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**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**ACT** : PLANNING AND DEVELOPMENT ACT 2005 (WA)

**CITATION** : SATTERLEY PROPERTY GROUP PTY LTD and  
WESTERN AUSTRALIAN PLANNING  
COMMISSION [2026] WASAT 39

**MEMBER** : JUDGE H JACKSON, DEPUTY PRESIDENT  
MR R POVEY, MEMBER

**HEARD** : 1 APRIL 2026

**DELIVERED** : 22 APRIL 2026

**FILE NO/S** : DR 189 of 2020

**BETWEEN** : SATTERLEY PROPERTY GROUP PTY LTD  
Applicant

AND

WESTERN AUSTRALIAN PLANNING  
COMMISSION  
Respondent

SAVE PERTH HILLS  
Intervenor

SHIRE OF MUNDARING  
Interested Party

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*Catchwords:*

Town planning - Application for review of refusal to approve structure plan - Hearing completed - Decision reserved - Application to reopen by applicant for review - Tribunal's power to allow party to reopen - Relevant factors for consideration - Turns on own facts - Leave to reopen refused

*Legislation:*

*State Administrative Tribunal Act 2004 (WA), s 9, s 32(1), s 34(1)*  
*Strata Titles Act 1985 (WA)*

*Result:*

Leave should be refused

*Category:* B

**Representation:**

*Counsel:*

Applicant : Mr P McQueen  
Respondent : Mr IA Repper and Ms S Price  
Intervenor : Mr S Bourke  
Interested Party : Mr CA Slarke

*Solicitors:*

Applicant : Lavan  
Respondent : State Solicitor's Office  
Intervenor : Logie Legal  
Interested Party : McLeods

**Case(s) referred to in decision(s):**

Adam and Di Giacomo [2017] WASAT 126  
Legal Profession Complaints Committee and a Legal Practitioner  
[2013] WASAT 34  
Owners of Island Apartments Strata Plan 52597 and Pindan Pty Ltd  
[2018] WASAT 2  
Re Confidential and Commissioner of Taxation [2013] AATA 382; 61 AAR 293  
Satterley Property Group Pty Ltd and Western Australian Planning Commission  
[2025] WASAT 17; 117 SR (WA) 86  
Westgem Investments Pty Ltd in its own right as Trustee for Hossean Pourzand  
and Jenny Maria Pourzand ATF the Helen Trust v Commonwealth Bank  
of Australia Ltd [No 5] [2019] WASC 310

**REASONS FOR DECISION OF THE TRIBUNAL:**

**Introduction and Overview of the Application**

1           In this proceeding, the applicant (**Satterley**) seeks review of the Western Australian Planning Commission's (**WAPC**) refusal to approve a proposed Structure Plan.

2           Central to that refusal, and to the proceeding, is the question whether the development of the land the subject of the proposed Structure Plan (**Site**) can be developed in a manner such that the risk to people and property from bushfire is acceptable.

3           As part of its proposed Structure Plan, Satterley proposes the implementation of various mitigation measures which, together, it says will reduce the risk posed by bushfire to an acceptable level. One such mitigation measure is that certain vegetation will be managed so as to be maintained in a 'low threat state'.<sup>1</sup>

4           Concerns as to practicalities associated with such management, including alleged difficulties of enforceability, have been raised as an issue for determination for some time (**Issue**).

5           The proceeding was heard over 17 days commencing in September 2025. Final closing submissions were made on 11 December 2025. The Issue was the subject of evidence and closing submissions.

6           Satterley proposes various possible mechanisms as means by which it might ensure that vegetation will be maintained in a low threat state. In relation to privately held land, they include the use of bushfire notices issued by the local government, and the imposition of restrictive covenants on title.

7           On 27 February 2026, Satterley applied for leave to reopen its case to make further submissions about the Issue.

8           The draft submissions which it seeks leave to make are attached to an affidavit from Mr McGlue, the solicitor with carriage of the matter for Satterley.

9           The draft submissions identify 'an alternate mechanism' that Satterley believes 'could be used to ensure compliance with the "low

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<sup>1</sup> For present purposes it is not necessary to describe with any precision what that term means.

threat state" measures in the BMP in perpetuity, as they relate to proposed private lots within the Structure Plan'.<sup>2</sup>

10 That 'alternate mechanism' is the subdivision of private lots within the proposed Structure Plan 'pursuant to a survey-strata subdivision, under the *Strata Titles Act 1985* (WA), as opposed to a freehold subdivision ...'.<sup>3</sup>

11 The draft submissions conclude that, '[i]f the Tribunal accepts that a survey-strata subdivision approach would be appropriate in the circumstances',<sup>4</sup> then we should<sup>5</sup> require a modification of the proposed Structure Plan as follows:<sup>6</sup>

The Structure Plan is to be amended to identify that private lots will be created pursuant to a survey-strata subdivision and to explain how management measures identified in the Structure Plan ... will be addressed and enforced through the imposition of by-laws.

