

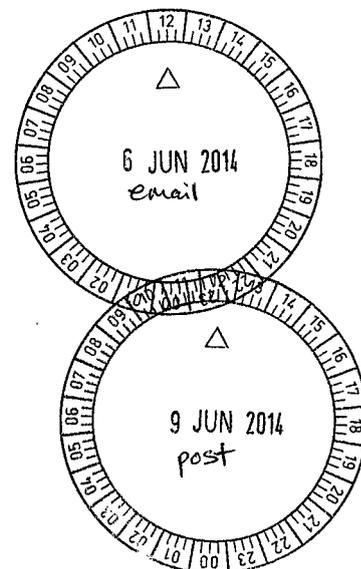
# Matt Taylor MLA

Your State Member for Bateman



Representing: Alfred Cove, Bateman, Booragoon, Brentwood, Bull Creek, Kardinya, Melville, Mt Pleasant, Murdoch, Myaree and Whithra

Ms Margaret Liveris  
Standing Committee on Environment and Public Affairs  
GPO Box A11  
PERTH WA 6837



Dear Committee,

## Submission on the Petition re: development approval at 94 Kitchener Road, Alfred Cove

I am making a submission on this petition because the development site is within my electorate of Bateman. I have been aware of the proposed redevelopment of the site and have followed the process of the Joint Development Assessment Panel (JDAP) with interest since March 2013.

For 10 years before entering Parliament I was intimately involved in the WA planning system and worked on some of the most significant projects in the State. This included as project director for the 15,000-household Wungong Urban Water Master Plan, which was subsequently awarded the Planning Institute of Australia WA Division 2007 President's award for planning excellence and the 2007 award for environmental planning or conservation. My final contract as a sustainable development consultant prior to entering Parliament was advising both joint venture partners Landcorp and LendLease on their Alkimos structure plan.

I provide this information to illustrate that I am not merely a local Member standing up for the best interests of my electorate, but I am also someone with recognised expert experience in state planning and in particular with contemporary developments that sought to increase density but in a responsible and appropriate way.

Based on my experience I believe this JDAP approval, whilst lawful, is inconsistent with responsible and appropriate planning. I therefore request that the Committee inquire into the JDAP system and use this example and numerous others brought to my attention to assess whether the JDAP settings produce the best possible outcomes for the WA community – not just developers.

On 10 April 2014 I brought a grievance motion to the Minister for Planning in the Legislative Assembly regarding the subject of this petition, namely, the development approval at 94 Kitchener Road, Alfred Cove. I used the maximum allowable time of 7 minutes to outline the

relevant history and facts of this matter and for your information have enclosed a Hansard extract of my speech along with this submission (Appendix 1).

My concerns with this development approval can be summarised as follows.

### **1) The discretion available to the JDAP**

I have been surprised and shocked to learn of the wide discretion available to JDAP to vary the planning requirements under the City of Melville's *Community Planning Scheme 5 (CPS 5)* and the State Planning Policy 3.1 *Residential Design Codes (R-Codes)*. In this instance the JDAP have used their discretion to significantly vary arguably the two most important considerations of the proposal – the building height and plot ratio (density).

The R-Codes provide for a plot ratio of 0.6 (3631m<sup>2</sup>) and building height of up to 9 metres. The proposal approved by the JDAP has a plot ratio more than double this amount of 1.28 (7765.5m<sup>2</sup>) AND A maximum building height of 11.1 metres.

I appreciate the benefit of providing decision-makers with discretion to mitigate unnecessary restriction and red-tape, but this case highlights the excessive nature of the discretion available to the JDAP. JDAP were deemed to have discretion to approve what amounts to a R100-density development in a R40 zone. In approving a design above even the subsequent higher zones of R50, R60 and R80 their decision goes beyond a mere variation to the planning guidelines and is more properly characterised as a disregard for those guidelines.

Given my experience with this development outcome I believe JDAPs should have their discretion restricted. The extent of their discretion should be a matter for investigation, however in the case of 94 Kitchener Rd, I believe JDAP discretion should have been restricted to approving R60 and nothing beyond. That would still be an increase of 2 R-Codes.

### **2) The JDAP's exercise of discretion**

The fact that a decision-maker has discretion does not necessitate the exercise of this discretion. The overwhelming recommendations in this instance requested that the development application be refused, yet the JDAP nonetheless decided against this advice and used its maximum discretion to approve the application.

The intention of the local government, the City of Melville, was clear:

- In 2011 the Melville City Council unanimously rejected an application to change the R-coding of the land in question from R20 to R60/R80.
- In 2012 the Melville City Council supported an amendment of the R-coding to R40, citing that medium-density coding was consistent with the principles of *Directions 2031 and Beyond*.

The local community's position was also clear. No objections were received by the City of Melville to the proposal to rezone the land R40. However, a multitude of objections were raised against this development application, including:

- In February 2013 the City of Melville notified selected nearby residents of the development application. They received 64 submissions objecting to the application including a petition signed by 480 residents.
- In July 2013 the revised plans were re-advertised by the City of Melville who received 51 submissions from residents and a petition signed by 533 people outlining a range of specific concerns.
- The Striker Balance community group also made it abundantly clear to the JDAP itself that the community was strongly opposed to the development proposal

By approving the application, the JDAP chose to exercise their optional discretion against the clear intention of the local government and the local community who supported medium-level density and opposed high-level density.

### 3) Lack of transparency and accountability

It concerns me that the JDAP, comprised of unelected officials, can make decisions against strong recommendations of elected community representatives and intentional, democratic processes as explained above. Adding to this is the lack of transparency in the JDAP decision-making process.

