DEVELOPMENT COMMITTEE

17 APRIL 2018

AGENDA

It is advised that a meeting of the Development Committee will be held at 6.00pm Tuesday 17 April 2018 in the Council Chambers at the Town of Cambridge Administration/Civic Centre, 1 Bold Park Drive, Floreat.

10 April 2018

JASON LYON
DIRECTOR CORPORATE AND STRATEGIC

MEMBERS:

Mayor Keri Shannon (Presiding Member)
Cr Ian Everett
Cr Kate McKerracher
Cr James Nelson
Cr Jane Powell

First Deputy (Coast Ward)   Cr Rod Bradley
First Deputy (Wembley Ward) Cr Louis Carr

Second Deputy (Coast Ward)  Cr Andres Timmermanis
Second Deputy (Wembley Ward) Cr Jo McAllister
DEVELOPMENT COMMITTEE
17 APRIL 2018
ORDER OF BUSINESS

1. DECLARATION OF OPENING
2. RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE
3. PUBLIC QUESTION TIME
4. DEPUTATIONS AND PETITIONS
5. CONFIRMATION OF MINUTES
6. DECLARATION OF MEMBERS’ INTERESTS
7. REPORTS

DEVELOPMENT

DV18.27 Lots 147-149 (No. 177) Cambridge Street, West Leederville and Lot 800 (No. 12) Salvado Road, Subiaco - Construction of Temporary Carpark - Further Report
DV18.28 Lot 405 (No. 84) Evandale Street, Floreat - Retrospective Ancillary Dwelling
DV18.29 Lot 252 (No. 30) Chipping Road, City Beach - Two Storey Dwelling
DV18.30 Lot 1191 (No. 1) Ayr Street, Floreat - Two Storey Dwelling
DV18.31 Lot 645 (No. 4) Niribi Road, City Beach - Two Storey Dwelling
DV18.32 Lot 1020 (No. 36) Peebles Road, Floreat - Two Storey Dwelling
DV18.33 Lot 372 (No. 78) Branksome Gardens, City Beach - Two Storey Dwelling
DV18.34 Lot 395 (No. 114) Rosedale Street, Floreat - Single Storey Dwelling with Undercroft Garage and Roof Terrace
DV18.35 Lot 518 (No. 124) Alderbury Street, Floreat - Single Storey Dwelling
DV18.36 Lot 175 (No. 204) Harborne Street, Wembley - Additions and Alterations to Existing Dwelling
DV18.37 Lot 25 (No. 6) Kingsland Avenue, City Beach - Additions & Alterations to Existing Dwelling
DV18.38 Lot 317 (No. 23) Kinkuna Way, City Beach - Proposed Additions and Alterations to Existing Dwelling - Kitchen Addition and New Carport
DV18.39 Lot 188 (No. 15) Tarongo Way, City Beach - Balcony Addition and Alterations to Existing Dwelling
DV18.40 Lot 62 (No. 122) Kimberley Street, West Leederville - 19 Multiple Dwelling Development - Vehicle Security Gate and Pedestrian Gate
DV18.41 Lot 260 (No. 20) Linden Gardens, Floreat - Proposed Carport
DV18.42 Lot 466 (No. 17) Marimba Crescent, City Beach - Carport, Verandah and Front Fence
DV18.43 Lot 258 (No. 24) Linden Gardens, Floreat - Proposed Carport and Two Patios
ADMINISTRATION/POLICIES

DV18.44  Wembley Activity Centre Plan - Consideration of Western Australian Planning Commission Modifications  120
DV18.45  Health and Compliance Policies - Review and Adoption  124
DV18.46  Health Act, Local Government Act and Bushfires Act Notices - Lot 41 (No.25) Pandora Drive, City Beach  127

8. CLOSURE
DV18.27  LOTS 147-149 (NO. 177) CAMBRIDGE STREET, WEST LEEDERVILLE AND LOT 800 (NO. 12) SALVADO ROAD, SUBIACO - CONSTRUCTION OF TEMPORARY CARPARK - FURTHER REPORT

SUMMARY:

The purpose of this report is for Council to consider a development application for the construction of a temporary carpark at Lots 147-149 (No. 177) Cambridge Street, Wembley and Lot 800 (No. 12) Salvado Road, Subiaco.

This application is being presented to Council following the Metro-West Joint Development Assessment Panels (JDAP) decision to approve the construction of a six-storey carpark at No. 12 Salvado Road, Subiaco. This application included reference to the construction of a temporary car park.

The Administration recommends that the application should be conditionally approved.

AUTHORITY / DISCRETION

☐ Advocacy

When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

☐ Executive

The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

☐ Legislative

Includes adopting local laws, town planning schemes & policies.

☐ Review

When the Council operates as a review authority on decisions made by Officers for appeal purposes.

☑ Quasi-Judicial

When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

☐ Information

For the Council/Committee to note.

BACKGROUND:

Application: 0003DA-2018
Owner: St John of God Health Inc.
Applicant: Planning Solutions Pty Ltd
Zoning: Medical
Precinct: West Leederville
Use class: Hospital ‘P’ – permitted
Land area: 3059m²

On 24 March 2017, a demolition permit was issued for the demolition of St. John of God House which was located on lots 147-149 (No. 177) Cambridge Street, Wembley. The demolition was completed by 29 June 2017 and the site has remained vacant since this time.
On 21 June 2017, a Development Assessment Panel application was submitted for No. 12 Salvado Road, Subiaco which proposed to construct a six storey multi-level car park. The application was initially considered by the JDAP on 30 September 2017, however, the application was deferred for a period of 3 months.

On 8 January 2018, the proposal was further considered by the JDAP. The Responsible Authority Report (RAR) recommended that the application be refused (refer to Attachment 3 for further information), however, the application was conditionally approved. At the time of writing the RAR, the application for a temporary car park had not been submitted by the applicant and was not considered as part of the application, however, was indicated on the plans.

DETAILS:

Site Context

The proposed development is located on Lots 147-149 (No. 177) Cambridge Street, Wembley and Lot 800 (No. 12) Salvado Road, Subiaco (the subject site), and within a street block bound by Cambridge Street to the north, Station Street to the west, McCourt Street to the east and Salvado Road to the south. The subject site is zoned Medical and is located within the West Leederville Precinct.

The site is currently vacant with portions of vegetation on the northern and western boundaries and some portions of bituminised car parking spaces, orientated east-west, comprising of 55 bays. There are two existing crossovers, a 3 metre wide crossover on Lot 147 (‘crossover 1’) and a 9 metre wide crossover on Lot 12 (‘crossover 2’), both accessible from Cambridge Street and vehicle access from D'Arcy Lane, which is accessible from Station Street. D'Arcy Lane is a public thoroughfare servicing No. 12 Salvado Road and 181 and 187 Cambridge Street respectively, however, it only extends for a length of 130 metres and then falls within the private property of the subject site.

The subject site is surrounded to the east and south by the St John of God Hospital, and multiple dwellings to the west (181 Cambridge Street). Properties on the opposite side of Cambridge Street are predominantly commercial ranging in height from one to four storeys.

Development description

This application was submitted on 5 January 2018 and proposes to use the subject site as a temporary carpark by:

- Adding 103 car bays to the existing 55 car bays on site, resulting in 158 car parking bays. These bays will be used solely for staff and contractors car parking to compensate for the loss of Kitchener Park;
- Consolidating Vehicle access from Cambridge Street (Two crossovers exist, only one will be used during the lifetime of the car park) and D'Arcy Lane; and
- Using of an entry boom gate and card reader (located at the end of D'Arcy Lane) and an exit boom gate (using the Cambridge Street crossover).

The applicant has advised that the car park is required for 4-5 years before it is ultimately redeveloped for medical purposes.
In support of the application, the applicant has submitted a Transport Impact Statement (refer to attachment 2) which addresses:

- Car parking provision, access and layout; and
- Daily traffic volumes and vehicle types.

On 24 January 2018, the applicant was requested to provide additional information regarding:

- The provision of landscaping;
- Drainage;
- The provision of motorcycle bays; and
- The width of the existing crossover located on the Cambridge Street frontage of Lot 800 (No. 12) Salvado Road.

On 30 January 2018, the applicant provided additional information outlining responses to these matters (refer to attachment 2). Where relevant, these matters and the information provided in support of the application, have been incorporated into the assessment.

An assessment of the application has been conducted against the provisions of Town Planning Scheme No. 1 (the Scheme), Clause 67 of the Deemed Provisions of Schedule 2, Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, and the following Local Planning Policies:

- 4.1 (Design of Non-Residential Development);
- 5.1 (Parking);
- 5.3 (Landscaping and Water Sensitive Urban Design); and
- 6.5 (West Leederville Precinct).

The proposal complies with all the requirements of the Scheme, and provisions of the aforementioned policies with the exception of the following key issues outlined below.

Assessment against Schedule 2, Part 6 of the Planning and Development (Local Planning Schemes) Regulations 2015

Local Development Plan

On 11 October 2017, the Town requested that the Western Australian Planning Commission (WAPC) agree to require that a Local Development Plan (LDP) be prepared for the site. A LDP is a plan that sets out specific and detailed guidance for future development including one or more of the following:

a) site and development standards that are to apply to the development;
b) specifying exemptions from the requirement to obtain development approval for development in the area to which the plan relates.

Part 6 of the deemed provisions sets out the requirements for a LDP, including when a LDP can be prepared, how this should occur (advertising, approval and review of decisions) as well as the effect of a LDP. Clause 56(1) of the deemed provisions states that the local government must give due regard to, but is not bound by, a LDP when determining an application.
On 20 December 2017, the WAPC agreed that a LDP should be prepared for any future redevelopment of the site. At the time of writing this report, a LDP or a masterplan that is not subject to change, has not been submitted to the Town for assessment.

In consideration of this application, Clause 56(2) of the deemed provisions is important as it states that a decision maker for an application for development approval in an area referred to in Clause 47 as being an area for which a LDP may be prepared, but for which no LDP has been approved by the local government, may approve the application if the decision-maker is satisfied that: -

a) The proposed development does not conflict with the principles of orderly and proper planning; and
b) The proposed development would not prejudice the overall development potential of the area.

As no LDP presently exists for the site, the matters identified above should be considered in the determination of this application. It is considered that the proposal is appropriate for the following reasons:

- The proposed development does not conflict with the principles of orderly and proper planning as the temporary car park provides satisfactory means of access (from D'Arcy Lane) and egress (to Cambridge Street). Further, the proposal assists with the provision of car parking at the site; and
- The proposed development is temporary in nature and will not prejudice the overall development potential of the area, particularly as a LDP is required for the overall development of the area. A condition of approval is recommended to ensure that the use of the site reverts back to its current use in 5 years.

Assessment against Schedule 2, Part 9, Clause 67 (g) of the Planning and Development (Local Planning Schemes) Regulations 2015.

Local Planning Policy 4.1 'Design of Non-Residential Development'

The proposed development requires consideration against the development criteria 1.1 (Safety) of Local Planning Policy 4.1 'Design of Non-Residential Development' which states:

The need for safe movement of vehicular traffic and minimisation of conflicts between vehicles, pedestrians and cyclists, with reference to factors such as the volume of traffic (both pedestrian and vehicle) likely to be generated by the proposed development, location of vehicular access points, the design and location of crossovers, public transport stops and the provision and location of segregated pedestrian walkways and sightlines.

The proposal is not considered to satisfy this requirement as the subject site is located within a high pedestrian area and 'Crossover 2', situated on the Cambridge Street frontage of Lot 800 (No. 12) Salvado Road, is 9m wide which exceeds the Town's crossover standards by 3 metres. Due to the width of this crossover and the proposed consolidated arrangement of the proposed temporary car park, there is potential for conflict between pedestrians utilising the footpath of Cambridge Street and more than one vehicle exiting the site onto Cambridge Street. Further, the size of the crossover may encourage conflict between vehicles travelling west on Cambridge Street and vehicles exiting the site onto Cambridge Street.

With this in mind, condition 7 is recommended to ensure that the width of the crossover is reduced to 6 metres and diagonal hatching be marked within the 2.5 metres setback area to improve pedestrian safety.
Local Planning Policy 5.1 ‘Parking’

Table 1 of Local Planning Policy 5.1 ‘Parking’ (LPP5.1) outlines the car parking requirements by land use categories as well as motorcycle parking requirements, the assessment as it relates to a hospital is shown below:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Existing</th>
<th>Proposed</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hospital: 1 space per 30m² administration area and 1 space per 3 licensed beds (Existing Requirement: 1377)</td>
<td>1377</td>
<td>1480</td>
<td>+103</td>
</tr>
<tr>
<td>Motorcycle: 2% of overall parking proposed (2% * 103 bays = 2 bay requirement)</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
</tbody>
</table>

The proposed development will result in an oversupply of car parking for the subject site. Clause 1.7 of LPP5.1 provides the following guidance for this situation:

*Car Parking provision exceeding the requirements specified in Table 1 will generally not be supported, in order to limit traffic congestion and encourage more sustainable modes of transport. The Responsible Authority may determine that the provision of bays exceeding the required number under the Policy provisions is not justified or required and will impose an adverse impact on amenity, safety and traffic management in the surrounding locality. In some circumstances, the Responsible Authority may require there to be fewer parking bays than required under the Policy if the number of bays proposed is likely to present an adverse impact on amenity, safety and/or traffic management.*

The proposed oversupply is considered to be appropriate for the following reasons:

- The proposed car park does not adversely impact the amenity of the area;
- As discussed in the discussion of LPP4.1, condition 7 is recommended to mitigate safety concerns associated with potential conflicts between pedestrians utilising the Cambridge Street footpath and vehicles existing onto Cambridge Street;
- The traffic impact statement submitted indicates that the trips generated from the development will not adversely impact the road network; and
- The proposed development is temporary and condition 1 is recommended to ensure that, should the application be approved, the site reverts back to its previous use at the expiry of the approval period or the applicant will need to submit another development application to extend the use of the site.

In relation to the motorcycle bays, the proposed temporary car park does not satisfy the requirements of the Parking Policy for the provision of motorcycle parking. The shortfall of motorcycle bays is considered to be appropriate for the following reasons:

- The applicant contends that the proposed development will be used by contractors working on the redevelopment of the St John of God Hospital, and staff of the hospital. Contractors by nature do not require motorcycle bays. Staff provided with access to the car park will be allocated a car parking bay, and would not require an additional dedicated motorcycle bay. Motorcycle bays would therefore be underutilised. This is noted; and
The interim car parks function will ultimately be replaced by the multi-storey car park, which was approved by the JDAP in January 2018. The multi-storey car park was approved with no provision of motorcycle parking bays. As the interim car park serves a similar purpose to the multi-storey car park, there is no logical or proper planning purpose to require motor cycle bays under the current application. Condition 1 is recommended to ensure that after 5 years, the use of the car park will cease.

