

13.2 450 HAY STREET, SUBIACO - RESPONSE TO PROPOSED IMPROVEMENT PLAN - CONFIDENTIAL*

COUNCIL DECISION

1. The City of Subiaco recommends that the Western Australian Planning Commission does not proceed with the proposed Improvement Plan 450 Hay Street, Subiaco.
2. The Background and Initial Improvement Plan Consideration sections of this report are made public.

CARRIED

Background

This report considers the 15 May 2023 request from the DPLH to consider additional information provided by Sanur relating to a proposed Improvement Plan.

Improvement Plans

An Improvement Plan is a planning instrument and has broad powers under Section 119 of the *Planning and Development Act 2005*. It provides power to advance the planning, development and use of land. It also permits, amongst other things, the power for the WAPC to acquire land compulsorily.

Sanur Pty Ltd Proposed Improvement Plan

On 10 February 2023, the City received notification from the DPLH advising that they were in receipt of a proposed Improvement Plan lodged by Sanur Pty Ltd. The proposed Improvement Plan covers 424-436 and 440 Hay Street, 1 Seddon Street and Burley Lane (see **Figure 1** below).



Figure 1 – Location of Improvement (green shading) almost exclusively with boundaries of Sanur's SDAU application (red outline)

The proposed Improvement Plan seeks to establish a framework for the WAPC to acquire Burley Lane (freehold land owned by the City). Sanur provides that this mechanism will facilitate redevelopment of the site.

A desktop review of active Improvement Plans is summarised below:

- There are 24 active Improvement Plans in Western Australia;

- One was initiated by a private owner;
- Three are for land acquisition to progress urban development outcomes (i.e. Metronet initiatives); and
- The smallest land area is Middleton Beach Activity Centre with 31,900m² - versus the ~4,600m² proposed in Sanur's Improvement Plan which seeks only to acquire Burley Lane which is 506m² in area.

Initial WAPC Consideration – 29 March 2023 WAPC Meeting

The City was notified of the proposed Improvement Plan on 10 February 2023 with comment due by 10 March 2023. The City secured a one week extension to the response timeframe until 17 March 2023. Elected members and staff worked closely to formulate a response recommending that the WAPC not progress with the proposed Improvement Plan.

The proposed Improvement Plan was considered by the WAPC at its 29 March 2023 meeting. The City's Chief Executive Officer (Colin Cameron) and Director Development Services (Alexander Petrovski) made a deputation recommending that the WAPC do not progress the proposed Improvement Plan.

Sanur Pty Ltd made a deputation in support of the proposed Improvement Plan. Sanur was represented by Barrie Lepley, Malcom Mackay, Cara McIntyre, Tim Hillyard and David McFerran.

Mr Hillyard and Mr McFerran have recently held senior positions in the State Government before moving on to consultancy. Mr Hillyard was the former Chief Property Officer at the DPLH and a former Secretary of the WAPC. Mr McFerran was the Principal Policy Adviser to the Minister for Planning from June 2017 until December 2021 and at a time when Sanur attempted to lodge its application with the SDAU in August 2020.

The minutes of the WAPC meeting are confidential, however, the City is of the understanding that the WAPC resolved not to proceed with the preparation of an Improvement Plan at this stage.

WAPC Reconsideration – June 2023

On 15 May 2023, DPLH advised the City that it had received a request from Sanur to consider additional information in support of their request for an Improvement Plan.

The content and nature of the proposed Improvement Plan remains unchanged from what was submitted on 10 February 2023 with the additional supporting information being a series of allegations from Sanur.

The DPLH has requested comment by 12 June 2023 and the City understands that the WAPC is likely to reconsider the Improvement Plan at its 28 June 2023 meeting.

Response to Improvement Plan

The City will provide a response to the WAPC recommending that the Improvement Plan not be progressed for the following reasons:

- The proposed Improvement Plan has no merit, is not needed for any planning purpose and is premised on a private landowner (Sanur) seeking development over land it does not own.

- Articulating why the Improvement Plan is not required under the *Planning and Development Act 2005*.
- Addressing the misconceptions outlined by Sanur.
- Reiterating that the City wants to see appropriate development occur in this precinct which protects and celebrates heritage in accordance with a contemporary planning framework.
- Demonstrate that the City has been acting appropriately in accordance with its legislative requirements and in good faith in all dealings with Sanur.

Initial Improvement Plan Consideration

Upon initial review, the City raised concerns with the Improvement Plan mechanism advancing the commercial interests of a private landowner, particularly because the proposed acquisition of Burley Lane has only arisen due to a landowner seeking to develop land that it does not own. Sanur ought to amend its SDAU proposal (so that the proposed development is contained wholly within land that it owns), and an improvement plan ought not proceed.

The City has a contemporary planning framework which allows for redevelopment to an appropriate scale and which integrates and celebrates heritage values. In light of this, there is no planning purpose which supports the progression of the Improvement Plan and Sanur's land can be developed.

Use of such extraordinary powers are generally reserved for exceptional circumstances with State and regional importance and should not be used to advance the interests of a private development outcome, particularly in a financial sense.

Following a review of relevant legislation, should the Improvement Plan proceed Sanur would benefit beyond their SDAU application being able to progress to determination.

Public money would be expended in compensating all properties with an interest in Burley Lane including companies related and/or owned by Sanur.

In all discussions with Sanur, the City has acted, fairly, reasonably and in good faith to progress an appropriate outcome. This is the first instance in the City's experience where the State Government has been involved in negotiations seeking to advance the interests of a private landowner.