

17.1 LATE ITEM - APPLICATION FOR AMENDMENT OF A DEVELOPMENT ASSESSMENT PANEL DETERMINATION – WORKFORCE ACCOMMODATION, LOT 3799 RANKIN ROAD, NICKOL

File No:	DA18083
Responsible Executive Officer:	Director Development Services
Reporting Author:	Manager Planning Services
Date of Report:	13 November 2018
Applicant/Proponent:	Rowe Group/Woodside Energy Ltd
Disclosure of Interest:	Nil
Attachment(s)	Application

PURPOSE

For Council to consider an application to amend a Development Assessment Panel determination for Workforce Accommodation for Lot 3799 Rankin Road, Nickol (DAP/18/01440).

BACKGROUND

Council considered a Development Application for a 30-year approval to a 700 room Workforce Accommodation facility on the Bay Village site to convey its position to the Development Assessment Panel on 17 September 2018. Council resolved to:

1. Note improvements in design, community integration, local employment and local contractor engagement in the proposal for redevelopment of the Bay Village site since the development was initially proposed;
2. Maintain its position that there are better locations for a development like this if a long term approval is being contemplated;
3. Advise the Development Assessment Panel that Development Application DA18083 (dated 31 August 2018) for Workforce Accommodation at Lot 3799 Rankin Road, Nickol is supported subject to 16 conditions.

On 2 October 2018 the applicant made a submission directly to the Development Assessment Panels Secretariat to modify Condition 1 and delete Conditions 2 and 14 from the Responsible Authority Report, which are:

- 1) The approval is time limited to 10 years from the date of occupation.
- 2) The development only being occupied by Woodside employees and direct contractors involved with Woodside and/or North West Shelf Joint Venture projects.
- 14) A lit pedestrian and cycle connection that meets relevant standards and specifications being provided between the development and the Tambrey Neighbourhood Centre prior to occupation to the satisfaction of the City of Karratha.

The Kimberley/Pilbara/Gascoyne Joint Development Assessment Panel (JDAP) resolved at its 9 October 2018 meeting to adopt the Responsible Authority Report recommendation with

minor amendments but did not make the changes to the conditions requested by the applicant.

On the 9 November 2018, the Department of Planning, Lands and Heritage notified the City that an application to the State Administrative Tribunal (SAT) review JDAP's decision and have appealed all conditions of the approval. The Presiding Member of the JDAP is the respondent in the SAT matter and represented by the State Solicitors Office. The State Solicitor has advised the City will not have any role in the SAT proceedings.

On 14 November 2018 Woodside has lodged a Form 2 Application to Amend the Development Approval by the responsible authority (i.e the City of Karratha) pursuant to the *Planning and Development (Development Assessment Panels) Regulations 2011*. This means that the City of Karratha is the determining authority for the application to amend the existing development approval.

The application includes the following:

- Amend Condition 1 to extend the time for a further 5 years (Condition 16 which relates to decommissioning and rehabilitation would also need to be amended to reflect the 5 year extension); and
- Reduce the number of beds from 700 to 604 rooms. This would result in a new Condition being imposed to limit the development to a maximum of 604 rooms to the satisfaction of the City of Karratha.
- The application does not seek to amend the conditions that were previously challenged during the JDAP proceedings including Condition 2 that prohibits any third party access and does not amend Condition 14 to provide a contribution towards pedestrian infrastructure.

This means there are two 'live' applications to amend the Development Approval for Bay Village. Woodside has submitted an application for a review with the State Administrative Tribunal and has also made an application to amend the Development Approval to the City. This means that both processes are running concurrently.

In considering how to deal with concurrent processes, the DAPs Practice Note 11 provides guidance, which states that:

"It is important for local governments to note that if a development approval granted by a DAP is the subject of review proceedings before the State Administrative Tribunal ('SAT'), the local government should refrain from determining an application to amend the development approval until the SAT review proceedings have concluded."

The Practice Note advice is non-statutory and non-binding on the local government and Council is legitimately able to consider the application to amend the Development Approval. In considering whether the Council should determine the application, the following table outlines the differences between the two processes:

SAT Application for Review	Application to the City to Amend
Woodside has appealed Conditions 1, 2 and 14.	Woodside has applied to amend Condition 1 and remove 96 rooms from the approval
Condition 1 be reworded from 10 years to 30 years.	Condition 1 be extended by 5 years.
Condition 2 to be deleted so that occupants don't need to be Woodside Staff or associated with Woodside projects.	Condition 2 to be retained so that occupants must be Woodside Staff or associated with Woodside projects.