Local Planning Policy 5.3 'Landscaping and Water Sensitive Urban Design'

The proposed development does not satisfy Clause 3 of Local Planning Policy 5.3 'Landscaping and Water Sensitive Urban Design' as outlined in the table below:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>All open air car parking areas shall be landscaped by the planting of shade trees along car parking rows, with a minimum spacing of 10 metres unless otherwise approved by the Council where such spacing can be demonstrated to be impractical in the circumstances of the particular development.</td>
<td>Existing landscaping along the western and eastern boundaries of the existing car park will be retained. No shade trees proposed</td>
</tr>
</tbody>
</table>

The proposed variations are considered to be acceptable given that the proposed carpark is temporary in nature. Any additional significant landscaping (shade trees) is unlikely to have the opportunity to reach mature height and produce shade prior to the redevelopment of the car park area.

Notwithstanding this, given the prominence of the site, it is recommended that a landscaping plan (condition 8) be submitted and implemented to populate the 2.5 metre setback area with water-wise native species, particularly as it relates to the existing shrub on the site.

Commencement of Planning Approval

The applicant has stated that the proposed car park is temporary in nature and would assist with facilitating the development of the recently approved multi-level car park on 12 Salvado Road. It would also assist in relieving car parking pressure associated with the expiration of a lease on Kitchener Park. The applicant contends that the application should not be time limited as:

- It is the owners current intention that the proposed interim car park be utilised for 4-5 years before it is ultimately redeveloped for medical purposes; and
- As the length of time that this interim car park is required will be subject to other conditions, the timeframe cannot be known with certainty.

Should the owners' intention change, the site will be utilised for an extended period of time and the Town will not have the ability to re-assess its impact on the streetscape and the road network. Further, it is clear that this application would not have been submitted if the (recently approved) multi-storey car park had not been approved by the JDAP in January 2018. There is a clear connection between the two, particularly as the temporary car park will be used by contractors, during the construction period, and staff.

Condition 1 is recommended to ensure that the car park use remains temporary in nature and provides adequate time for the applicant to commence, and subsequently complete, the construction of the multi-storey car park. This would also ensure that there is certainty for the timeframe. Should the 5 year timeframe expire, the applicant can reapply to continue to use the site as a car park.
Local Government and Public Property Local Law 2017

Division 4 of the Town of Cambridge Local Government and Public Property Local Law addresses vehicle crossings. In particular, Clause 9.12 'Removal of redundant vehicle crossings' states that:

"Where works on a lot will result in a crossing no longer giving access to a lot, the crossing is to removed and the kerb, drain, footpath, verge and any other part of the thoroughfare affected by the removal are to be reinstated to the satisfaction of the local government."

With this in mind, the plans submitted as part of this application demonstrate that Crossover 1, situated on Lot 147 (No. 177) Cambridge Street, will not be used for access to the lot and it is recommended that condition 6 be imposed to ensure that the redundant crossover is removed and the kerbing, verge and footpath be reinstated. This is not unreasonable given that:

- The site currently utilises two crossovers on Cambridge and the application is proposing to only use one consolidated crossover;
- The condition is consistent with the Local Government and Public Property Local Law 2017;
- Prior to the commencement of the development is adequately final and certain as it clearly sets out when the redundant crossover needs to be removed and the kerbing, verge and footpath being reinstated. There are standards available on the Town's website regarding crossovers; and
- The applicant has stated that the site will ultimately be redeveloped for medical purposes and the crossover will be used as part of any future large-scale redevelopment. However, the Town has not been given any indication as to when a LDP will be submitted or when this overall development is likely to occur. It should also be noted that reference to the 'commercially confidential' preliminary masterplan submitted through the JDAP application process for the multi-storey car park at No. 12 Salvado Road cannot be relied upon as the masterplan was not sufficiently finalised and is subject to change.

Community Consultation

The application was not advertised as there is no requirement to do so, in accordance with Local Planning Policy 2.3 'Public Notification of Planning Proposals' and Schedule 2, Part 8, Clause 64 of the Planning and Development (Local Planning Schemes) Regulations 2015.

POLICY/STATUTORY IMPLICATIONS:

The proposal was assessed against the provisions of Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Consideration of this application is consistent with the Town's Interim Strategic Community Plan 2017-2027 for the priority area 'Our Planned Neighbourhoods'.
Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs

Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Simon Shub, Senior Strategic Planning Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. Development Application Plans;

Committee Meeting 20 February 2018

Prior to consideration of the item, Cr McKerracher disclosed an interest affecting impartiality and declared as follows: "with regard to Item DV18.2, I declare that I have a personal association with a director of the Applicant company and as a consequence there may be a perception that my impartiality may be affected. I declare that I will consider this matter on its merits and vote accordingly.

Council Meeting 27 February 2018

Prior to consideration of the item, Cr McKerracher disclosed an interest affecting impartiality and declared as follows: "with regard to Item DV18.2, I declare that I have a personal association with a director of the Applicant company and as a consequence there may be a perception that my impartiality may be affected. I declare that I will consider this matter on its merits and vote accordingly.

COMMITTEE AND ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES the application for a temporary car park submitted by Planning Solutions Pty Ltd at Lots 147-149 (No. 177) Cambridge Street, Wembley and Lot 800 (No. 12) Salvado Road, Subiaco as shown on the plans dated 4 January 2018 (S04017 C00 Rev B, C01 Rev E and C02 RevA), subject to the following conditions:-

(i) this approval is valid for five (5) years, upon which the approval ceases and has no further effect;
(ii) all car parking dimensions, manoeuvring areas, circulation areas, crossovers and driveways shall be constructed in accordance with Australian Standard AS2890.1 (as amended);

(iii) all existing street trees shall be protected and maintained with no pruning permitted without prior approval of the Town of Cambridge;

(iv) the lighting to public areas, pathways and car parking areas within the development shall comply with the Australian Standard 1158.3.1 2005 'Lighting for Roads and Public Spaces Part 3.1 - (Category P) — Performance and design requirements'. Plans and details shall be provided to the Town for approval, prior to the commencement of the development;

(v) the redundant vehicle crossover outside Lot 147 (No. 177) Cambridge Street, to be removed and the kerbing, verge and footpath shall be reinstated to the specifications and satisfaction of the Town prior to the commencement of the development;

(vi) the vehicle crossover providing access to the subject site from Cambridge Street, on Lot 800 (No. 12) Salvado Road as depicted on Plan S04017, shall be reduced in width from 9 metres to 6 metres. The kerbing, verge and footpath shall be reinstated to the specifications and satisfaction of the Town prior to the commencement of the development;

(vii) prior to the commencement of the development, a landscaping plan, showing the location and type of vegetation for the 77m² front setback area of the subject site, shall be submitted and approved by the Town of Cambridge, subsequently installed to the satisfaction of the Town.

Advice Notes

The applicant be advised that:-

1. Obtrusive or spill lighting from the development must not cause a 'nuisance' and shall comply with the Town of Cambridge Private Property Local Law 2016 and AS 4282.1997 - ‘Control of obtrusive effects of outdoor lighting’.

2. Waste Collection service along D’Arcy Lane should be reviewed.

3. In relation to condition (iii), the applicant is encouraged to incorporate water wise and/or local native plants within the landscaping plan.

During discussion, Members noted that the applicant has requested that the item be deferred for one month of enable issues raised at the Development Committee to be addressed.

COUNCIL DECISION:

That the item relating to Lots 147-149 (No. 177) Cambridge Street, Wembley and Lot 800 (No. 12) Salvado Road, Subiaco be deferred for one month

FURTHER REPORT: (Post Council Meeting - 27 February 2018)

The application was presented to Council at the Ordinary Council meeting held on 27 February 2018 and was deferred, at the request of the applicant, for one month.
The applicant has now requested the proposal be deferred until the April 2018 round of meetings.

COUNCIL DECISION:
(ADMINISTRATION RECOMMENDATION)

That the item related to Lots 147-149 (No. 177) Cambridge Street, Wembley and Lot 800 (No. 12) Salvado Road, Subiaco be deferred until April 2018.

FURTHER REPORT (Post Council Meeting 27 March 2018)

The application was presented to Council at the Ordinary Council Meeting held on 27 March 2018 and was deferred, at the request of the applicant, until April 2018.

On 19 March 2018, the Town contacted the landowner requesting an update on the additional information/justification for the crossovers and a likely submission time. The Towns’ internal deadline (26 March 2018) was also clearly identified.

On 27 March 2018, the Town received an amended plan and additional information regarding the crossovers and pedestrian safety. On 9 April 2018, the applicant amended the application form and the plans to remove Lot 147 (which is already used for car parking) from the proposal. This has resulted in the proposal only adding 91 bays to the existing 10 bays on Lots 148-149 and Lot 800, resulting in a total of 1468 bays (a difference of +91 bays) for the entirety of the St John of God Subiaco site.

The applicant contends that the car park will be used in two phases:

(a) Outside of Construction Phases

Outside of the construction phase, the whole of the carpark will be used for staff car parking. The internal fencing of the contractors’ compound will be removed when not in use, and all staff parking bays will be line-marked. Fencing along the Cambridge Street frontage of the carpark will be retained to ensure the parking lot is secure and not illegally used for public vehicle parking.

The gate to the western most crossover will be locked and not used during this phase.

(b) During Construction Phases

During periods of major construction phases, the western portion of the carpark will used as a contractors’ compound. The intent of the contractors’ compound is to provide a secure area for the temporary storage of contractors’ equipment and building materials, when required. This secure compound is essential for contractors, as theft of materials and tools is common for building sites.

The southern portion of the carpark will be dedicated area for large vehicles and cranes. A dedicated large vehicle exit gate is also provided.

To ensure the construction site can be managed in a safe manner, a one-way movement system will be implemented and enforced by the site manager. Contractors’ vehicles will be required to enter the compound via D’Arcy Lane and to exit the compound via Cambridge Street. Large vehicles will also enter the site from D’Arcy Lane and exit the site via Cambridge Street. Egress onto Cambridge Street will be controlled by gates to ensure all vehicles exiting the site do so in a manner that does not compromise the safety of pedestrians. Traffic management measures will be implemented as part of construction activities as required.
The additional information addresses matters during the construction phase of the car park; however it is apparent that once construction is completed the size of the eastern crossover will no longer be necessary. No additional information has been provided regarding the future redevelopment of the site and until such time as a Local Development Plan has been submitted and approved the Town, there is no demonstrated need for a crossover of this size once the construction has been completed.

With this in mind, condition (v) has been removed as Lot 147 and the associated crossover no longer forms part of the application and the wording of condition (vi) (now condition (v)) be amended to reflect the redundant nature of the crossover following the completion of construction.

ADMINISTRATION RECOMMENDATION

That, in accordance with Clause 68(2) of the Deemed Provisions of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES the application for a temporary car park submitted by Planning Solutions Pty Ltd at Lots 148-149 (No. 177) Cambridge Street, Wembley and Lot 800 (No. 12) Salvado Road, Subiaco as shown on the plans dated 4 January 2018 (S04017 C02 Rev A) and 10 April 2018 (S04017 C01 Rev H), subject to the following conditions:

(i) this approval is valid for five (5) years, upon which the approval ceases and has no further effect;

(ii) all car parking dimensions, manoeuvring areas, circulation areas, crossovers and driveways shall be constructed in accordance with Australian Standard AS2890.1 (as amended);

(iii) all existing street trees shall be protected and maintained with no pruning permitted without prior approval of the Town of Cambridge;

(iv) the lighting to public areas, pathways and car parking areas within the development shall comply with the Australian Standard 1158.3.1 2005 'Lighting for Roads and Public Spaces Part 3.1 - (Category P) — Performance and design requirements'. Plans and details shall be provided to the Town for approval, prior to the commencement of the development;

(v) the vehicle crossover providing access to the subject site from Cambridge Street, on Lot 800 (No. 12) Salvado Road as depicted on Plan S04017 C01 Rev H, shall be reduced in width from 9 metres to 6 metres. The kerbing, verge and footpath shall be reinstated to the specifications and satisfaction of the Town following completion of the development;

(vi) prior to the commencement of the development, a landscaping plan, showing the location and type of vegetation for the 77m$^2$ front setback area of the subject site, shall be submitted and approved by the Town of Cambridge, subsequently installed to the satisfaction of the Town.
Advice Notes

The applicant be advised that:-

1. Obtrusive or spill lighting from the development must not cause a 'nuisance' and shall comply with the Town of Cambridge Private Property Local Law 2016 and AS 4282.1997 - 'Control of obtrusive effects of outdoor lighting'.

2. Waste Collection service along D'Arcy Lane should be reviewed.

3. In relation to condition (iii), the applicant is encouraged to incorporate water wise and/or local native plants within the landscaping plan.
SUMMARY:
The purpose of this report is for Council to consider a development application for a retrospective ancillary dwelling at No. 84 Evandale Street, Floreat.

Under the Town's Policy 2.6: Delegation of Authority Clause 1.3.2, Council will determine development applications where they have been advertised and objections have been received. In this instance, objections have been received from a neighbouring resident in relation to the size, height, roof reflectivity and materials used and therefore the application is required to be determined by Council.

The application also requires an approval under Local Law 43, as it does not meet the deemed to comply requirements of the Local Law. The application is capable of approval, by absolute majority of Council, provided it meets the requirements of Clause 2B of the Local Law.

The Administration recommends that the application should be approved subject to appropriate conditions.

AUTHORITY / DISCRETION

- **Advocacy**
  - When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

- **Executive**
  - The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

- **Legislative**
  - Includes adopting local laws, town planning schemes & policies.

- **Review**
  - When the Council operates as a review authority on decisions made by Officers for appeal purposes.

- **Quasi-Judicial**
  - When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

- **Information**
  - For the Council/Committee to note.

BACKGROUND:

<table>
<thead>
<tr>
<th>Application:</th>
<th>0011DA-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner:</td>
<td>Ms L Semeniuk and Mr JG Nicholls</td>
</tr>
<tr>
<td>Applicant:</td>
<td>Lise Semeniuk</td>
</tr>
<tr>
<td></td>
<td>James George Nicholls</td>
</tr>
<tr>
<td>Zoning:</td>
<td>Residential R12.5</td>
</tr>
<tr>
<td>Use class:</td>
<td>Dwelling (single) ‘P’ – permitted</td>
</tr>
<tr>
<td>Land area:</td>
<td>1009m²</td>
</tr>
</tbody>
</table>
DETAILS:

Development description

The subject site is a corner lot located in the Floreat Planning Precinct in a block bound by Grovedale Road to the east, Evandale Street to the south, Rosedale Street to the west and Salvado Road to the north. The streetscape consists predominately of single storey dwellings constructed of brick and tile or metal sheeting roofs.

The application for the subject site was submitted on 12 January 2018 for the retrospective approval of an ancillary dwelling. The proposed additions are comprised of an ancillary dwelling with a master bedroom, living room, kitchen and bathroom. The total proposed additions create 68m² of additional floor area.

Upon completion of the Town's planning assessment, justification was submitted on 1 March 2018.

