPPs considered to be relevant to the development proposal include:

- SPP No. 2 – Environment and Natural Resources Policy; and
- SPP No. 2.6 – State Coastal Planning Policy (incl. Amendment gazetted 19 December 2006).

In our view, neither document contains provisions that would prohibit the form of development proposed.

Development Control Policies

Development Control ('DC') Policies are prepared and adopted by the WAPC but unlike State Planning Policies do not have the same level of statutory force. DC Policies provide guidance on a range of planning matters including the subdivision of land, rural land use planning, road planning, and industrial subdivision.

DC Policies considered to be relevant to the development proposal include:

- DC Policy 4.2 – Planning for Hazards and Safety; and
- DC Policy 1.2 – Development Control-General Principles.

In our view, neither document contains provisions that would prohibit the form of development proposed.

Planning Bulletins

Planning Bulletins are also prepared and adopted by the WAPC and like DC Policies, fall 'underneath' the regulatory framework of SPPs. Planning Bulletins provide general guidance on a range of specific land use and development issues such as high pressure gas transmission pipelines, child care centres and acid sulphate soils.

Planning Bulletins considered to be relevant to the development proposal include:

- Planning Bulletin No. 83 - Planning for Tourism; and

- Planning Bulletin No. 40 - Development Control Under the Metropolitan Region Scheme.

In our view, neither document contains provisions that would prohibit the form of development proposed.

Administration

Role of the WAPC

The WAPC is the responsible authority for all applications on land reserved, or partly reserved, by the MRS for any purpose other than regional road purposes (except private jetties and associated facilities with an artificial waterway).

The objectives of the WAPC in exercising development control are as follows:

- To control the development of land within the framework of the relevant legislation.
- To protect the integrity and purpose of reservations made under the MRS and PRS.
- To ensure development is consistent with the provisions of the relevant local government scheme.
- To preserve planning options in areas subject to planning study or review.
- To ensure development is in accordance with sound planning principles.
- To promote development that is sustainable and achieves appropriate community standards of health, safety and amenity.
- To ensure development is site-responsive, enhances local identity and character and is well-connected to the adjacent neighbourhood.
- To facilitate land uses that support daily needs, local employment and provide choice and variety.
- To ensure that conditions, where applicable, improve the quality and consistency of development approvals.
- To promote efficiency in the planning and development assessment process.

In its determination of applications for approval to commence development on land reserved under the MRS, the WAPC is bound to have regard to the purpose for which the land is reserved and may include conditions limiting the period of its approval and relating to the types of building that may be built on the land, or the removal of buildings.

A principal objective in this regard is to ensure that the use of reserved land, its acquisition or any development for its intended purpose is not prejudiced by the development application.

In our opinion, the proposed development would not be considered to prejudice the purpose for which the land is reserved under the MRS.

Role of the Town of Cottesloe

Applications for approval to commence development under the MRS are required to be lodged with the relevant local government before being forwarded to the WAPC. The local government will consider the application and provides its comments and recommendation to the WAPC.

Whilst the Town of Cottesloe may not perform a direct decision-making role in relation to the proposed development by virtue of the land's tenure and reservation under the MRS, the Town will form an integral role in informing such decisions. Consultation with the Town of Cottesloe is therefore an important part of the planning process.

Role of the Department of Lands

The Department of Lands administers Western Australia's Crown land estate under the LAA including unallocated Crown land and unmanaged reserves. The State maintains legislative powers under the LAA and title over coastal waters (seabed, subsoil, and water) out to a three mile limit from the coast.

Since June 2000, there has been a requirement for the Department of Lands to sign off all applications for development approvals in relation to Crown land. The Department of Lands will generally only endorse applications after the proponent has obtained the written agreement of all Government agencies that have management responsibilities over the development area.

Role of the Department of Transport

The Department of Transport is responsible for issuing licenses under the Jetties Act. The Department is also responsible for the administration of leases on reserved land that is vested with the Minister for Transport.

Approvals, Leases and Licenses

State Lease

The Minister for Lands has the power under the LAA to lease unallocated Crown land and unmanaged reserves to a person or corporation for a particular purpose in the form of a lease. The Department of Lands is responsible for releasing and administering leases over State land.

Leases are given effect by the preparation of document signed by both parties and registered with the Registrar of Titles under the *Transfer of Land Act 1893*. Leases may be granted for any purpose and for any term.

The proposed development will require the granting of a lease from the Department of Lands under the LAA.

Jetty Licence

Under the provisions of the Jetties Act, a jetty licence is required to be obtained from the Department of Transport. The Jetty License is required for the whole of the development structure over the waterway, including mooring areas.

For the purposes of the Jetties Act, a 'jetty' includes "*any jetty, pier, wharf, quay, grid, slip, landing place, stage, platform or similar structure, whether fixed or floating, erected or placed, wholly or part in, on or*

over any waters or any ramp which is or which may be used for the purpose of launching or landing a vessel."

There are 3 types of jetty licences issued by the Department of Transport. These are as follows:

- Commercial jetty licence: issued to businesses or for commercial activities.
- Private jetty licence: for domestic and recreational by the applicant and family only.
- Public jetty licence: issued to a public body for use by the general public.

The Department of Transport requires that plans for a proposed jetty are certified by an engineer qualified and experienced in the design of such structures. Applicants are also required to submit a facility maintenance plan for the ongoing maintenance of the structure.

Other Considerations

Aboriginal Heritage

A search of the Department of Indigenous Affairs Registered Sites Database identifies that a "Registered Site" is located to the south-east of the development site. The site is registered under the Site Name "Moonderup" and is referenced as Site ID 435.

Under Section 17 of the *Aboriginal Heritage Act 1972* (AHA) a person who excavates, destroys, damages, conceals or in any way alters an Aboriginal Heritage site commits an offence unless he or she acts with the Consent of the Registrar of Aboriginal Sites or the Consent of the Minister for Indigenous Affairs under Section 18.

Further investigations will need to be undertaken with the Department of Indigenous Affairs to confirm the location and extent of Site ID 435.

The Registered Sites Database also identifies the development site as being located within the north-eastern corner of an "Other Heritage Site" known as "Indian Ocean (Site ID 3776). This site has been assessed for inclusion as a Registered Site however the assessment determined that the site did not meet the requirements under Section 5 of the *Aboriginal Heritage Act 1972*.

Native Title

Aboriginal parties have special rights to use unallocated State (Crown) land for traditional purposes, except to the degree restricted by any valid law. The Department of Families, Housing, Community Services and Indigenous Affairs (DFHCSIA) is the responsible Department for the administration of Indigenous Affairs in Australia. The National Native Title Tribunal (NNTT) determines claims relating to Native Title in Australia.

The extent of any Native Title Claims over land on or in the vicinity of the proposed development will need to be discussed with the DFHCSIA.

Cultural Heritage

A review of the State Heritage Database identifies a potential site in the general vicinity of the Cottesloe foreshore. The site, known as the "Cottesloe Beach Precinct" (reference number 16637), is identified on the State Register as an "Interim Listing".

Further investigations with the State Heritage Office will need to be undertaken to determine the extent and classification of the heritage listing.