Condition 14 be deleted to remove any contribution to the pedestrian network improvements.	Condition 14 to be retained and a contribution will be made to the pedestrian network improvements.
The City is not represented as the decision was made by the JDAP and the Presiding member is represented by the State Solicitors Office. The City is not a party to the SAT process.	The City of Karratha is the decision maker and considers the application as if the Development Approval had not been granted pursuant to a DAP Application and had been granted by the local government.

There are differences between the application to SAT and the application to the City. It is understood that Woodside would withdraw the SAT matter if the application to the City is determined as applied. There is a risk that any determination on the application to amend may not lead to the SAT application being withdrawn. However the SAT application is in its early stages without any mediation having occurred – there is yet to be any certainty through this process on what the likely outcome will be.

It is understood from conversations with Woodside that timing of a decision is important and the SAT process will take longer to resolve. It is understood the application to the City seeks to put forward a proposal that is acceptable to both parties and can be made in a timely manner. In concluding on whether Council should consider the application contrary to the Practice Note the following information is provided:

- Woodside has chosen to make application to the City in preference to reach an outcome that is acceptable to the City;
- It is understood that Woodside has made the SAT application only to protect their legal rights whilst a mutually agreeable outcome can be reached;
- The application to the City presents more favourable terms as it is more within and better aligned the City's Planning Framework and Council's Vision;
- The City and Woodside have been working on the development proposal for longer than the JDAP Presiding Member, the State Solicitor and Tribunal Member.

There is no delegated authority to City Officers to determine applications for development approval for Workforce Accommodation and therefore Council is required to determine the application.

LEVEL OF SIGNIFICANCE

In accordance with Council Policy CG-8 Significant Decision Making Policy, this matter is considered to be of moderate significance in terms of social, economic, cultural & wellbeing issues and parties affected.

COUNCILLOR/OFFICER CONSULTATION

Councillors and members of the Executive have met with senior Woodside representatives in relation to this matter.

COMMUNITY CONSULTATION

There is no requirement for public advertising of the current application and no community consultation has occurred.

STATUTORY IMPLICATIONS

Under Regulation 17A of the *Planning and Development (Development Assessment Panels) Regulations 2011* an applicant can apply to the local government to amend or delete any JDAP condition when there is a relevant planning instrument that provides for the amendment of a development approval. Clause 77(4) of the *Planning and Development (Local Planning Schemes) Regulations 2015* provides for a local government to determine such an application.

POLICY IMPLICATIONS

Council has an existing adopted Local Planning Policy DP10 – Transient Workforce Accommodation and a revised draft version of that policy, which Council adopted for public advertising at its December 2017 meeting.

The Policy implications for this application in considering the approval timeframe are relatively complex. There is an existing Policy, a revised draft Policy and a proposed Scheme Amendment that all have statutory weight and are relevant to the application. The relevant provisions are summarised as follows:

- The existing adopted Policy DP10 allows for a permanent approval for Workforce Accommodation in a Transient Workforce Accommodation zone.
- Scheme Amendment No. 39 is a seriously entertained planning proposal designates the land as Urban Development.
- DP10 only allows a maximum of 10 year approval for Workforce Accommodation in an Urban Development zone.
- The City's draft revised Policy DP10 which has been adopted for the purposes of advertising allows a maximum of 10 year approval with 5 year extensions. It also allows longer term approvals where performance criteria are met.

It is considered that the application to extend the approval term for a further 5 years is within the City's Policy Framework.

There are no other policy implications from the other components of the application.

FINANCIAL IMPLICATIONS

Nil.

STRATEGIC IMPLICATIONS

This item is relevant to the Council's approved Strategic Community Plan 2016-2026 and Corporate Business Plan 2016-2021. In particular, the Operational Plan 2018-2019 provided for this activity:

Programs/Services:	2.b.1.1	Development Services
Projects/Actions:	2.b.1.1.1	Help businesses to establish and grow in the City of Karratha and review and streamline approval processes

RISK MANAGEMENT CONSIDERATIONS

The level of risk to the City is considered to be as follows:

Category	Risk level	Comments
Health	Low	Nil
Financial	Low	Nil
Service Interruption	N/A	Nil
Environment	Low	Nil
Reputation	Low	The City has a good reputation with industry and the State Government as a progressive local government that is helping facilitate sustainable growth.
Compliance	Low	City officers will ensure any approved development over this site complies with conditions of approval and that SIMP commitments are met over the life of the project

IMPACT ON CAPACITY

Nil.

RELEVANT PRECEDENTS

Council must consider applications for development approval on their merits against the statutory and strategic planning policy framework.

VOTING REQUIREMENTS

Simple Majority

OPTIONS:

There are two (2) options available for Council to consider.

Option 1 – Approve

Officer's Recommendation

Option 2 – Refuse

That Council by SIMPLE Majority pursuant to Regulation 17A of the *Planning and Development (Development Assessment Panels) Regulations 2011* RESOLVES to REFUSE the application to amend Development Assessment Panel Application reference DAP/18/01440.