The proposal does not meet the deemed to comply requirements of 5.1.3 lot boundary setbacks, the development is capable of approval, provided it meets the design principles of State Planning Policy 3.1 Residential Design Codes, design element 5.1.3 lot boundary setbacks. The proposal does not meet the deemed to comply requirements of Local Planning Policy 3.1 Streetscape, the development is capable of approval provided it meets the design principles of Local Planning Policy 3.1 Streetscape, 3.1.11 roof reflectivity.

Additionally, the proposal does not meet the requirements of Local Law 43 Building on Endowment Lands and Limekilns Estate. The development is capable of approval provided the Council is satisfied by absolute majority that:

- The development would be consistent with orderly and proper planning of the locality and the preservation of amenities, and
- The use to be made of the land and the non-compliance with the prescribed standard or requirement will not have an adverse effect upon the occupiers or users of the development or the property in or the inhabitants of the locality or the likely future development of the locality.

Community Consultation

The application was advertised for a period of 14 days, from 6 March 2018 to 20 March 2018, in accordance with the requirements of the Residential Design Codes. Three (3) objections were received. The applicant has agreed to a condition in relation to the reflectivity of the roof, to address the main concern for the majority of objections.

Attachment 2 of this report provides a summary of the comments and issues raised during the community consultation process and an Officer technical response to each comment and issue.

<table>
<thead>
<tr>
<th>Summary of Comments Received:</th>
<th>Officer Technical Comment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solar Reflectivity</td>
<td>The solar reflectivity will be addressed as a condition, as agreed to by the applicant.</td>
</tr>
<tr>
<td>Materials of construction</td>
<td>The material of construction is not visible from the street. Furthermore there are a number of examples of buildings that are constructed of materials other than brick, stone, concrete or brick veneer, and as such it is considered to not have a detrimental amenity impact.</td>
</tr>
</tbody>
</table>
Lot boundary setback

The proposed development is single storey with a wall height of 2.7m, as such the bulk impacts are not considered to have a detrimental amenity impact. Furthermore the proposed development complies with the deemed to comply requirements for 5.4.2 solar access for adjoining sites as the shadow will fall on the subject site, and 5.4.1 visual privacy as the finished floor level is not in excess of 0.5m of natural ground level.

Applicant’s justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to the reduced setback, materials of construction and roof reflectivity. A summary of the applicant’s justification is attached to this agenda.

Assessment against the design principles

Lot boundary setback – Residential Design Codes 5.1.3

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setback of the Kitchen/Living Room from the Eastern/Right boundary</td>
<td>1.5m</td>
</tr>
</tbody>
</table>

P3.1 Buildings set back from lot boundaries so as to:
- reduce impacts of building bulk on adjoining properties;
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.

The proposed variation is considered to satisfy the design principles in the following ways:

- The bulk impact of the ancillary dwelling is considered to be minor in nature due to it being a single storey building, with wall heights of 2.7 metres and a wall length of 11.3 metres. The bulk impact is further reduced as the wall length is spread between two adjoining properties to the east.
- There is a considerable distance between the ancillary dwelling and buildings on adjoining properties to the east, allowing for adequate ventilation to buildings and open space both on site and on adjoining properties. Additionally, the shadow produced by the ancillary dwelling will fall predominantly on the subject site and is not considered to have a negative impact on adjoining properties.
- There is not considered to be any additional privacy concerns in relation to the setback variations, as the proposed additions do not include any major openings with a floor level exceeding 500 millimetres in height and, as such, the development is fully compliant with deemed to comply requirements of 5.4.1 visual privacy.
Roof Reflectivity – Local Planning Policy 3.1 Roof Reflectivity

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ancillary Dwelling Roof material</td>
<td>Metal roofs with a pitch of more than 5 degrees shall not be constructed with metal sheeting having a solar reflectivity index exceeding 40%</td>
</tr>
</tbody>
</table>

Roof materials are acceptable where, due to position, location, and pitch, the proposed roofing material is not considered to result in excessive glare upon neighbours and the streetscape.

The proposed variation is considered to satisfy the design principles in the following ways:

- The zincalume roof is to be painted in a non-reflective colour, which will ameliorate the impact of glare on adjoining properties. The roof is not visible from the street and as such will not have an impact on the streetscape.

Roof Reflectivity and Materials of Construction – Local Law 43 Building on Endowment Lands and Limekilns Estate

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ancillary dwelling roof material</td>
<td>Metal roofs with a pitch of more than 5 degrees shall not be constructed with metal sheeting having a solar reflectivity index exceeding 40%</td>
</tr>
<tr>
<td>Ancillary dwelling materials of construction</td>
<td>All single storey single occupancy dwelling houses and all buildings other than dwelling houses shall be constructed of brick, stone, concrete or similar material.</td>
</tr>
</tbody>
</table>

Clause 2B:

(i) The development would be consistent with the orderly and proper planning of the locality and preservation of its amenities, and

(ii) The use to be made of the land and the non-compliance with the prescribed standards or requirement will not have any adverse effect upon the occupiers or users of the development of the property in or the inhabitants of the locality or the likely future development of the locality.
The proposed variation is considered to satisfy the design principles in the following ways:

- The zincalume roof is to be painted in a non-reflective colour, which will ameliorate the impact of glare on adjoining properties. The roof is not visible from the street and, as such, will not have an impact on the streetscape.
- The weatherboard material of construction is not considered to have an adverse impact on the amenity of the occupiers of the property or inhabitants of the locality.

**POLICY/STATUTORY IMPLICATIONS:**

There are no policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

**FINANCIAL IMPLICATIONS:**

There are no financial implications related to this report.

**STRATEGIC DIRECTION:**

Our Planned Neighbourhoods

**Goal 4:** Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs

**Strategy 4.2:** Guide new development which is in harmony with the surrounding area and retains a sense of place

**COMMUNITY ENGAGEMENT:**

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

**OFFICER INVOLVEMENT:**

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Chris Della Bona, Planning Officer</td>
</tr>
</tbody>
</table>

**ATTACHMENTS:**

1. Development Application plans
2. Summary of applicant's justification and neighbour comment
ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions of the Town of Cambridge Town Planning Scheme No. 1 and Clause 2B of Local Law 43, Council by APPROVES BY AN ABSOLUTE MAJORITY the application for Retrospective Ancillary Dwelling submitted by Lise Semeniuk and James Nicholls at Lot 405 (No. 84) Evandale Street, Floreat as shown on the plans dated 12 January 2018, subject to the following conditions:-

(i) the roofing material is to be painted to comply with the reflectivity requirements of Local Law 43; and

(ii) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the site for the effective retention of stormwater on site.
DV18.29 LOT 252 (NO. 30) CHIPPING ROAD, CITY BEACH - TWO STOREY DWELLING

SUMMARY:

The purpose of this report is for Council to consider a development application for a two storey dwelling at Lot 252 (No. 30) Chipping Road, City Beach.

Under the Town of Cambridge Town Planning Scheme No.1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1a) of the Town Planning Scheme No.1. Council determination is also required for proposed variations to lot boundary setbacks, building height and visual privacy, as objections have been received.

Should Council resolve to approve the application, an absolute majority decision is required.

The Administration recommends that the application should be refused.

AUTHORITY / DISCRETION

☐ Advocacy When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

☐ Executive The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

☐ Legislative Includes adopting local laws, town planning schemes & policies.

☐ Review When the Council operates as a review authority on decisions made by Officers for appeal purposes.

☑ Quasi-Judicial When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

☐ Information For the Council/Committee to note.

BACKGROUND:

Application: 0239DA-2017
Owner: Mr NJ Vujcich
Applicant: Averna Pty Ltd
Zoning: Residential R12.5
Use class: Dwelling (single) ‘P’ – permitted
Land area: 890sqm
DETAILS:

Development description

An application for the subject site was initially submitted on 17 August 2017. Amended plans were submitted on 22 January 2018 showing the relocation of the bus stop approved by the Public Transport Authority (PTA). This resulted in the house design being transposed to relocate the crossover to the southern side of the site.

An existing two storey dwelling is currently situated on the site. The dwelling has a primary street setback of approximately 8.4 metres to the garage, and 9.4 metres to the remainder of the dwelling. The lot faces Chipping Park.

The surrounding lots consist of single and double storey dwellings.

The development application proposes the following:

• a front setback of 6.0 metres is proposed in lieu of 7.5 metres to the front boundary;
• a two-storey flat roofed dwelling with a light ‘canopy’ located centrally on the roof;
• a large balcony extends the entire upper floor frontage, creating a verandah below;
• a bus stop is currently located on the southern side of the verge directly in front of the subject site. Approval has been granted by the PTA to relocate this bus stop to the northern side of the verge area;
• a large garage and workshop extends the length of the southern ground floor;
• the subject site is relatively flat, with the proposed finished floor level approximately 0.2 metres above the natural ground level;
• a variation is sought in relation to building height for the proposed light canopy, which has a maximum height of 7.842 metres in lieu of 7.5 metres; and
• variations are sought in relation to lot boundary setbacks to the eastern (rear), northern (left) and southern (right) boundaries and objections have been received.

An assessment of the application has been conducted against the provisions of the Town Planning Scheme No. 1 (the Scheme), Local Law 43 (Schedule 3), relevant deemed-to-comply requirements of the Residential Design Codes (R-Codes) and the following Local Planning Policies:

• 3.1 – Streetscape;
• 3.3 – Building Height; and
• 6.1 – City Beach Precinct

The proposal seeks a variation to the Scheme (Clause 20) with regards to the street setback in the City Beach Precinct.

Community Consultation

The application was advertised for a period of 16 days, from 23 January 2018 to 8 February 2018, to the five (5) surrounding properties in accordance with the requirements of the Residential Design Codes of Western Australia. Two (2) objections were received.

The table below provides a summary of the comments and issues raised during the community consultation process and an Officer technical response to each comment and issue.
Summary of Comments Received:

<table>
<thead>
<tr>
<th>Comment</th>
<th>Officer Technical Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>A reduced setback would impact the existing streetscape and not be in keeping with the existing built form.</td>
<td>The reduced setback to the dwelling would sit forward of the two properties directly adjoining the subject site, and would be inconsistent with the majority of dwellings within the immediately locality.</td>
</tr>
<tr>
<td>The proposed plans show a large imposing wall very close to the boundary with no visual relief and shedding large amounts of shade over our pool and outdoor living area.</td>
<td>The overall length and setback of the upper floor setback from the adjoining property to the south will have an impact on the amenity of the adjoining dwelling in terms of building bulk and access to sunlight.</td>
</tr>
<tr>
<td>There would be great concern if the natural ground level of the site was raised.</td>
<td>The proposed finished floor level is approximately 0.2 metres above the natural ground level and is generally consistent with the existing natural ground level of the site.</td>
</tr>
<tr>
<td>Visual Privacy Concerns</td>
<td>The proposed balcony will overlook a large area of the adjoining property behind the primary setback line, and whilst not overlooking any private outdoor living areas, will overlook existing habitable room windows of the adjoining site.</td>
</tr>
</tbody>
</table>

Applicant's justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to lot boundary setback and building height. A summary of the applicant’s justification is attached to this agenda.

Assessment against the design principles

Street Setback (Clause 20 of the Town Planning Scheme No. 1)

In accordance with Clause 20 of The Town's TPS No. 1, street boundary setbacks within the City Beach Precinct shall be a minimum of 7.5 metres from the primary street.

In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.

The Council must therefore be satisfied by Absolute Majority that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme:
Deemed-to-comply provision | Proposed
---|---
Primary street setback | Minimum 7.5 metres
| 6.1 metres to verandah
| 7.02 metres to dwelling
| Upper Floor:
| 6.0 metres to balcony
| 10.50 metres to dwelling

Clause 39

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied my an absolute majority that:-

(a). If approval were to be granted, the development would be consistent with:-
   (i) The orderly and proper planning in the locality;
   (ii) The conservation of the amenities of the locality; and
   (iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b). The non-compliance would not have any undue adverse effect on:-
   (i) The occupiers or users of the development;
   (ii) The property in, or the inhabitants of, the locality; or
   (iii) The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

   (i) The orderly and proper planning in the locality

   The subject site is located in a prominent location visible from West Coast Highway. Whilst the adjoining site to the south is not set back in accordance with Clause 20 of the Town Planning Scheme, the section of building closest to the subject site is set back 7.5 metres from the front boundary.

   It is considered, given the current streetscape, that the proposal would be inconsistent with the surrounding dwellings in the immediate locality. The adjoining site to the north is set back 12.4 metres from the front boundary. The approval of the proposed application would result in the dwelling sitting approximately 6.3 metres forward of the dwelling to the north, and approximately 1.5 metres forward of the northern portion of the dwelling to the south.

   It is considered that the approval of the proposed dwelling would be inconsistent with the existing streetscape and would not reflect orderly and proper planning in the locality.
(ii) The conservation of the amenities of the locality; and

The proposed setback is inconsistent with the majority of dwellings in the immediate area, and will have a detrimental impact on the existing streetscape and amenity of the locality. The sheer bulk of the proposed dwelling and the reduced setback to the front boundary will have a negative impact on the current open streetscapes evident along the street, and will be out of character with scale of the surrounding dwellings.

(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

Whilst the proposal will be consistent with the Statement of Intent of the City Beach Precinct, by providing a single residential dwelling, it is considered that the sheer bulk and scale of the proposal could guide future redevelopment within the area.

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for a single residential dwelling to be occupied by the owners of the property. The reduced street setback will not result in an undue adverse effect on the owners of the property. In supporting the proposed street setback variation, the private outdoor living area to the rear is increased, however this is only marginal.

(ii) The property in, or the inhabitants of, the locality; or

The form of development proposed will contribute negatively to the character of development established or desired in the locality as it results in a design outcome that is not compatible with the existing streetscape. The reduced setback to the front boundary will increase overshadowing to the front balcony and impact views to the property immediately to the south.

(iii) The likely future development of the locality.

The existing streetscape consists of a number of older dwellings, which may be ready for redevelopment in the near future. It is considered that the approval of the subject application could set an undesirable precedent and affect future development within the locality.

The proposed non-complying application is therefore not supported.

Lot Boundary Setback (Clause 5.1.3 of the R-Codes)

<table>
<thead>
<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setback of Cabana from eastern (rear) boundary</td>
<td>Minimum 6.0 metres</td>
<td>1.7 metres</td>
</tr>
<tr>
<td>Upper floor setback balcony from southern (right) bound</td>
<td>Minimum 2.3 metres</td>
<td>2.0 metres</td>
</tr>
<tr>
<td>Upper floor setback kitchen, bath and study from southern (right) boundary</td>
<td>Minimum 2.5 metre</td>
<td>2.0 metres</td>
</tr>
</tbody>
</table>
Upper floor setback of walk-in-robe and ensuite from northern (left) boundary | Minimum 2.1 metres | 1.94 metres

**Design principles:**

*Buildings set back from lot boundaries so as to:*
- reduce impacts of building bulk on adjoining properties;
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.