12 The difficulty with Satterley's position is that, even if leave is granted, there is (and would be) no evidence, of either fact or opinion, before us upon which we might rely to make the finding that Satterley would ask us to make: 'that a survey-strata subdivision approach would be appropriate in the circumstances of this case'.

13 To be clear, the written submissions filed on behalf of Satterley proceed on the basis that, if leave is granted, Satterley would simply file the draft submissions.

14 At the hearing of the application for leave, Mr McQueen confirmed that Satterley did not propose to call any evidence, should leave be granted.

15 For this and other reasons, leave should be refused.

### **The Law**

16 The *State Administrative Tribunal Act 2004* (WA) (**SAT Act**) is silent as to whether the Tribunal has the power to allow a party to reopen its case.

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<sup>2</sup>Affidavit of Alexander Mark McCarney McGlue, Affirmed 27 February 2026 (**Exhibit 1**), Attachment AMG1 (**Draft Submissions**), para 7.

<sup>3</sup> Exhibit 1, Draft Submissions, para 8.

<sup>4</sup> Exhibit 1, Draft Submissions, para 20.

<sup>5</sup> In reply to oral submissions at the hearing, Mr McQueen altered 'should' to 'could'.

<sup>6</sup> Exhibit 1, Draft Submissions, para 21.

17           Nonetheless, we are satisfied that we have the power to do so.  
Previous iterations of the Tribunal have proceeded on that basis.<sup>7</sup>

18           In *Legal Profession Complaints Committee and a Legal Practitioner* [2013] WASAT 34, the Tribunal said that the power was 'undoubted' and referred to sections 32(5) and 34(1) of the SAT Act in support of that conclusion. The former provides for the Tribunal to determine 'the practice and procedure' to be applied while the latter allows for the giving of 'directions at any time in a proceeding and do whatever is necessary for the speedy and fair conduct of the proceeding'. With respect, we agree that we have the power and that those statutory provisions are (at least part of) its source.

19           As to the relevant principles to be applied to the exercise of our discretion, we note that the Tribunal's statutory objectives of fairness, expedition and informality in s 9 and the obligation of procedural fairness in s 32(1) are plainly relevant. Importantly, those objectives and that obligation are also consistent with the provisions of s 34(1) which, as noted above, provides the power to do whatever is necessary for the 'speedy and fair conduct of the proceeding'.

20           In addition to the provisions of the SAT Act, we consider it appropriate to have regard to the principles developed by the courts in dealing with applications to reopen a parties' case in judicial proceedings.

21           In *Re Confidential and Commissioner of Taxation* it was held that those principles 'provide a useful guide' to the determination of the issue by that tribunal 'because, broadly, they are founded in the notion of fairness or natural justice'.<sup>8</sup> Again, we agree, subject to the observation that such principles must be read in the context of the relevant provisions of the SAT Act.

22           In *Westgem Investments Pty Ltd in its own right as Trustee for Hossean Pourzand and Jenny Maria Pourzand ATF the Helen Trust v Commonwealth Bank of Australia Ltd [No 5]* [2019] WASC 310 (*Westgem*), [63] Tottle J held that the overriding principle in the exercise of discretion in an application to reopen is whether the justice of the case favours the grant of leave. Again, so much appears consistent with the relevant provisions of the SAT Act, subject to understanding the phrase 'justice of the case' in the context of the relevant statutory provisions.

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<sup>7</sup> *Owners of Island Apartments Strata Plan 52597 and Pindan Pty Ltd* [2018] WASAT 2; *Adam and Di Giacomo* [2017] WASAT 126.

<sup>8</sup> *Re Confidential and Commissioner of Taxation* [2013] AATA 382; 61 AAR 293 [132].

23 Tottle J further identified (at [89]) the following considerations relevant to an application to reopen a party's case where the decision has been reserved but not determined and where the purpose of the application is to overcome an error by a party's lawyers:

- (a) the public interest (and the interests of the particular parties) in litigation being conducted efficiently and expeditiously;
- (b) the public interest in the finality of litigation, with the consequent expectation that litigants will present all their evidence and submissions at the one hearing;
- (c) the significance of any proposed new evidence and submissions in the context of the trial;
- (d) the explanation for the evidence not having been led at the trial;
- (e) the likely prejudice to the opposing party if the application is allowed;
- (f) the potential detriment to the applying party if the application is refused; and
- (g) any delay by an applicant in seeking leave to re-open.