CONCLUSION

Woodside has reinforced the importance of the redevelopment of the Bay Village site as an essential part of its plans to deliver major growth projects for Western Australia. Woodside is seeking a further 5 year approval with 96 less rooms. The application confirms that Conditions 2 and 14 will be retained meaning all occupants will need to be Woodside Staff or associated with Woodside projects. A contribution towards pedestrian infrastructure improvements has been agreed to and the details will be worked through the normal planning implementation process. The proposal is considered to be within the City's Policy Framework for a 5 year extension, and the reduced number of rooms is considered to be a positive outcome.

There are risks and complexities with a concurrent SAT appeal however Woodside has made the application and has informed City Officers that the details of what is proposed is acceptable to their needs and therefore the SAT appeal would subsequently be discontinued. City Officers have worked with Woodside to achieve improvements in design, community integration, local employment and local contractor engagement in the proposal for redevelopment of the Bay Village site since the development was initially proposed. The application to amend the Development Approval represents further refinement of the proposed development. The application is considered to be within the City's Planning Framework and to be an acceptable outcome for both parties.

OFFICER'S RECOMMENDATION

That Council by SIMPLE Majority pursuant to Regulation 17A of the *Planning and Development (Development Assessment Panels) Regulations 2011* and Clause 77(4) of the *Planning and Development (Local Planning Schemes) Regulations 2015* RESOLVES to AMEND DAP Application reference DAP/18/01440 as follows:

1. Amend Condition 1 to read:

“The approval is time limited to an initial period of 10 years from the date of occupation with a further 5 years available should the applicant advise the land owner that there is a need to continue to operate the facility for that extended period.”

2. Amend Condition 16 to read:

“A Decommissioning and Rehabilitation Plan being submitted to and endorsed by the City of Karratha 6 months prior to expiry of the ten (10) year occupancy period or of the five (5) year extension period and the plan being implemented to the satisfaction of the City of Karratha within 12 months of the ten (10) year or of the five (5) year extension occupancy period ceasing.”

3. Add Condition 17 to read:

“The maximum number of single bed rooms limited to 604 and revised plans are required to prepared to the satisfaction of the City of Karratha.”

Job Ref: 8739
14 November 2018

City of Karratha
Lot 1083 Welcome Road
PO Box 219
KARRATHA WA 6714

Attention: Mr Ryan Hall – Director Development Services

Dear Mr Hall

**Application under Regulation 17A – Amendment Request to Approval
Lot 3799 Rankin Road, Gap Ridge**

Rowe Group acts on behalf of Woodside Energy Ltd (our 'Client'), the primary leaseholder of Lot 3799 Rankin Road, Gap Ridge (the 'subject site'). Pursuant to Regulation 17A of the *Planning and Development (Development Assessment Panels) Regulations 2011*, this application seeks an amendment to DAP Approval DAP/18/01440 (LG Ref: DA18083) which was issued by the Kimberley/Pilbara/Gascoyne Joint Development Assessment Panel ('JDAP') on 9 October 2018.

In this regard, please find enclosed the following documents forming our request under Regulation 17A of the *Planning and Development (Development Assessment Panels) Regulations 2011*:

- A copy of the current Certificates of Title;
- A completed and signed Development Assessment Panel Application Form 2;
- A copy of the most recent Development Approval (DAP Ref: 8/2013/C);

Further background and information in support of this application is provided below for your consideration.

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Planning Approval was issued by the Metro Kimberley/Pilbara/Gascoyne JDAP on 9 October 2018 for a Workforce Accommodation development at the subject site. The Approval was issued with a condition limiting the duration of the approval to 10-years from the date of occupation. As per previous discussions with our Office and Woodside Energy Ltd, the approval timeframe of 10-years does not provide our Client with the certainty required to secure financial funding for the project.

In this regard, subsequent discussions and negotiations have occurred between Woodside Energy Ltd and the City of Karratha which has led to a revised development proposal being put forward for the City's consideration, summarised as follows:

- Reduction in the number of accommodation rooms / beds from 700 to 604;
- Approval duration of 15-years (modification to Condition 1 of the Planning Approval);
- No third-party access (in accordance with Condition 2 of the Planning Approval); and
- An agreed monetary contribution being provided for infrastructure upgrade works (in accordance with Condition 14 of the Planning Approval).

We trust the amendments to the existing DAP Approval are to the City's satisfaction and look forward to the City's favourable consideration of this application. Should you require any further information or clarification in relation to this matter, please contact the undersigned or our Mr Paul Cunningham on 9221 1991.

Yours faithfully,

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Rowe Group

Encl.

cc. Mr Marlon Cooray – Woodside Energy Ltd