The applicant seeks variations to the lot boundary setbacks to the northern (left), southern (right) and eastern (rear) boundaries. It is considered that the proposal does not satisfy the above design principles for the following reasons:

- the workshop has a wall height of 4.558 metres, and is set back 2.0 metres from the adjoining property. Whilst there are no major openings and privacy will not be affected, it is considered that this will have a significant impact in terms of building bulk as seen from the adjoining property to the south;
- 6 metre rear setbacks have been maintained in the surrounding properties (with the exception of outbuildings which are permitted 1.0 metre from the boundary). It is considered that the proposed dwelling located 1.7 metres from the rear boundary will create undue bulk to the surrounding properties and have a negative impact on the current open yards to the surrounding dwellings;
- the southern elevation features no ‘breaks’ in the wall or articulation, therefore increasing the visual impact on the amenity of the adjoining owner in terms of building bulk, and access to ventilation and sunlight;
- the reduced setback to the southern boundary will reduce the adjoining property's access to sunlight and ventilation, and the reduced setback to the rear will further exacerbate the shadow cast to the property to the south;
- it is considered that the variation to the northern boundary is minor and will have little impact on the amenity of the adjoining property to the north;
- on a lot size of 890sqm, it is considered excessive to seek variations to all boundaries, including the front primary street boundary; and
- the proposed dwelling has been designed with outdoor living areas and habitable rooms to the north but in doing so results in reduced setbacks to the southern boundary. These setbacks will result in overshadowing of the adjoining pool area of the property to the south.

Overall, the proposed variations will overshadow habitable rooms and the outdoor living area of the adjoining property to the south, and the lack of articulation will have a negative impact on the surrounding properties in terms of building bulk. The proposal is therefore not considered to satisfy the design principles of the R-Codes.

**Building Height (Clause 5.1.6 of the R-Codes)**

<table>
<thead>
<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum building height for a flat or skillion roof</td>
<td>Maximum 7.5 metres</td>
<td>6.8 metres to top of roof of dwelling</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7.842 metres to light canopy</td>
</tr>
</tbody>
</table>
Design principles:

Building height that creates no adverse impact on the amenity of adjoining properties or the streetscape, including road reserves and public open space reserves; and where appropriate maintains:

- adequate access to direct sun into buildings and appurtenant open spaces;
- adequate daylight to major openings into habitable rooms; and
- access to views of significance.

The applicant seeks a variation to the building height for the light canopy located on the roof. A maximum height of 7.842 metres is sought for the light canopy (0.342 metre variation). The subject site is relatively flat, with the proposed finished floor level approximately 0.2 metres above the natural ground level.

It is considered that the proposal does not satisfy the above design principles for the following reasons:

- the provision for a 7.5 metre building height (0.5 metres higher than the R-Codes) in City Beach was a result of the location of the suburb and the significant slope across many of the sites. As the subject site is relatively flat, it is considered that a maximum building height of 7.5 metres could be achieved;
- with the location of the subject site, it is considered that there is the potential for loss of views to the ocean from adjoining properties to the east;
- it is noted that there is only one section of the dwelling which is over height, and that this is located centrally on the roof, however, it is still considered that this could have an impact on views of significance and set an undesirable precedent in the area; and
- with the combination of reduced lot boundary setbacks and building height it is considered that there will be an impact on the amenity of the adjoining property to the south in terms of daylight to major openings.

Overall, the proposed variation to the building height will create excessive height that will impact the amenity of the surrounding dwellings in relation to sunlight and access to views of significance. The proposal is therefore not considered to satisfy the design principles of the R-Codes.

POLICY/STATUTORY IMPLICATIONS:

The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

Should the Council refuse the application for development approval, the applicant may have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.
STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs; and

Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place.

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Ciara Slim, Statutory Planning Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. Development Application plans
2. Summary of applicant's justification and neighbour comment

ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions and Clause 39 (2) of the Town of Cambridge Town Planning Scheme No. 1, Council REFUSES the application for a Two Storey Dwelling submitted by Averna Pty Ltd at Lot 252 (No. 30) Chipping Road, City Beach, as shown on the plans dated 22 January 2018, for the following reasons:-

(i) the proposal does not satisfy the requirements of Clause 39 of the Town Planning Scheme No. 1 and is considered to be incompatible with the existing form of development in the area;

(ii) the proposal would have a negative impact on future development within the area, and would be inconsistent with the prevailing streetscape, and therefore is not in accordance with orderly and proper planning in the locality;

(iii) the proposal is not considered to meet the Design Principles of part 5.1.3 (Lot Boundary Setbacks) of the Residential Design Codes of Western Australia 2015, resulting in undue bulk and overshadowing to the adjoining property to the south; and

(iv) the proposal is not considered to meet the Design Principles of part 5.1.6 of the Residential Design Codes of Western Australia as it results in an undue impact of building bulk on the adjoining properties and will have an impact on access to views of significance.
DV18.30 LOT 1191 (NO. 1) AYR STREET, FLOREAT - TWO STOREY DWELLING

SUMMARY:

The purpose of this report is for Council to consider a development application for a two-storey dwelling at Lot 1191 (No. 1) Ayr Street, Floreat.

Under the Town of Cambridge Town Planning Scheme No. 1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the Scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1b) of the Scheme.

The Administration recommends that the application should be approved subject to appropriate conditions.

Should Council resolve to approve the application, an absolute majority decision is required.

AUTHORITY / DISCRETION

☐ Advocacy When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

☐ Executive The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

☐ Legislative Review When the Council operates as a review authority on decisions made by Officers for appeal purposes.

☐ Quasi-Judicial When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

☐ Information For the Council/Committee to note.

BACKGROUND:

Application: 0222DA-2017
Owner: Mr CK Edwards and Mrs R Edwards
Applicant: Coastview Australia Pty Ltd
Zoning: Residential R12.5
Use class: Dwelling (single) ‘P’ – permitted
Land area: 827sqm
DETAILS:

Development description

The subject site is located within the Floreat Precinct. The site consists of a single storey dwelling constructed on a brick build-up.

The site is orientated in an east/west direction, tapering towards the rear western boundary. The site slopes approximately 3.4 metres upwards from the north-eastern corner (front right) to the south-western corner (rear left).

The surrounding developments consist of predominantly single storey dwellings, with only 6 houses on the street. Three dwellings have Ayr Street as their Primary Street Frontage.

The development application proposes the following:

• a two storey dwelling with a setback between 6.0 metres and 9.0 metres from the eastern (front) boundary in lieu of a minimum 9.0 metre setback;
• a ground floor level consisting of the living areas, laundry and guest bedroom;
• an upper floor consisting of three (3) bedrooms, a sitting room and balcony;
• the ground floor is set back 11.994 metres from the rear (western) boundary, with the upper floor set back 18 metres from the rear boundary;
• the northern and southern side boundaries taper to the rear of the site;
• the site slopes upwards approximately 3.4 metres from the front (eastern) boundary to the rear (western) boundary;
• the application complies with the landscaping requirements, with the provision of two mature trees being planted within the front setback area;
• low planter boxes are proposed within the front setback area, no higher than 0.5 metres above natural ground level;
• no front fencing is proposed; and
• all side and rear setbacks are compliant with Table 2a and 2b of the R-Codes.

An assessment of the application has been conducted against the provisions of the Town Planning Scheme No. 1 (the Scheme), Local Law 43 (Schedule 3), relevant deemed-to-comply requirements of the Residential Design Codes (R-Codes) and the following Local Planning Policies:

• 3.1 – Streetscape;
• 3.3 – Building Height; and
• 6.3 – Floreat Precinct

The proposal seeks a variation to the Scheme (Clause 20) with regards to the street setback in the Floreat Precinct.

Community Consultation

The application was advertised for a period of 16 days, from 22 January 2018 to 7 February 2018, to seven (7) surrounding properties in accordance with the requirements of the Residential Design Codes of Western Australia. No objections were received.
Applicant's justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to street setback, building height and visual privacy. A summary of the applicant’s justification is attached to this agenda.

Assessment against the design principles

Street Setback (Clause 20 of the Town Planning Scheme No. 1)

In accordance with Clause 20, notwithstanding the above provisions of the Residential Design Codes, street boundary setbacks within the Floreat Precinct shall be a minimum of 9.0 metres from the primary street.

In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.

The Council must therefore be satisfied by Absolute Majority that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme:

<table>
<thead>
<tr>
<th>Dwelling setback from Primary Street</th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum 9.0 metres</td>
<td>6.0 metres - 8.96 metres</td>
<td></td>
</tr>
</tbody>
</table>

Clause 39

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied by an absolute majority that:-

(a). If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality;
(ii) The conservation of the amenities of the locality; and
(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b). The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;
(ii) The property in, or the inhabitants of, the locality; or
(iii) The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality

The subject street houses 6 dwellings only. Four of these properties are corner sites, and a total of three out of the six properties have Ayr Street as the primary street frontage, these being No. 15 Cromarty Road (corner site), number 1 Ayr Street (subject site) and number 2 Ayr Street.
The two central sites (No. 1 and 2 Ayr Street) are currently set back in excess of 9.0 metres, however, the subject site is abutting two corner lots, with secondary street setbacks to Ayr Street of 4.5 metres for the southern property and 6.0 metres for the northern property. It is considered that the proposal will be consistent with the established streetscape and will provide orderly and proper planning in the locality.

(ii) The conservation of the amenities of the locality; and

The subject site will be heavily landscaped, with the two existing street trees to be retained. The application complies with all landscaping and lot boundary setback requirements with the condition for two established mature trees to be planted in the front setback area.

The setbacks are consistent with the setbacks in the immediate locality, and will not impact the surrounding dwellings in terms of building bulk, visual privacy or loss of views of significance, therefore preserving the amenities of the locality.

(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

The proposal will be consistent with the Statement of Intent of the Floreat Precinct, and will provide a single residential dwelling consistent with those in the immediate locality.

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for a single residential dwelling to be occupied by the owners of the property. The reduced street setback will not result in an undue adverse effect on the owners of the property.

In supporting the proposed street setback variation, the occupiers of the proposed dwelling will be able to enjoy a private outdoor living area with access to winter sunlight.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback will not impact on the inhabitants of the locality as the two storey dwelling is setback consistently with existing residential development in the locality.

The application complies with all R-Code and Policy requirements in relation to lot boundary setbacks, visual privacy and overall building height. This will further reduce the impact of the proposed dwelling on the inhabitants of the surrounding properties.

(iii) The likely future development of the locality.

It is considered that the variation to front setback would not be out of character with the remainder of the streetscape. Due to the size and nature of the street, it is unlikely that the approval of this development would have any impact on future developments of the locality, and could not be used as a precedent.

The proposed non-complying application is therefore supported.
POLICY/STATUTORY IMPLICATIONS:

The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

Should the Council refuse the application for development approval, the applicant may have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs; and

Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Ciara Slim, Statutory Planning Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. Development application plans
2. Summary of applicant's justification.

ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions and Clause 39 (2) of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES by an ABSOLUTE MAJORITY the application for a Two Storey Dwelling submitted by Coastview Australia Pty Ltd at Lot 1191 (No. 1) Ayr Street, Floreat as shown on the plans dated 24 January 2018, subject to the following conditions:

(i) the roof material not to be zincalume or off-white (‘Surfmist’) Colorbond;

(ii) a minimum of 50% of the front setback area to be landscaped to the satisfaction of the Town;
(iii) two (2) mature trees, being a minimum 45 litre bag or a minimum of 2 metres in height and diameter, to be provided within the front setback area in accordance with the provisions of clause 3.1.9: Landscaping of the Town’s Planning Policy 3.1: Streetscape;

(iv) the landscaping in the front setback area to be installed within six (6) months of the completion of the dwelling and to be maintained to the satisfaction of the Town;

(v) the two trees located on the verge directly adjacent to the subject site to be retained;

(vi) the crossover to be no wider than 6.0 metres (excluding splays);

(vii) the redundant vehicle crossover outside the subject site to be removed and the kerbing, verge and footpath to be reinstated to the specifications and satisfaction of the Town prior to the occupation of the dwelling; and

(viii) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the site for the effective retention of stormwater on site.

Advice Note:

The applicant be advised that:

1. the applicant is responsible for ensuring that all lot boundaries as shown on the approved plans are correct;

2. all works within the road reserve, such as vehicle crossovers, verge paving and landscaping require a separate application and approval by the Town’s Infrastructure Services. These works must conform to the Town’s specifications; and

3. a protective fence to be installed around all street trees within the affected building development area. This protective fencing is to be maintained in good order at all times.

The fence around the trees to be 2m high x 2m x 2m, with installation prior to commencement of any demolition or site works. The builder to provide access for inspection and watering of street trees as and when required by the Town.
DV18.31 LOT 645 (NO. 4) NIRIBI ROAD, CITY BEACH - TWO STOREY DWELLING

SUMMARY:

The purpose of this report is for Council to consider a development application for a two storey dwelling at 645 (No. 4) Niribi Road, City Beach.

Under the Town of Cambridge Town Planning Scheme No. 1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the Scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1a) of the Scheme in relation to the setback of the dwelling from the front boundary. Determination is also required by Council with regards to variations to lot boundary setbacks and building height as objections have been received.

The Administration recommends that the application should be refused.

Should Council resolve to approve the application, an absolute majority decision is required.

AUTHORITY / DISCRETION

- Advocacy: When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative: Includes adopting local laws, town planning schemes & policies.
- Review: When the Council operates as a review authority on decisions made by Officers for appeal purposes.
- Quasi-Judicial: When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
- Information: For the Council/Committee to note.

BACKGROUND:

Application: 0278DA-2017
Owner: Ms E Golding and Mr DR Golding
Applicant: Ms E Golding and Mr DR Golding
Zoning: Residential R12.5
Use class: Dwelling (single) ‘P’ – permitted
Land area: 733sqm
DETAILS:

Development description

The subject site is located within the City Beach Precinct, and the site currently comprises of a two-storey pitched roofed dwelling. The current dwelling is set back approximately 12 metres from the front boundary, with a side loading garage set back approximately 8.0 metres from the front boundary.

The street slopes downwards from the east to the west. The subject site slopes downwards approximately 2.5 metres from the front right boundary (south-east) to the rear left boundary (northern corner). The surrounding lots consist of double storey dwellings, with setbacks for the dwellings fronting Niribi Road ranging from 8.3 metres to 15.0 metres (one carport is existing at a setback of 2.8 metres to the front boundary).