**A Brief History of the Issue in these Proceedings**

24 The Site was the subject of a previous Structure Plan from 1998 until late last year.

25 A proposed replacement Structure Plan was first lodged by Satterley with the WAPC in November 2018. Approval was refused in July 2020, and in the following month Satterley lodged with the Tribunal an application for review of that refusal.

26 Nine mediation sessions followed. The WAPC reconsidered its decision on 7 December 2023 and confirmed its refusal. Its reasons included that the proposed Structure Plan does not demonstrate that the threat of bushfire can be mitigated to an acceptable level.

27 An amended Structure Plan was filed with the Tribunal in June 2024, which included a Bushfire Management Plan dated 11 June 2024 (**2024 BMP**).

28 Within that document (i.e. the 2024 BMP) are several references to the need to maintain vegetation in a low threat state but most relevant is

item 8 in Table 6, which is headed 'Bushfire hazard issues and proposed mitigation measures'. It states:

Justification for the low threat post-development classifications applied within this BMP (i.e. Plot 9) will need to be demonstrated through the preparation of detailed landscaping design, which is most appropriately prepared at subdivision stage. An overarching Concept Landscape Plan is recommended to be prepared as part of the initial subdivision stage, as part of a wider Landscape Management Plan (**LMP**) which would:

...

...

clearly detail the responsibilities and provide an appropriate means of enforcement for the ongoing management of vegetation across the site, **especially APZs and low threat vegetation on private land and POS.**<sup>9</sup>

29 The same appears in identical terms in the updated Bushfire Management Plan of 11 April 2025 (**2025 BMP**).<sup>10</sup>

30 That is, both the 2024 BMP and the 2025 BMP identify the need for vegetation to be maintained in a low threat state, including on private land, and propose that a landscape management plan should be prepared at subdivision stage that identifies how that will occur, including that it will detail responsibilities and provide an appropriate means of enforcement.

31 The WAPC has long considered this approach to be inadequate. In its Statement of Issues, Facts and Contentions (**SIFC**), drafted on the basis of the 2024 BMP, the WAPC contends that the 'post-development BHL [Bushfire Hazard Level] ratings were calculated on the basis that certain parts of the Structure Plan area would be modified to a low threat state and maintained in that state in perpetuity' (paragraph 323) but that 'critical assumption is unjustified and inappropriate' (paragraph 324). Amongst other things, it called for a landscape management plan to be developed to 'support' the proposed Structure Plan.

32 The Witness Statement of Mr Rowe, who was called by Satterley, responds to the WAPCs concerns by insisting that they 'are routinely addressed in subsequent stages of development assessment'.<sup>11</sup> He then

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<sup>9</sup> Emphasis added.

<sup>10</sup> At item 8 of Table 4.1.

<sup>11</sup> Witness statement of Mr Anthony Rowe 14 April 2025, para 120.

refers to various methods by which the concerns may be addressed, including the use of restrictive covenants on title.<sup>12</sup>

33 Mr Parker was called by the WAPC. His evidence includes that a landscape management plan should be prepared to support the proposed Structure Plan.<sup>13</sup>

34 In his Responsive Statement, Mr Panickar (called by Satterley) disagrees, describing such an approach as premature.<sup>14</sup>

35 The issue was the subject of expert conferral. In the Joint Statement, Messrs Panickar, Rowe, McMahon (called by the WAPC) and Parker all addressed the suitability of a landscape management plan at the Structure Plan stage. All but Mr Panickar did so (explicitly or implicitly) by reference to enforceability of obligations to maintain vegetation in a low threat state.<sup>15</sup>

36 The issue of the maintenance of vegetation in a low threat state was also the subject of evidence during the hearing, including questions asked of the experts as to various practicalities including enforceability.

37 In his affidavit, Mr McGlue deposes that during the cross-examination of Mr Rowe, and also following an exchange between us and Mr McQueen during closing submissions regarding the means by which restrictive covenants are enforced, he (Mr McGlue) turned his mind, without success, to the possibility of alternative means by which private landowners within the Site might be required to comply with the positive obligations to maintain vegetation in a low threat state.

38 He deposes that the day after the completion of closing submissions, he discussed the matter with a partner of his firm with expertise in strata matters, who suggested that the issue might be addressed by developing the Structure Plan area as a survey strata scheme.