The developer's original proposal and the subsequent amended proposal were both assessed in a Responsible Authority Report commissioned by the City of Melville's Planning Office. This report is produced and submitted independent of influence by elected Councillors – who unanimously rejected R60 for the site. It is important to note that both the Responsible Authority Reports recommended that approval be refused.

The final Responsible Authority Report (RAR) dated 20 February 2014 concluded the following:

*"The previous RAR identified a number of modifications to the design of the proposed development which were considered necessary before it could be considered to achieve an appropriate standard of amenity for future potential occupants and to maintain the amenity of the locality. The modifications which have been made to the proposed design are considered to have significantly improved the design of the proposal.*

*Variations to plot ratio and height can be considered where **all** potential amenity impacts are adequately mitigated under CPS5 and the Design Principles of the R-codes. As outlined within the report, the design measures proposed are considered to mitigate **a number of** potential amenity impacts, in relation to the streetscapes of Kitchener Road and Cotrill Street, and also upon the adjoining residential properties.*

*It is considered that **the height proposed contributes to an amenity impact** on the surrounding locality and it is considered that the overall effect of the discretion sought on height together with the discretion sought on plot ratio would be a **building scale which is out of character with the surrounding locality.***

*On this basis the proposed development is recommended for refusal.” (emphasis mine, see Appendix 2)*

Clause 6.1(a) of the R-Codes provides the objective of design elements for multiple dwellings in areas coded R30 or greater as follows:

*“To ensure that development of multiple dwellings occurs with **due regard to the existing development context and/or the desired future built form for the locality as set out in the local planning framework.**” (emphasis mine)*

Further, clause 6.1.1 and 6.1.2 set out both the design principles and the deemed-to-comply requirements in relation to building size ('bulk and scale' or density) and building height (see Appendix 3 and 4 respectively). The RAR's conclusion above indicates that the development application fails on these grounds.

Yet it seems the JDAP ignored this and instead focused only on the first paragraph of the RAR's conclusion. Their reason for approving the development application appears to be inconsistent with the RAR's conclusion and makes no mention of the important Part 6.1 of the R-Codes. It reads as follows (see Appendix 5):

*“In the view of the DAP the applicant has met the requirements for design changes to the proposal that were sought in the Responsible Authority Report prepared by the Administration at the City of Melville when the application was previously considered.”*

The Chairperson of the local residents action group Striker Balance has written to the Chairperson of the JDAP seeking elaboration on these reasons, an explanation on the discrepancy between the recommendations and statements within the RAR and the reasons for approving the development. These requests have been ignored by the JDAP Chairperson for more almost three weeks as of 6 June 2014.

I request that the Committee obtain these answers from the Chairperson under a line of inquiry regarding the inadequacy of JDAP transparency and accountability.

#### **4) The feedback from the Councils re: the JDAP process**

Last year the Department of Planning conducted a Review of the Development Assessment Panels alongside its *Planning makes it happen: phase two* discussion paper.

As part of this Review the Department conducted a survey on the improvements in development assessment decision making through the DAPs. I have enclosed these pages of the Review with my submission (Appendix 6).

Table 3.2 of Appendix 6 compares the responses. Most striking in this survey is the discrepancy between responses from industry representatives and local government planning staff, the former being extremely positive while the latter was extremely negative.

In particular, on the final statement "DAPs have improved the quality of planning conditions", the percentage of favourable responses from industry was 75% (with 25%

neutral) while the percentage of favourable responses from local government planning staff was 0%, with 47% neutral and 53% giving an unfavourable response.

It is surely a telling statistic that *not one* of the local government planning staff surveyed believed that the DAPs have improved the quality of planning decisions, and 53% of them responded negatively to this assertion.

I believe these survey results are additional strong evidence to support an inquiry by the Committee into the JDAP system and whether its settings are producing the best outcomes for the WA community – not just developers.

## 5) Composition of JDAP

There appears to be confusion around the role of local government councillors on the JDAP. According to the FAQ on the Department of Planning's website (Appendix 7):

***"Local representation is a vital component of the DAP, and as such, if the local government fails to nominate two elected representatives to the relevant DAP within the specified time period, the Minister will have the power to appoint two non-councillors from the community to represent the local community on that DAP."***  
(emphasis mine)

This paragraph seems to stress the importance of two JDAP members who represent the local community.

This is inconsistent with the instructions being given to local government councillors. Local government councillors are instructed to exercise independent judgment in relation to any DAP application before them, and to consider an application on its planning merits (see top of page 4, Appendix 8). My conversations with local government councillors who have sat on the DAP confirm that this is the case.

In directing them to act independently of their local government, and to assess the application on its planning merits (without additional emphasis on the interests of the local community), local government representatives on the DAP panel are no different from the other three industry panel members, except that they generally have less planning expertise.

If the two City of Melville Councillors on JDAP were instructed to act on behalf of the Council and local community, then given the clear weight of opinion, I believe they both would have voted against the 94 Kitchener Rd proposal in which case the development would have been rejected for a second time rather than approved 4 to 1.

I believe the Committee should undertake an inquiry into the composition of JDAP panels, members training and their instructions because I have no doubt this aspect of the JDAP system caused an inappropriate approval for the 94 Kitchener Rd development and presumably many more other localities.

I urge the Committee to read my enclosed grievance to the Minister for Planning and resolve to inquire into the JDAP system and the particular elements I have highlighted in this submission, namely:

- The discretion available to JDAPs and how that discretion is being used;
- The lack of transparency and accountability of JDAPs; and
- The composition of JDAPs.

I am willing to elaborate on this submission in person should the Committee consider this desirable.

Yours sincerely,

**Matt Taylor MLA**  
Member for Bateman

06 JUN 2014