The development application proposes the following:

- a two-storey split level dwelling comprising of:
  - a garage, den, kitchen, sitting room, dining room, sunroom and conversation area on the lower ground level (FFL 65.52);
  - a games room, guest room, laundry, ensuite and terrace on the upper ground floor (FFL 66.549);
  - two bedrooms and an activity room on one level of the upper floor (UFL 68.091); and
  - two bedrooms, two bathrooms; outdoor lounge and balcony on the second level of the upper floor (UFL 69.463);
- a front setback of 6.0 metres is proposed in lieu of 7.5 metres to the front boundary.
- the proposed double garage is set back 6.0 metres from the front boundary in lieu of 7.5 metres;
- a parapet wall to the garage is proposed to the north-western boundary;
- a large retaining wall approximately 1.2 metres high separates the subject site and the lot to the east;
- a ‘turret’ is proposed central to the building, with a 25 degree pitch to the remaining roof;
- the dwelling will be finished in face brickwork and feature stone;
- the applicant proposes to maintain the levels to the rear of the site, and therefore the terrace will step down to the existing natural ground level;
- a compliant front boundary wall is proposed consisting of limestone blockwork with visually permeable infill panels; and
- variations are sought in relation to lot boundary setbacks, visual privacy and building height. Objections have been received.

An assessment of the application has been conducted against the provisions of the Town Planning Scheme No. 1 (the Scheme), Local Law 43 (Schedule 3), relevant deemed-to-comply requirements of the Residential Design Codes (R-Codes) and the following Local Planning Policies:

- 3.1 – Streetscape;
- 3.3 – Building Height; and
- 6.1 – City Beach Precinct

The proposal seeks a variation to the Scheme (Clause 20) with regards to the street setback in the City Beach Precinct.
Community Consultation

The application was advertised for a period of 16 days, from 6 November 2017 to 22 November 2017 to the three (3) adjoining properties in relation to the side setbacks and building height. Two (2) objections were received.

The application was then readvertised for a period of 16 days from 30 January 2018 to 15 February 2018, to the five (5) surrounding properties in accordance with the requirements of the Residential Design Codes of Western Australia. Three (3) objections were received (two additional from previous advertising period).

The table below provides a summary of the comments and issues raised during the community consultation process and an officer technical response to each comment and issue.

<table>
<thead>
<tr>
<th>Summary of Comments Received:</th>
<th>Officer Technical Comment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed setback of the kitchen wall will impact our property</td>
<td>The setback of the kitchen wall will increase the impact of building bulk as seen from the adjoining property to the north-west.</td>
</tr>
<tr>
<td>Loss of morning sunlight to the adjoining dwelling</td>
<td>The reduced setback may affect sunlight to the adjoining property to the north-west, however, overshadowing from the winter sun is compliant with Clause 5.4.2 (Solar Access for Adjoining Sites).</td>
</tr>
<tr>
<td>Loss of privacy</td>
<td>The application complies with all requirements of the R-Codes Clause 5.4.1 (Visual Privacy)</td>
</tr>
<tr>
<td>Approval of reduced setback could set a precedent for development in the area</td>
<td>The proposed setback is inconsistent with the prevailing streetscape as all dwellings are setback in accordance with the Scheme Requirements of Clause 20.</td>
</tr>
<tr>
<td>Loss of views</td>
<td>With the location of the proposed dwelling and the proposed building height there is the potential for the development to impact on the adjoining property's access to views of significance.</td>
</tr>
</tbody>
</table>

Applicant's justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to front setback, lot boundary setback and building height. A summary of the applicant’s justification is attached to this agenda.

Assessment against the design principles

Street Setback (Clause 20 of the Town Planning Scheme No. 1)

In accordance with Clause 20 of the Town's TPS No. 1, street boundary setbacks within the City Beach Precinct shall be a minimum of 7.5 metres from the primary street (Niribi Road).

In considering variations to these provisions Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.
The Council must therefore be satisfied by Absolute Majority that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme:

<table>
<thead>
<tr>
<th>Dwelling setback from Primary Street</th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minimum 7.5 metres</td>
<td>Ground Floor: 6.0 metres</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Upper Floor: 6.0 metres</td>
</tr>
</tbody>
</table>

Clause 39

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied my an absolute majority that:-

(a). If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality;
(ii) The conservation of the amenities of the locality; and
(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b). The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;
(ii) The property in, or the inhabitants of, the locality; or
(iii) The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality

The subject site is located on a street which five lots use as their primary street frontage. Of these lots, all are set back in excess of the required 7.5 metre setback as required by the Town Planning Scheme (Clause 20). The setbacks range from 8.3 metres to 15.0 metres from the front boundary. The approval of the subject proposal would be inconsistent with the prevailing streetscape, and would not conserve the existing amenities and setbacks in the immediate locality.

(ii) The conservation of the amenities of the locality; and

The amenities in the locality will be compromised by the approval of this application. The existing open streetscape will be compromised should the proposal be approved. Views of significance will be negatively impacted for the properties to the east of the subject site.

(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

Whilst the proposal will be consistent with the Statement of Intent of the City Beach Precinct, by providing a single residential dwelling, it is considered that the sheer bulk and scale of the proposal as seen from the street could guide future redevelopment within the area.
(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for a two storey split level residential dwelling to be occupied by the owners of the property. The reduced street setback will not result in an undue adverse effect on the owners of the property. The reduced setback to the front provides a greater setback to the rear boundary, well in excess of the required setbacks.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback will negatively impact those inhabitants of the surrounding properties. The bulk of the dwelling as presented to the street is inconsistent with those in the immediate locality. A reduced setback is sought to both the upper and ground floors from the front boundary, and will reduce ocean views of the neighbouring properties to the east as the front setback is reduced by 1.5 metres. This compounded with the building height and lot boundary setbacks will have a negative impact on the amenity of the inhabitants of the locality.

(iii) The likely future development of the locality.

The established streetscape demonstrates setbacks in excess of the required setbacks. The approval of the proposed application would result in the dwelling sitting approximately 3.3 metres forward of the dwelling to the north-west. Whilst it is noted, that the adjoining dwelling to the south-east (left) has a setback of 3.75 metres to Niribi Road, this is a corner site which fronts Kalinda Drive, and is therefore compliant with the required setbacks.

Should surrounding lots on the street be redeveloped in the future, the approval of the proposed two-storey dwelling set back 6.0 metres from the front boundary could set an undesirable precedent and affect future development within the locality. It is considered, that the proposal would be inconsistent with the established streetscape.

The proposed non-complying application is therefore not supported.

Lot Boundary Setback (Clause 5.1.3 of the R-Codes)

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ground floor setback of kitchen and larder from the north-western (left) side boundary</td>
<td>Minimum 1.5 metres</td>
</tr>
<tr>
<td>Ground floor setback of the garage from the north-western (left) side boundary</td>
<td>Minimum 1.0 metre</td>
</tr>
</tbody>
</table>

Design principles:

P3.1 Buildings set back from lot boundaries so as to:
- reduce impacts of building bulk on adjoining properties;
- provide adequate direct sun and ventilation to the building and open spaces
- on the site and adjoining properties; and
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.
P3.2 Buildings built up to boundaries (other than the street boundary) where this:

- makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;
- does not compromise the design principle contained in clause 5.1.3 P3.1;
- does not have any adverse impact on the amenity of the adjoining property;
- ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and
- positively contributes to the prevailing development context and streetscape.

The applicant seeks variations to the lot boundary setbacks of the ground floor to the north-western (left) side boundary. It is considered that the proposal does not satisfy the above design principles for the following reasons:

- the proposal is for a new build on a lot with a frontage of 22.13 metres. It is considered, that the provision of a parapet wall on a lot of this size creates unnecessary building bulk as viewed from the adjoining property;
- whilst there will be little impact on the adjoining site with regards to overshadowing, the reduced setbacks to the north-western boundary will have an adverse impact on the amenity of the adjoining property with regards to access to sunlight and ventilation, and will negatively impact the windows on the adjoining property; and
- the current streetscape comprises of single dwellings set back from the side boundaries. The proposal is inconsistent with the prevailing development in the area.

Overall, the proposed variations will create unnecessary bulk as viewed from the street and the adjoining property to the north-west. The proposal is therefore not considered to satisfy the design principles of the R-Codes.

Building Height (Clause 5.1.6 of the R-Codes)

<table>
<thead>
<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wall height</td>
<td>Maximum 6.5 metres</td>
<td>6.8 metres (to rear of dwelling) 7.57 metres (to front turret)</td>
</tr>
</tbody>
</table>

Design principles:

Building height that creates no adverse impact on the amenity of adjoining properties or the streetscape, including road reserves and public open space reserves; and where appropriate maintains:

- adequate access to direct sun into buildings and appurtenant open spaces;
- adequate daylight to major openings into habitable rooms; and
- access to views of significance.

The applicant seeks a variation to the building height for the building height at the rear of the site, and to the front turret. It is considered that the proposal does not satisfy the above design principles for the following reasons:

- whilst both the upper and ground floors have been 'stepped' to reflect the natural fall of the land, it is still considered that the additional height in addition to the reduced front setback will impact the adjoining properties' access to views of significance;
- the building height to the front and rear of the site will have a negative impact in terms of building bulk as viewed from the street and the adjoining properties; and
with the combination of reduced lot boundary setbacks and building height, it is considered, that there will be an impact on the amenity of the adjoining properties in terms of daylight to major openings.

Overall, the proposed variation to the building height will create excessive height that will impact the amenity of the surrounding dwellings in relation to sunlight and access to views of significance. The proposal is therefore not considered to satisfy the design principles of the R-Codes.

POLICY/STATUTORY IMPLICATIONS:

The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

Should the Council refuse the application for development approval, the applicant may have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs; and

Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place.

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
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<td>Ciara Slim, Statutory Planning Officer</td>
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</tbody>
</table>

ATTACHMENTS:

1. Development Application plans
2. Summary of applicant's justification and neighbour comment.
ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions and Clause 39 (2) of the Town of Cambridge Town Planning Scheme No. 1, Council REFUSES the application for a Two Storey Dwelling submitted by (Ms E Golding and Mr DR Golding at Lot 645 (No. 4) Niribi Road, City Beach, as shown on the plans dated 18 January 2018, for the following reasons:-

(i) the proposal does not satisfy the requirements of Clause 39 of the Town Planning Scheme No. 1 and is considered to be incompatible with the existing form of development in the area;

(ii) the proposal would have a negative impact on future development within the area, and would be inconsistent with the prevailing streetscape, and therefore is not in accordance with orderly and proper planning in the locality;

(iii) the proposal is not considered to meet the Design Principles of part 5.1.3 (Lot Boundary Setbacks) of the Residential Design Codes of Western Australia, resulting in undue bulk as viewed from the adjoining property, which is inconsistent with the prevailing streetscape; and

(iv) the proposal is not considered to meet the Design Principles of part 5.1.6 of the Residential Design Codes of Western Australia as it result in undue impact of building bulk on the adjoining properties and will have an impact on access to views of significance.
**DV18.32 LOT 1020 (NO. 36) PEEBLES ROAD, FLOREAT - TWO STOREY DWELLING**

**SUMMARY:**

The purpose of this report is for Council to consider a development application for a two storey dwelling at No. 36 Peebles Road, Floreat.

Under the Town of Cambridge Town Planning Scheme No. 1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the Scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1b) of the Scheme in relation to the setback of the dwelling from the front boundary.

The Administration recommends that the application should be approved subject to appropriate conditions.

Should Council resolve to approve the application, an absolute majority decision is required.

**AUTHORITY / DISCRETION**

- **Advocacy** When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- **Executive** The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- **Legislative** Includes adopting local laws, town planning schemes & policies.
- **Review** When the Council operates as a review authority on decisions made by Officers for appeal purposes.
- **Quasi-Judicial** When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
- **Information** For the Council/Committee to note.

**BACKGROUND:**

- **Application:** 0047DA-2018
- **Owner:** Mr FW Drummond and Mrs HC Drummond
- **Applicant:** Highbury Homes (WA) Pty Ltd
- **Zoning:** Residential R12.5
- **Use class:** Dwelling (single) ‘P’ – permitted
- **Land area:** 918 m²
DEVELOPMENT COMMITTEE
TUESDAY 17 APRIL 2018

DETAILS:

Development description

An application for the subject site was initially submitted on 19 February 2018. Amended plans were received on 12 March 2018 which addressed issue with the crossover and landscaping in the front setback area.

The subject site is located within the Floreat. The site is currently vacant. The site is the only dwelling on the street block with sole frontage to Peebles Road with the properties on either side being corner lots.

The lot is slightly wedge shaped with two rear lot boundaries and a wide frontage of 25.15 metres.

The development application proposes the following:

- Two storey dwelling with a flat roof facing the street and skillion roofs at the rear of the dwelling.
- The dwelling has a minimum front setback of 6.5 metres to the dwelling in lieu of 9.0 metres.
- The dwelling has a double garage setback approximately 7.0 metres from the front boundary and an additional single garage/workshop adjacent with a setback of 7.5 metres.
- The triple garage results in a minor variation to garage frontage provisions.
- Subject to the retention of the existing mature tree retained in the south-east corner of the lot, landscaping in the front setback meets Council's Streetscape requirements. A condition requiring its retention or the provision of a new mature tree within the front setback area can be applied to any approval.

Community Consultation

The application was advertised for a period of 20 days (extended due to Easter period), from 20 March 2018 to 9 April 2018, in accordance with the requirements of Clause 39 of Town Planning Scheme No. 1. No objections or submissions were received.

Applicant's justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to the primary street setback and garage width variation. A summary of the applicant's justification is attached to this agenda.

Assessment against the design principles

Street Setback (Clause 20 of the Town Planning Scheme No. 1)

In accordance with Clause 20 street boundary setbacks within the Floreat Precinct shall be a minimum of 9.0 metres from the primary street.

In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.
The Council must therefore be satisfied by absolute majority that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme:

<table>
<thead>
<tr>
<th>Dwelling setback from Primary Street</th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum 9.0 metres</td>
<td>6.502 metres</td>
<td></td>
</tr>
</tbody>
</table>

Clause 39

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied my an absolute majority that:-

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality;
(ii) The conservation of the amenities of the locality; and
(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;
(ii) The property in, or the inhabitants of, the locality; or
(iii) The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality

Peebles Road runs east west and there are a number of street blocks on the north side of Peebles road consisting of only one lot with sole frontage to Peebles Road with lots either side being on corners. This means that there is not one long continuous line of dwellings with large setbacks to Peebles Road as many original dwellings on corners are angled to the corner and other dwellings have solid walls along Peebles Road if they are deemed secondary street frontages. A reduced front setback to one of few dwellings facing Peebles Road within this section would not interrupt a contiguous streetscape.

It is also noted that the subject site is opposite a primary school and church which have car parking areas adjacent and result in this portion of Peebles Road having less of a feel of a traditional residential streetscape.

It is considered, that the proposal will be consistent with the established streetscape and will provide orderly and proper planning in the locality.

(ii) The conservation of the amenities of the locality; and

It is not considered the front setback variation proposed would have a significant impact on the amenities of the locality as the setbacks are consistent with the setbacks in the immediate locality, and will not impact the surrounding dwellings in terms of building bulk, visual privacy or loss of views of significance, therefore preserving the amenities of the locality.
(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

The proposal will be consistent with the Statement of Intent of the Floreat Precinct, and will provide a single residential dwelling consistent with those in the immediate locality.