39 Mr McGlue's affidavit then explains why and how, with the need to: (1) consider the matter; (2) discuss with counsel; (3) give advice and take instructions; and with complications associated with doing so over the Christmas period, it was not until the end of February before the application for leave to reopen was made.

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<sup>12</sup> Ibid. paras 128, 130.

<sup>13</sup> Witness statement of Mr Jackson Parker 13 June 2025, para 90.

<sup>14</sup> Ibid, para 10.

<sup>15</sup> Expert Conferral Statement - Bushfire Planning 14 July 2025.

**Why Leave Should not be Granted**

**Leave Would Not Assist Us to Reach the Correct and Preferable Decision**

40 As we have said, Satterley's position is that, if leave is granted, it will file supplementary submissions in the form of the draft submissions attached to Mr McGlue's affidavit.

41 The crux of those submissions is that the development of the Site as a survey-strata scheme would provide a mechanism for the maintenance of vegetation on privately held land in a low threat state that overcomes some of the difficulties associated with doing so through the imposition of restrictive covenants on title. There are three principal benefits to that mechanism relied upon:<sup>16</sup>

- (a) First, *contra* restrictive covenants, strata by-laws 'can impose positive obligations on owners' and could therefore set out precisely what is required to maintain vegetation in a low threat state.
- (b) Secondly, enforcement of a breach of strata by-laws occurs by application to the Tribunal, rather than by proceedings in the Supreme Court. Enforcement is therefore simpler, cheaper and is much less likely to require legal representation than the enforcement of a restrictive covenant.
- (c) Thirdly, enforcement can occur by various entities, including the strata company or an individual owner, rather than being left to individual owners.

42 We accept that strata by-laws can impose positive obligations on unit owners, that enforcement occurs by proceedings brought in the Tribunal and that such actions may be brought by both the strata company and other owners.

43 However, in our view those submissions, if made, would be insufficient to allow us to make the finding which, if leave were granted, Satterley says it would press upon us - that a 'survey-strata subdivision approach would be appropriate in the circumstances'.

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<sup>16</sup> Draft Submissions, paras 14 - 16.

44 In our view, before we may reach such a conclusion, we would need  
to receive evidence as to whether such an approach is otherwise suitable  
in the circumstances of this case.

45 As has already been said in other reasons<sup>17</sup> the Structure Plan  
proposed by Satterley for the Site can reasonably be described as  
'extraordinary'. Amongst other things, it covers 534 hectares, proposes  
1001 lots to accommodate ~2803 people, includes two schools and will  
be staged over a very lengthy period of time, probably more than  
15 years.

46 To propose a survey strata subdivision in the context of those  
parameters is, equally, extraordinary.

47 That is not to say that it could not be done. We accept  
Mr McQueen's submissions that there is nothing in the relevant planning  
regime - statutory and policy - that precludes it, but such an approach  
appears to be unprecedented.

48 The written submissions, filed on behalf of the WAPC raise a  
number of questions. Slightly altered, they include the following:

- (a) Would a single survey-strata scheme cover the whole Structure  
Plan area, or would there be more than one?
- (b) If more than one is proposed, how will the schemes interact so as  
to facilitate the maintenance of vegetation in a low threat state in  
'the other' scheme?
- (c) Is it practical for a survey strata scheme to apply to a development  
anticipated to be staged over ~15 years?
- (d) What is to be proposed to be included in the survey-strata  
scheme? Are the proposed local roads included? If so, would  
they become privately owned common property? What does  
planning policy say about that? What arrangement will be made  
for their ongoing maintenance to the standards required by  
Western Australian Planning Commission *State Planning  
Policy 3.7 Bushfire (SPP 3.7)*? How will they remain open to  
the public, as assumed by the traffic modelling and the  
microsimulation evacuation modelling?

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<sup>17</sup> *Satterley Property Group Pty Ltd and Western Australian Planning Commission* [2025] WASAT 17; 117 SR (WA) 86.

- (e) Is it proposed for areas of open space to be managed by the strata company as common property? If so, what arrangements are to be made to ensure the strata company is properly funded to maintain this open space so that a low threat state and relevant environmental outcomes are achieved in perpetuity? Will these areas be open to members of the public other than residents of the survey-strata scheme? Who will pay for insurances? Is this consistent with planning policy?
- (f) Will the survey-strata parcel comprise multiple non-contiguous portions divided by public roads and parks, stretching over several kilometres? Is this consistent with policy or the *Strata Titles Act 1985* (WA)? Does this affect the likelihood of effective enforcement of by-laws? Has it ever been done before?
- (g) How will the provision of water tanks and hydrants be implemented across a survey strata subdivision?
- (h) How does the proposal for the on-site bushfire refuge to potentially be common property under the survey-strata scheme align with the BMP, which refers to refuge buildings being used for another purpose such as a community purpose or shopping centre?