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for a single residential dwelling to be occupied by the owners of the property. The reduced street setback will not result in an undue adverse effect on the owners of the property.

In supporting the proposed street setback variation, the occupiers of the proposed dwelling will be able to enjoy a private outdoor living area with access to winter sunlight as the rear of the property faces north.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback will not impact on the inhabitants of the locality as the two storey dwelling does not impact on inhabitants of the locality with adjoining lots oriented away from this dwelling and there is a school opposite.

The application complies with all R-Code and Policy requirements in relation to lot boundary setbacks, visual privacy and overall building height. This will further reduce the impact of the proposed dwelling on the inhabitants of the surrounding properties.

(iii) The likely future development of the locality.

It is considered that the variation to front setback would not be out of character with the remainder of the streetscape. Due to the size and nature of the street, it is unlikely that the approval of this development would have any impact on future developments of the locality, and could not be used as a precedent. There are only a few houses along the northern side of Peebles Road with only primary access to this streetscape.

The proposed non-complying application is therefore supported.

Garage Width (Clause 5.2.2 of R Codes)

<table>
<thead>
<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garage Width</td>
<td>Max 50% of the frontage at the setback line as viewed from the street</td>
<td>53.3%</td>
</tr>
</tbody>
</table>

Design Principles

Visual connectivity between the dwelling and the streetscape should be maintained and the effect of the garage door on the streetscape should be minimised whereby the streetscape is not dominated by garage doors.
The garage width proposed can be supported as it satisfies the design principles of the R Codes as follows:

- There are two sections of garage door broken up into different setbacks which assists in breaking up the line of garage doors and assists in ensuring the streetscape is not dominated by garage doors.
- There are numerous major openings at both ground and upper levels which ensures visual connectivity between the dwelling and the street is maintained with the front entry also clearly visible.

The upper storey sits over the double garage section of the dwelling with two bedrooms with major openings facing the street so that visual connectivity between the dwelling and the streetscape is maintained.

On the basis of all of these factors, it is considered the proposal meets the relevant design principles and can be supported.

POLICY/STATUTORY IMPLICATIONS:

There are no policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs
Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Jenny Bender, Senior Planning Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. Development Application plans
2. Summary of applicant's justification and neighbour comment
ADMINISTRATION RECOMMENDATION:

That in accordance with Clause 68 (2) of the Deemed Provisions and Clause 39 (2) of the Town of Cambridge Town Planning Scheme No.1, Council APPROVES by an ABSOLUTE MAJORITY the application for a two storey dwelling as submitted by Highbury Homes at Lot 1020 (No. 36) Peebles Road, Floreat as shown on the plans dated 12 March 2018 subject to the following conditions:-

(i) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sump for rainwater tanks within the site for the effective retention of stormwater on site;

(ii) one advanced growth tree, being a minimum 45 litre bag or a minimum of 2 metres in height and diameter, to be provided within the front setback area in accordance with the provisions of Clause 3.1.9: Landscaping of the Town's Planning Policy 3.1: Streetscape or else the existing mature tree on the south eastern corner of the lot is to be retained;

(iii) the roofing material not to be zincalume, white or off-white (Surfmist) Colorbond; and

(iv) all air conditioning units to be screened from the street and are to be located in a position to minimise the impact on adjoining properties.
DV18.33 LOT 372 (NO. 78) BRANKSOME GARDENS, CITY BEACH - TWO STOREY DWELLING

SUMMARY:

The purpose of this report is for Council to consider a development application for a two storey dwelling at 78 Branksome Gardens, City Beach.

Under the Town of Cambridge Town Planning Scheme No. 1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the Scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20 (1a) of the Scheme in relation to the setback of the dwelling from the front boundary.

The Administration recommends that the application should be refused. Should Council resolve to approve the application, an absolute majority decision is required.

AUTHORITY / DISCRETION

- **Advocacy**: When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- **Executive**: The substantial direction setting and oversight role of the Council, e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
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- **Information**: For the Council/Committee to note.

BACKGROUND:

- **Application**: 0033DA-2018
- **Owner**: Mr GJR King and Mrs KL King
- **Applicant**: Coast Homes (WA) Pty Ltd
- **Zoning**: Residential R12.5
- **Use class**: Dwelling (single) ‘P’ – permitted
- **Land area**: 903m²

The Council approved a similar dwelling at its meeting on 28 March 2018 (Item DV17.31), which had a 6.0 metre setback for the front section of the building and a larger rear setback variation with a wing of the dwelling running along the length of the rear boundary. The walls along the rear boundary were staggered and varied between 1.8 and 4.1 metres.
DETAILS:

Development description

An application for the subject site was initially submitted on 31 January 2018 for the two storey dwelling. Further amended plans and justification were received on 14 March 2018.

The subject site is located within the City Beach precinct. The site is currently comprises a single storey brick and tile dwelling which is to be demolished.

The property has an incremental slope of just over two metres from the front/north-eastern to the rear/south-western corners.

The development application proposes the following:

- The proposed dwelling has most of its key living areas on the ground floor, designed with a wing running along the southern boundary with outdoor areas to the side and rear to maximise a solar aspect. The upper floor has a relatively small footprint and is positioned towards the front of the site.
- A flat roof design has been employed for most of the building, however, the rear single storey position includes a 5 degree skillion roof.
- The design results in a rear setback variation of 2.2 metres to the activity room in lieu of the required 6.0 metres. An open pergola structure is also set within the rear setback area but is not classified as a building requiring a 6.0 metre setback.
- The dwelling is set back 6.0 metres in lieu of 7.5 metres from the front boundary. A cantilevered porch/awning has a minimum front setback of 5.0 metres.
- Landscaping within the front setback area meets requirements with two mature trees being provided. These have been indicated on the amended plan.

Community Consultation

The application was advertised for a period of 18 days, from 19 March 2018 to 6 April 2018, in accordance with the requirements of Clause 39 of Town Planning Scheme No. 1. One submission objecting to the proposal was received.

Attachment 2 of this report provides a summary of the comments and issues raised during the community consultation process and an Officer technical response to each comment and issue.

<table>
<thead>
<tr>
<th>Summary of Comments Received</th>
<th>Officer Technical Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The building bulk projecting beyond other houses to the street is not acceptable.</td>
<td>The development will impact on the streetscape in terms of building bulk forward of the 7.5 metre required front setback.</td>
</tr>
</tbody>
</table>

Applicant's justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to the front and rear setbacks. A summary of the applicant's justification is attached to this agenda.
Assessment against the design principles

Street setback (Clause 20 of Town Planning Scheme No. 1)

In accordance with Clause 20, street boundary setbacks within the City Beach Precinct shall be a minimum of 7.5 metres from the primary street boundary.

In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.

The Council must therefore be satisfied by absolute majority that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme.

<table>
<thead>
<tr>
<th>Dwelling setback from Primary Street</th>
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<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum 7.5 metres</td>
<td>6.0 metres to dwelling</td>
<td>5.0 metres to cantilevered porch</td>
</tr>
</tbody>
</table>

Clause 39
(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied by an absolute majority that:-

(a). If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality;
(ii) The conservation of the amenities of the locality; and
(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b). The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;
(ii) The property in, or the inhabitants of, the locality; or
(iii) The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality

The subject site forms part of a long streetscape of large setbacks and open front gardens. There only a few examples of open carports or minor incursions into the front setback area. Large and open front setbacks is a characteristic of the locality.

There are no site constraints to the dwelling being located further back with the lot being a regular shape.

The introduction of a reduced front setback into this locality would not be consistent with the existing streetscape and would therefore not be orderly and proper planning.
(ii) The conservation of the amenities of the locality; and

The setback would not be consistent with the setbacks in the immediate locality, and will impact the surrounding dwellings in terms of building bulk with the two storey component of the dwelling set forward on the lot.

This would increase building bulk on the streetscape and introduce built forms into an area otherwise taken up with open lawns and front gardens.

(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

The proposal will be consistent with the Statement of Intent of the City Beach Precinct, as it provides for a single residential dwelling.

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for a single residential dwelling to be occupied by the owners of the property. The reduced street setback will not result in an undue adverse effect on the owners of the property.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback will impact on the inhabitants of the locality as the two storey dwelling will not be set back consistently with existing residential development in the locality.

A submission has been received from a neighbor directly affected by the proposed setback variation noting that the proposed front setback variation will have an impact on the streetscape surrounding them by introducing increased building bulk into the streetscape area.

(iii) The likely future development of the locality.

It is considered that the variation to front setback will be out of character with the remainder of the streetscape. Due to its location along part of a long open streetscape, the approval of a reduced front setback could be used as a precedent and affect the likely future development of the locality.

The proposed non-complying application is therefore not supported.

Lot boundary setback (Clause 5.1.3 of R Codes)

<table>
<thead>
<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rear Setback</td>
<td>Min 6.0 metres</td>
<td>2.2 metres to activity room</td>
</tr>
</tbody>
</table>
Design principles:

Buildings set back from lot boundaries so as to:
- reduce impacts of building bulk on adjoining properties;
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.

Buildings built up to boundaries (other than the street boundary) where this:
- makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;
- does not compromise the design principle contained in 5.1.3 P3.1;
- does not have any adverse impact on the amenity of the adjoining property;
- ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and
- positively contributes to the prevailing development context and streetscape.

The design satisfies the design principles relating to rear boundary setbacks due to the following reasons:
- makes for effective use of space by creating active habitable spaces on the north side of the property. Apart from the activity room and an open pergola structure, the remainder of the rear setback area is open space and pool area which minimises the impact of building bulk on surrounding properties.
- the incursion into the rear setback area is for a single storey activity room with its major openings oriented towards the northern active habitable spaces. Impact on the adjoining property to the south in terms of overshadowing and privacy is therefore minimised.
- it is noted that the adjoining property has a similar layout with a reduced rear setback to the dwelling and a pool gazebo in the rear setback area so that the proposal is consistent with the surrounding development context.

POLICY/STATUTORY IMPLICATIONS:

There are no policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs
Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place
COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

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<thead>
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<td>Jenny Bender, Senior Planning Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. Development Application plans
2. Summary of applicant's justification and neighbour comment

ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) and Clause 39 of the Deemed Provisions of the Town of Cambridge Town Planning Scheme No. 1, Council REFUSES the application for a two storey dwelling submitted by Coast Homes at Lot 372 (No. 78) Branksome Gardens, City Beach as shown on the plans dated 14 March 2018, for the following reason:-

(i) the front setback for the dwelling does not satisfy the deemed-to-comply provisions of Clause 39 of Town Planning Scheme No. 1 in relation to orderly and property planning and the conservation of the amenities for the locality as it will result in a development that is not consistent or compatible to the prevailing form of development in the locality.
SUMMARY:

The purpose of this report is for Council to consider a development application for a single storey dwelling within undercroft garage and roof terrace at Lot 395 (No. 114) Rosedale Street, Floreat.

Under the Town of Cambridge Town Planning Scheme No. 1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the Scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1a) of the Scheme.

Should Council resolve to approve the application, an absolute majority decision is required.

The Administration recommends that the application should be approved subject to appropriate conditions.

AUTHORITY / DISCRETION

- **Advocacy**: When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
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- **Quasi-Judicial**: When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
- **Information**: For the Council/Committee to note.

BACKGROUND:

- **Application**: 0018DA-2018
- **Owner**: Ms N Forrest and Mr SR Allison
- **Applicant**: CSA Craig Steere Architects
- **Zoning**: Residential R12.5
- **Use class**: Dwelling (single) ‘P’ – permitted
- **Land area**: 799sqm
DETAILS:

Development description

A development application for a single storey dwelling was received by the Town on 18 January 2018 with amended plans being provided on 8 March 2018.

The subject site is located within the Floreat Precinct. The site currently comprises of a single storey brick and tile dwelling.

The site is orientated in an eastern direction with the natural ground level of the property gently sloping upwards from street level (western boundary) towards the rear (eastern boundary). The property slopes a total of 2.77 metres over a length of 44.12 metres. The surrounding properties consist of predominantly single storey dwellings. Of the four dwellings on Rosedale Street, between Evandale Street and Salvado Road, only two are orientated to and propose their primary street frontage to Rosedale Street. Those dwellings are No. 112 Rosedale Street (neighbouring property to the right/south of the subject site) and the proposed subject dwelling No. 114 Rosedale Street.

The development application proposes the following:

- a single storey dwelling set back a minimum of 6.0 metres to the undercroft entry and overall ground floor, 7.0 metres to the garage and 9.2 metres to the roof terrace from the western (front) boundary, in lieu of the required 9.0 metres required under Clause 20 of Town Planning Scheme No 1;
- the development comprises of a double car garage, store and study on the undercroft level. The main suite, guest bedroom and respective ensuites are located at the front of the dwelling on the ground floor level. The living, dining, kitchen and sitting rooms are in the centre of the dwelling on this level with the outdoor living areas located directly off the living and dining rooms. The remaining three bedrooms and main bathroom have been positioned to the rear of the property on the ground floor. The roof terrace is accessed through the spiral staircase located in the outdoor living area off the living room;
- the proposal is fully compliant with building height provisions and open space requirements;
- the application easily complies with the landscaping requirements, with the provision of a total of 54.12% landscaping (4.12% greater than the required 50%) within the front setback area and sees the retention of an existing mature tree on site and one new advanced tree has also been proposed within the front setback area;
- no front fencing is proposed as part of this application;
- all retaining proposed is within 0.5 metres of natural ground level;
- lot boundary setbacks to the north (left hand side boundary) are fully compliant with Tables 2a and 2b of the R-Codes.
- A total of two lot boundary setback variations have been proposed for this development. The first lot boundary setback variation is proposed to the southern side boundary with the minimum setback proposed of 2.2 metres in lieu of 2.8 metres based on the overall length of the dwelling to the south. The second lot boundary setback variation is proposed to the rear eastern boundary with the ground floor setback 1 metre in lieu of the minimum setback requirement of 6.0 metres which is required as per Table 1 of the R-Codes and not as per Table 2a or 2b. No objections were received in relation to either of these lot boundary setback variations.
An assessment of the application has been conducted against the provisions of the Town Planning Scheme No. 1 (the Scheme), Local Law 43 (Schedule 3), relevant deemed-to-comply requirements of the Residential Design Codes (R-Codes) and the following Local Planning Policies:

- 3.1 – Streetscape; and
- 6.3 – Floreat Precinct

The proposal seeks a variation to the Scheme (Clause 20) with regards to the minimum street setback requirement in the Floreat Precinct. A design principle assessment has been undertaken with regards to the two variations to Lot boundary setbacks (Clause 5.1.3). The development demonstrates compliance with the relevant design principles, and no objections were received in regards to this proposal.

**Community Consultation**

The application in respect to the primary street setback variations was advertised for a period of 14 days, from 9 March 2018 to 23 March 2018, to six (6) neighbouring properties in accordance with the requirements of the Residential Design Codes of Western Australia. No objections were received against the proposal from any of the neighbouring property owners. It is also noted that the applicants submitted signed copies of plans from adjoining property owners (No 319, No 317, No 315 Salvado Road, No 96 Evandale Street and No 112 Rosedale Street) with notations on the plans stating they had no objection to the proposed street setbacks or lot boundary setbacks relative to their property.

**Applicant's justification**

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to street setback, lot boundary setbacks and visual privacy. A summary of the applicant’s justification is attached to this agenda.

**Assessment against the design principles**

**Street Setback (Clause 20 of the Town Planning Scheme No. 1)**

In accordance with Clause 20, notwithstanding the above provisions of the Residential Design Codes, street boundary setbacks within the Floreat Precinct shall be a minimum of 9.0 metres from the primary street.

In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.

The Council must therefore be satisfied BY ABSOLUTE MAJORITY that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme:
Deemed-to-comply provision | Proposed
--- | ---
Dwelling setback from Primary Street | Minimum 9.0 metres | • 6.0 metres to the undercroft entry & the ground floor level, and • 7.0 metres to the undercroft garage & study

Clause 39

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied my an absolute majority that:-

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality;

(ii) The conservation of the amenities of the locality; and

(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

(ii) The property in, or the inhabitants of, the locality; or

(iii) The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality

There are four dwellings on this section of Rosedale Street between Evandale Street and Salvado Road and two propose their primary street frontage to Rosedale Street. Those dwellings are No. 112 Rosedale Street (neighbouring property to the right/south of the subject site) and the proposed subject dwelling No. 114 Rosedale Street.

The existing dwelling on No. 319 Salvado Road (property to the north of the subject site) is set back 4.5 metres from Rosedale Street. The proposed dwelling, which is the subject of this application, proposes a 6.0 metres setback to the undercroft entry and ground floor level and a 7.0 metres setback to the garage and study on the undercroft level. A compliant setback of 9.2 metres to the roof terrace has been proposed. The existing dwelling on No. 112 Rosedale Street (property to the south of the subject site) has a setback of 10.5 metres from Rosedale Street.

It is noted that the property sits directly across from No. 115 and No. 117 Rosedale Street, both of which have carport structures located within their primary street setback areas. No. 115 Rosedale Streets existing carport is set back approximately 1.1 metres from the street and No. 117 Rosedale Street's existing carport is set back 4.0 metres from the street. It is therefore considered that the proposal and the proposed primary street setback variations would not be out of character with the existing established streetscape and would not impact negatively on the locality.
(ii) The conservation of the amenities of the locality; and

The encroachment into the primary street (Rosedale Street) setback area is in keeping with the streetscape. The portions of the dwelling proposed within the street setback area include the balcony, main suite opening and guest bed opening, all of which provides passive surveillance between the subject site and Rosedale Street. The amenities in the locality will not be compromised by the approval of this application. The proposal is for a single storey residential dwelling, with undercroft level and a roof terrace. The proposal will not impact or cause any disturbance on the amenities in the locality.

(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

The proposal is consistent with the Statement of Intent of the Floreat Precinct, as the development proposes a single residential dwelling to occupy the property which is consistent with those in the immediate locality.

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for a single residential dwelling to be occupied by the owners of the property. The reduced street setback will not result in an undue adverse effect on the owners of the property. In supporting the proposed street setback variation, the occupiers of the proposed dwelling will be able to enjoy additional outdoor living area which is provided to the northern boundary towards the rear of the property and a useable balcony area to the front of the dwelling on the ground floor level which will allow for passive surveillance and interaction with the street.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback will not impact on the inhabitants of the locality as the single storey dwelling does not impact negatively on any adjoining neighboring property and as previously mentioned is setback consistently with existing residential development in the locality.

(iii) The likely future development of the locality.

It is considered that the variation to the front setback would not be out of character with the remainder of the streetscape. With the exception of the entry, the majority of the undercroft level has been set back at 7.0 metres from the primary street. The ground floor level setback is 6.0 metres and has included a street facing balcony with open breezeflack screening fronting the street to promote interaction and surveillance of the street. The contrasting materials and finishes of the front façade have also assisted in ensuring there is no perceived building bulk as viewed from the street.

It is also noted that the subject site will be heavily landscaped, with an existing mature tree being retained and one advanced tree also being proposed within the front setback area. The application is fully compliant with all landscaping requirements and will be consistent with landscaping on neighbouring properties and further enhance the streetscape.

The proposed non-complying application is therefore supported.
Lot boundary setback (Clause 5.1.3 of the R-Codes)

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guest bed portion of wall setback to the southern side boundary</td>
<td>Minimum 2.8 metres</td>
</tr>
<tr>
<td>Bed 4 – bath portion of wall setback to the rear (eastern) boundary</td>
<td>Minimum 6.0 metres</td>
</tr>
</tbody>
</table>

**Design principles:**

**P3.1 Buildings set back from lot boundaries so as to:**
- reduce impacts of building bulk on adjoining properties;
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.

**P3.2 Buildings built up to boundaries (other than the street boundary) where this:**
- makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;
- does not compromise the design principle contained in clause 5.1.3 P3.1;
- does not have any adverse impact on the amenity of the adjoining property;
- ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and
- positively contributes to the prevailing development context and streetscape.

The applicant seeks one setback variation to the southern (right) side boundary and one to the eastern (rear) boundary only. All other lot boundary setbacks are compliant.

Notwithstanding, the reduced setbacks can be supported by satisfying the relevant design principles, as follows:

**Setback variation to the south (side)**

- the proposed side lot boundary setback is based on the total length of wall of the dwelling to the southern (right) side boundary and the minimum setback proposed is 2.3 metres to the guest bed. The remainder of the southern side setbacks have been assessed independently and are compliant.
- the southern side of the ground floor of the dwelling has been well articulated with the inclusion of minor openings to break up any perceived building bulk as viewed from the adjoining property to the south (No 112 Rosedale Street).
- as mentioned above this setback variation is from the portion of the guest bed only for a wall length of 3.6 metres.
• it is important to note that this ground floor side setback of the subject property abuts the neighbouring property's (No. 112 Rosedale Street's) approximately 4m wide driveway to their garage located to the rear of their property and does not abut any active habitable spaces or major openings. There is no overlooking or loss of privacy to the adjoining property to the south and while the dwelling does result in overshadowing to the adjoining property, the majority of the shadow cast falls onto the neighbouring property's driveway.
• the proposed minimum side setback of 2.3 metres will still enable adequate direct sun and ventilation to the building and open spaces of both the subject site and adjoining property.

Setback variation to the east (rear)

• the proposed rear lot boundary setback of 6.0 metres is based on Table 1 of the R-Codes and is not based on the the total length or height of the ground floor portion of dwelling. The minimum setback proposed is 1.0 metres.
• the rear ground floor portion of the dwelling is single storey only with the inclusion of a minor opening to ensure there is no perceived building bulk as viewed from the adjoining property to the east.
• it is important to note that there is an existing gazebo (set back approximately 1.8 metres) and an existing outbuilding (set back 1.0 metres) to the eastern rear boundary. It is therefore not considered that the removal of these structures and the construction of a portion of the single storey dwelling would create any building bulk impact to the adjoining property to the rear.
• the proposed setback variation to the rear would abut the neighbouring property's rear garden area in which they also have an outbuilding set back less than 6.0 metres from their rear boundary and setback approximately 1.0 metres from their side boundary. The proposed setback variation therefore does not abut any active habitable spaces or major openings.
• as mentioned above, there is no major opening proposed to the rear of the dwelling so there is no looking or loss of privacy to the adjoining property to the east. The proposed minimum rear setback of 1.0 metres will still enable adequate direct sun and ventilation to the building and open spaces of both the subject site and adjoining property.
• due to the sites orientation and this variation being proposed to the eastern rear boundary, there will be no shadow cast to the adjoining property.

The application and proposed variations clearly meets the relevant design principle and will not impact on the amenity of the adjoining properties.

POLICY/STATUTORY IMPLICATIONS:

There are no policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

Should the Council refuse the application for development approval, the applicant may have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.
FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs.

Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

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<tr>
<th>Responsible Executive</th>
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<tr>
<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Laura Kelliher, Planning Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. Development Application plans
2. Summary of applicant's justification.

ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions and Clause 39 (2) of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES by an ABSOLUTE MAJORITY decision the application for a Single Storey Dwelling with an undercroft level and roof terrace submitted by CSA Craig Steere Architects at Lot 395 (No. 114) Rosedale Street, Floreat as shown on the plans dated 8 March 2018, subject to the following conditions:-

(i) the roof material not to be zincalume or off-white ('Surfmist') Colorbond;

(ii) the landscaping areas, as shown on the approved plan, are to be installed and reticulated within six (6) months of the completion of the dwelling and to be maintained to the satisfaction of the Town;

(iii) the crossover to be no wider than 6.0 metres (excluding splays); and

(iv) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the site for the effective retention of stormwater on site.
Advice Note:

The applicant be advised that:

1. The applicant is responsible for ensuring that all lot boundaries as shown on the approved plans are correct;

2. All works within the road reserve, such as vehicle crossovers, verge paving and landscaping require a separate application and approval by the Town's Infrastructure Services. These works must conform to the Town's specifications;

3. In regards to the mature tree to be retained on site, a protective fence is to be installed around this tree within the affected building development area. This protective fencing is to be maintained in good order at all times.

   The fence around the tree is to be 2 metres x 2 metres and 2 metres in height, with installation prior to commencement of any demolition or site works.
DV18.35 LOT 518 (NO. 124) ALDERBURY STREET, FLOREAT - SINGLE STOREY DWELLING

SUMMARY:

The purpose of this report is for Council to consider a development application for a single storey dwelling at Lot 518 (No. 124) Alderbury Street, Floreat.

Under the Town of Cambridge Town Planning Scheme No. 1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the Scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1a) of the Scheme.

Should Council resolve to approve the application, an absolute majority decision is required.

The Administration recommends that the application should be approved subject to appropriate conditions.

AUTHORITY / DISCRETION

- **Advocacy**
  - When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

- **Executive**
  - The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

- **Legislative**
  - Includes adopting local laws, town planning schemes & policies.

- **Review**
  - When the Council operates as a review authority on decisions made by Officers for appeal purposes.

- **Quasi-Judicial**
  - When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

- **Information**
  - For the Council/Committee to note.

BACKGROUND:

<table>
<thead>
<tr>
<th>Application:</th>
<th>0342DA-2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner:</td>
<td>Mr CJ May and Mrs SE May</td>
</tr>
<tr>
<td>Applicant:</td>
<td>Distinctive Homes WA Pty Ltd</td>
</tr>
<tr>
<td>Zoning:</td>
<td>Residential R12.5</td>
</tr>
<tr>
<td>Use class:</td>
<td>Dwelling (single) ‘P’ – permitted</td>
</tr>
<tr>
<td>Land area:</td>
<td>1126sqm</td>
</tr>
</tbody>
</table>

DETAILS:

Development description

A development application for a single storey dwelling was received by the Town on 28 November 2017 with amended plans being provided on 22 February 2018.
The subject site is located within the Floreat Precinct. The site currently comprises of a
single storey brick and tile dwelling.

The site is orientated in a north western direction with the natural ground level of the
property gently sloping upwards from street level (south western boundary) towards the rear
(north eastern boundary). The property slopes a total of 2.7 metres over a length of 53.17
metres. The surrounding properties consist of predominantly single storey dwellings. Of the
four dwellings on Alderbury Street, between Arbordale Street and Lichendale Street, only
two are orientated to and propose their primary street frontage to Alderbury Street. Those
dwellings are No. 122 Alderbury Street (neighbouring property to the right of the subject site)
and the proposed subject dwelling No. 124 Alderbury Street.

The development application proposes the following:

- a single storey dwelling set back a minimum of 8.1 metres from the south western
  (front) boundary to the pantry portion of wall and 8.3 metres to the verandah in lieu of
  the required 9.0 metres required under Clause 20 of Town Planning Scheme No 1;
- the double garage has been set back accordingly at a minimum setback of 9.0 metres;
- the development comprises of four bedrooms, a study, laundry, activity room and the
  remainder of the living areas are centrally located within the dwelling with access to
  the rear alfresco being provided directly off the dining room;
- the proposal is fully compliant with building height provisions and open space
  requirements;
- the application complies with the landscaping requirements, with the provision of a
  total of 75% landscaping within the front setback area and sees the retention of an
  existing mature tree on site;
- no front fencing is proposed as part of this application;
- all retaining proposed is within 0.5 metres of natural ground level;
- lot boundary setbacks to the north east (rear) and south east (right hand side
  boundary) are fully compliant with Tables 2a and 2b of the R-Codes.
- one lot boundary setback variation is proposed to the north western side boundary with
  the minimum setback proposed of 2.8 metres in lieu of 3.1 metres to the corner of the
  master suite only. No objection was received in relation to this variation.
- two visual privacy setback variations are proposed to the north western side boundary
  with a minimum setback of 3 metres from the master suite (north western elevation) in
  lieu of 4.5 metres and a minimum setback of 5 metres from the verandah (north
  western elevation) in lieu of 7.5 metres. No objections were received in relation to
  these variations.

An assessment of the application has been conducted against the provisions of the Town
Planning Scheme No. 1 (the Scheme), Local Law 43 (Schedule 3), relevant deemed-to-
comply requirements of the Residential Design Codes (R-Codes) and the following Local
Planning Policies:

- 3.1 – Streetscape; and
- 6.3 – Floreat Precinct

The proposal seeks a variation to the Scheme (Clause 20) with regards to the minimum
street setback requirement in the Floreat Precinct. A design principle assessment has been
undertaken with regards to the variations to Lot boundary setbacks (Clause 5.1.3) and Visual
privacy (Clause 5.4.1). The development demonstrates compliance with the relevant design
principles, and no objections were received in regards to this proposal.
Community Consultation

The application was advertised for a period of 14 days, from 17 January 2018 to 31 January 2018, to the two (2) neighbouring properties (No. 122 Alderbury Street and No. 2 Lichendale Street) in accordance with the requirements of the Residential Design Codes of Western Australia. Two submissions were received in support of the proposal from both neighbouring property owners, clearly stating they had no objection to the proposed variations. The property owners of No 2 Lichendale Street also signed a copy of the plans and a letter stating they had no objection to the lot boundary setback and visual privacy setback variations.

Applicant's justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to street setback, lot boundary setbacks and visual privacy. A summary of the applicant’s justification is attached to this agenda.

Assessment against the design principles

Street Setback (Clause 20 of the Town Planning Scheme No. 1)

In accordance with Clause 20, notwithstanding the above provisions of the Residential Design Codes, street boundary setbacks within the Floreat Precinct shall be a minimum of 9.0 metres from the primary street.

In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.