49 We accept that those questions raise matters of a nature that should be properly considered before we might reach the conclusion for which Satterley would press, if leave were granted.

50 Put another way, while a survey-strata subdivision might overcome the difficulties identified with restrictive covenants regarding the maintenance of vegetation in a low threat state, it may well raise other difficulties which, at present, remain unidentified or unexplored.

51 Satterley's proposed approach, if leave is granted, does not acknowledge, let alone address, that possibility.

52 In response to the questions raised by WAPC, Mr McQueen indicated that it was not necessary for them to be addressed now and, as a fallback position, indicated that his client would not resist the calling of further witness evidence by WAPC to have such questions put to them.

53 That is, with respect, to miss the point.

54 In our view, the proceeding requires us to consider whether or not  
the Site is capable of being developed in the manner anticipated, more or  
less, by the proposed Structure Plan.

55 That is, it is not necessary for us to be satisfied of each and every  
detail. We accept the submissions made by Mr McQueen that a Structure  
Plan is a document to which due regard must be had by the WAPC when  
considering subsequent applications for subdivision and that such  
subsequent subdivisions need not slavishly follow it.

56 But we must be satisfied that it is possible and feasible to develop  
the Site in the manner proposed by the proposed Structure Plan and in a  
manner that is consistent with relevant planning policies, the most  
relevant in this case being SPP 3.7.

57 That requires Satterley, as the applicant, to put forward a considered  
proposal, one that fleshes out and explains what is proposed and how it  
will work, against relevant planning policies. Where matters are not  
agreed and, in the context of this proceeding, are significant, it will also  
require the calling of witnesses to express opinions which are explained  
and to answer questions posed by others.

58 That is so notwithstanding that Satterley's current position is that  
we should require the WAPC to reconsider the proposed Structure Plan  
in a modified form that we determine.

59 The present application for leave does not adopt such an approach  
and in our view, leave should not be granted accordingly. In our view,  
to grant leave would not assist us in seeking to reach the correct and  
preferable decision because the submission that would be made is  
inadequate for us to reach the conclusion which we would be encouraged  
to make.

### **Other Reasons Why Leave Should be Refused**

60 As previously noted, Tottle J in *Westgem* identified several  
principles acknowledged by the courts as relevant to the exercise of  
discretion in matters such as this. What follows refers to those principles.

61 It is unnecessary to say much about the explanation for the evidence  
not having been led at the trial. We accept that Mr McGlue's affidavit  
accurately states the relevant circumstances. No other party challenged  
its veracity. In effect, it accepts that Satterley's failure to raise the

possibility of a survey-strata subdivision was that of its legal representatives.

62 Mr McGlue's affidavit also explains why it took from 12 December 2025 (when the idea of the survey-strata subdivision was first raised) to 27 February 2026 to make the application to reopen. None of the other parties took issue with that delay and, while some criticism could be made, we accept that the explanation given is such that it should not weigh heavily against the grant of leave.

63 Having said that, given the history of the matter and the significance of the issue, it does strike us as surprising that alternative means by which to ensure the long-term maintenance of vegetation in a low threat state does not appear to have previously received a more thorough consideration.

64 Satterley was aware of the Issue for a long time, is not without resources, and has been legally represented throughout the proceeding, one which had a considerable number of procedural steps.

65 Both the Tribunal and the other parties are, in those circumstances, entitled to proceed on the basis that Satterley's case will be as outlined in its SIFC and the witness statements of its experts, and that it will not be necessary to come back for a 'second bite of the cherry'.

66 Put in the terms of the principles identified by Tottle J in *Westgem*, the public interest, and the interests of the other parties, in this litigation being conducted efficiently and expeditiously, and the public interest in the finality of litigation, both weigh against the grant of leave.

67 Finally, there is the question of prejudice.

68 Neither WAPC nor the Shire of Mundaring pressed this issue, but the Intervenor noted the very considerable interest of its members in the prompt resolution of the matter and that, should further evidence be called by WAPC, there would be a delay measured in months, not weeks. We accept that submission.

69 For these further reasons, leave should be refused.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

DM  
Associate

22 APRIL 2026