The Council must therefore be satisfied BY ABSOLUTE MAJORITY that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme:

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling setback from Primary Street</td>
<td>Minimum 9.0 metres</td>
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</tbody>
</table>

Clause 39

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied my an absolute majority that:-

(a). If approval were to be granted, the development would be consistent with:-
   (i) The orderly and proper planning in the locality;
   (ii) The conservation of the amenities of the locality; and
   (iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b). The non-compliance would not have any undue adverse effect on:-
   (i) The occupiers or users of the development;
   (ii) The property in, or the inhabitants of, the locality; or
   (iii) The likely future development of the locality.
An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality

There are four dwellings on this section of Alderbury Street between Arbordale Street and Lichendale Street and two propose their primary street frontage to Alderbury Street. Those dwellings are No. 122 Alderbury Street (neighbouring property to the right of the subject site) and the proposed subject dwelling No. 124 Alderbury Street.

The existing dwelling on No. 122 Alderbury Street has a setback of 6.0 metres to the verandah, 7.9 metres to the remainder of the dwelling and 8.5 metre to the garage. The proposed dwelling, which is the subject of this application, proposes 8.1 metres to the pantry portion of wall (2.6 metres wide portion of wall), 8.3 metres to the verandah and a compliant 9 metres to the garage.

There are also examples within the locality of open verandah structures to the front of dwellings, such as at No. 140, No. 142 and No. 144 Alderbury Street. It is therefore considered that the proposal and proposed minimum setbacks of 8.1 metres and 8.3 metres in lieu of 9.0 metres will be consistent with the established streetscape and will not impact negatively on the locality.

(ii) The conservation of the amenities of the locality; and

The amenities in the locality will not be compromised by the approval of this application. The proposal is for a single storey residential dwelling. The proposal will not impact or cause any disturbance on the amenities in the locality.

(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

The proposal consistent with the Statement of Intent of the Floreat Precinct, as the development proposes a single residential dwelling to occupy the property which is consistent with those in the immediate locality.

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for a single residential dwelling to be occupied by the owners of the property. The reduced street setback will not result in an undue adverse effect on the owners of the property. In supporting the proposed street setback variation, the occupiers of the proposed dwelling will be able to enjoy additional outdoor living area to their rear of the dwelling and have a useable verandah area to the front of the dwelling which will allow for passive surveillance of the street.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback will not impact on the inhabitants of the locality as the single storey dwelling does not impact negatively on any adjoining neighboring property and as previously mentioned is setback consistently with existing residential development in the locality.
(iii) The likely future development of the locality.

It is considered that the variation to front setback would not be out of character with the remainder of the streetscape. Due to the size and nature of the street setback, it is unlikely that the approval of this development would have any impact on future developments of the locality, and could not be used as a precedent.

The pantry wall length is considered to form a minor part of the front façade of the dwelling, with the emphasis on the open style verandah which provides an articulated entry and does not create any perceived building bulk as viewed from the street. Given the verandah is an open structure, fronting the street in a similar manner to neighbouring property No. 122’s verandah and there are other examples of verandah structures along Alderbury Street (No. 140, No. 142 and No. 144), it is considered, that the proposal and setback of 8.3 metres in lieu of 9.0 metres will be consistent with the established streetscape.

The subject site will be heavily landscaped, with an existing mature tree being retained within the front setback area. The application is fully compliant with all landscaping requirements.

The proposed non-complying application is therefore supported.

Lot boundary setback (Clause 5.1.3 of the R-Codes)

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Master suite – verandah portion of wall setback to the north western side boundary</td>
<td>Minimum 3.1 metres</td>
</tr>
</tbody>
</table>

**Design principles:**

**P3.1 Buildings set back from lot boundaries so as to:**
- reduce impacts of building bulk on adjoining properties;
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.

**P3.2 Buildings built up to boundaries (other than the street boundary) where this:**
- makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;
- does not compromise the design principle contained in clause 5.1.3 P3.1;
- does not have any adverse impact on the amenity of the adjoining property;
- ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and
- positively contributes to the prevailing development context and streetscape.

The applicant seeks a setback variation to the north western (left) boundary only. All other lot boundary setbacks are compliant.
Notwithstanding, the reduced setback can be supported by satisfying the relevant design principles, as follows:

- this proposed side lot boundary setback is based on the total length of wall of the dwelling to the north western side boundary and the minimum setback proposed is 2.8 metres to the corner of the master suite. The minimum setback to the ensuite - WIR wall was assessed independently and is compliant.
- this side of the ground floor of the dwelling has been well articulated with the inclusion of minor and major openings to break up any perceived building bulk as viewed from the adjoining properties to the side (No. 2 Lichendale Street).
- as mentioned above this setback variation is from this portion of the master suite only for a wall length of 0.9 metres. While there is resultant overlooking there is no loss of privacy as a result of this variation to the adjoining property (this is discussed in detail further on).
- the ground floor side setback of the subject property abuts the neighbouring property's (No. 2 Lichendale Street) 2.0 metre side setback area to their driveway and 1.8 metres side setback to their garage and dwelling.
- the proposed minimum side setback of 2.8 metres will still enable adequate direct sun and ventilation to the building and open spaces of both the subject site and adjoining property.
- due to the sites orientation and this variation being proposed to the north western side boundary, there will be no shadow cast to the adjoining property.

The application and proposed variation clearly meets the relevant design principle and will not impact on the amenity of the adjoining property.

**Visual privacy (Clause 5.4.1 of the R-Codes)**

<table>
<thead>
<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Master suite visual privacy setback to north western side boundary; and Verandah visual privacy setback to north western side boundary.</td>
<td>Minimum 4.5 metres</td>
<td>Minimum 3 metres</td>
</tr>
<tr>
<td></td>
<td>Minimum 4.5 metres</td>
<td>Minimum 3 metres</td>
</tr>
</tbody>
</table>

**Design principles:**

**P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:**
- building layout and location;
- design of major openings;
- landscape screening of outdoor active habitable spaces; and/or
- location of screening devices.

**P1.2 Maximum visual privacy to side and rear boundaries through measures such as:**
- offsetting the location of ground and first floor windows so that viewing is oblique rather than direct;
- building to the boundary where appropriate;
- setting back the first floor from the side boundary;
- providing higher or opaque and fixed windows; and/or
- screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).
The applicant seeks visual privacy setback variations to the north western (left) side boundary from the verandah and master suite.

Notwithstanding, the reduced setbacks can be supported by satisfying the relevant design principles, as follows:

- the proposed visual privacy setbacks result due to the Finished Floor Level (FFL) of the dwelling (at 9.4) being greater than 0.5 metres above NGL at the boundary. As the FFL of the verandah and master suite is not within 0.5 metres of NGL, a 7.5 metre cone of vision setback is required from the verandah and a 4.5 metre cone of vision is required from the master suite to the north western side boundary.
- the verandah proposes a minimum visual privacy setback of 5.1 metres in lieu of 7.5 metres and the master suite proposes a minimum visual privacy setback of 3.1 metres in lieu of 4.5 metres to the north western boundary.
- it is noted, that the majority of the cone of vision from the verandah will fall onto the existing driveway and driveway side setback area which is approximately 2.0 metres in width.
- while a portion does extend in the direction of the neighbouring properties existing verandah area located on top of their undercroft garage, this cone of vision will be restricted by the existing dense vegetation located on the shared boundary between the subject dwelling (No.124) and the neighbouring property to the north west (No. 2 Lichendale Street). This can be seen from aerial imagery and site photographs.
- similarly, the majority of the cone of vision from the master suite openings will be restricted of falling onto the neighbouring property by the existing vegetation located on the shared boundary. Any resultant overlooking will be oblique rather than direct and will fall onto the neighbours existing 1.9 metre side setback. This cone of vision will not fall onto any outdoor active habitable space and will therefore not result in a loss of privacy to the adjoining property.
- for the above reasons, obscure glazing or a screening device is not required to be provided to master suite openings and the north western side of the verandah.

The application and proposed variations clearly meets the relevant design principle and will not impact on the amenity of the adjoining property.

POLICY/STATUTORY IMPLICATIONS:

There are no policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

Should the Council refuse the application for development approval, the applicant may have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.
STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs.
Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

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ATTACHMENTS:

1. Development Application plans
2. Summary of applicant's justification and neighbour comment

ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions and Clause 39 (2) of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES by an ABSOLUTE MAJORITY decision the application for a Single Storey Dwelling submitted by Distinctive Homes WA Pty Ltd at Lot 518 (No. 124) Alderbury Street, Floreat as shown on the plans dated 22 February 2018, subject to the following conditions:-

(i) the roof material not to be zincalume or off-white ('Surfmist') Colorbond;
(ii) the landscaping areas, as shown on the approved plan, are to be installed and reticulated within six (6) months of the completion of the dwelling and to be maintained to the satisfaction of the Town;
(iii) the crossover to be no wider than 6.0 metres (excluding splays);
(iv) the redundant vehicle crossover outside the subject site to be removed and the kerbing, verge and footpath to be reinstated to the specifications and satisfaction of the Town prior to the occupation of the dwelling; and
(v) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the site for the effective retention of stormwater on site.
Advice Note:

The applicant be advised that:

1. The applicant is responsible for ensuring that all lot boundaries as shown on the approved plans are correct;

2. All works within the road reserve, such as vehicle crossovers, verge paving and landscaping require a separate application and approval by the Town's Infrastructure Services. These works must conform to the Town's specifications;

3. In regards to the mature tree to be retained on site, a protective fence is to be installed around this tree within the affected building development area. This protective fencing is to be maintained in good order at all times.

   The fence around the tree is to be 2 metres x 2 metres and 2 metres in height, with installation prior to commencement of any demolition or site works.
DV18.36 LOT 175 (NO. 204) HARBORNE STREET, WEMBLEY - ADDITIONS AND ALTERATIONS TO EXISTING DWELLING

SUMMARY:

The purpose of this report is for Council to consider a development application for additions and alterations to single dwelling at No. 204 Harborne Street, Wembley.

Under the Town's Local Planning Policy 2.6: Delegation of Authority Clause 1.3.2, Council will determine development applications where they have been advertised and objections have been received. In this instance, an objection has been received from a neighbouring resident in relation to the lot boundary setback and therefore the application is required to be determined by Council.

The Administration recommends that the application should be approved subject to appropriate conditions.

AUTHORITY / DISCRETION

☐ Advocacy
When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

☐ Executive
The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

☐ Legislative
Includes adopting local laws, town planning schemes & policies.

☐ Review
When the Council operates as a review authority on decisions made by Officers for appeal purposes.

☑ Quasi-Judicial
When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

☐ Information
For the Council/Committee to note.

BACKGROUND:

Application: 0010DA-2018
Owner: Mr P Leahy and Mrs SR Leahy
Applicant: James Taylor
Zoning: Residential R20
Use class: Dwelling (single) ‘P’ – permitted
Land area: 670m²
DETAILS:

Development description

The subject site is a freehold lot located in the Wembley Planning Precinct in a block bound by Harborne Street to the west, Dodd Street to the north, McLeod Lane to the east and Rason Street to the south. The streetscape consists of single and two storey dwellings, predominately constructed of brick and tile.

The application for the subject site was submitted on 12 January 2018 for single storey additions and alterations to an existing dwelling. The proposed addition comprises a retreat and ensuite located to the front of the dwelling, and a kitchen, living and dining room, laundry, bathroom, two bedrooms, patio and garage located to the rear of the existing dwelling with a total additional floor area of 180m².

Upon completion of the Town's planning assessment, and in response to an objection, amended plans were submitted on 18 March 2018. The revised plans increased the setback of the laundry and bathroom on the southern boundary from nil to 0.3 metres.

The amended proposal does not meet the acceptable development standards of Local Planning Policy 3.2 Buildings on the Boundary, the development is capable of approval, provided it meets the design principles of State Planning Policy 3.1 Residential Design Codes, design element 5.1.3 Lot Boundary Setbacks.

Community Consultation

The application was advertised for a period of 14 days, from 26 February 2018 to 12 March 2018, to one adjoining property, in accordance with the requirements of the Residential Design Codes. One (1) objection was received. The amended plans were shown to the adjoining property owner, however, they felt the amended plans did not adequately address the concerns raised in their submission.

Attachment 1 of this report provides a summary of the comments and issues raised during the community consultation process and an Officer technical response to each comment and issue.

- Summarise all submissions
- Refer to example below:

<table>
<thead>
<tr>
<th>Summary of Comments Received:</th>
<th>Officer Technical Comment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building bulk</td>
<td>The building on boundary walls of the laundry and bathroom are single storey and 2.8 metres tall and run for 5.0 metres and 5.5 metres respectively. Additionally there are multiple articulations along the wall, all of which contribute to a reduced bulk impact on the adjoining property, overall the bulk is considered to be acceptable.</td>
</tr>
<tr>
<td></td>
<td>The bulk impact of the ensuite is considered to be minor in nature due to the addition being 3.6 metres in length, with the wall height of 4.2 metres due to the natural slope of the site.</td>
</tr>
</tbody>
</table>
Overall any bulk impact of this addition is not considered to have a detrimental impact on any habitable rooms or outdoor living areas, as the addition is located next to a carport on the adjoining property.

**Overshadowing**

The development is fully compliant with deemed to comply requirements of 5.4.2 solar access for adjoining sites. The impact of the proposed reduced setback is not considered to have a detrimental impact on solar access for major openings to habitable rooms or outdoor living areas of the adjoining property.

**Ventilation**

It is considered that there is sufficient space between proposed addition and the existing adjoining dwelling to provide adequate ventilation between the buildings.

### Applicant’s justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to the reduced setback of the laundry and bathroom on the southern boundary. A summary of the applicant’s justification is attached to this agenda.

### Assessment against the design principles

#### Lot boundary setback – Local Planning Policy 3.1 Buildings on the Boundary

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.5 metres</td>
<td>0.3 metres</td>
</tr>
<tr>
<td>3.0 metres</td>
<td>1.4 metres</td>
</tr>
</tbody>
</table>

**Design principles:**

**P3.1 Buildings set back from lot boundaries so as to:**
- reduce impacts of building bulk on adjoining properties;
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.

**P3.2 Buildings built up to boundaries (other than the street boundary) where this:**
- makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;
- does not compromise the design principle contained in clause 5.1.3 P3.1;
- does not have any adverse impact on the amenity of the adjoining property;
- ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and
- positively contributes to the prevailing development context and streetscape.
As the proposal varies the deemed to comply criteria, an assessment has been undertaken against the relevant design principles. The variations sought are considered acceptable as they are considered to satisfy the design principles as follows:

- The building on boundary walls of the laundry and bathroom are single storey and 2.8 metres tall and run for 5.0 metres and 5.5 metres respectively. Additionally, there are multiple articulations along the wall, all of which contribute to a reduced bulk impact on the adjoining property.
- The bulk impact of the ensuite is considered to be minor in nature due to the addition being 3.6 metres in length, with the wall height of 4.2 metres due to the natural slope of the site. Overall, any bulk impact of this addition will not be from impact any habitable rooms or outdoor living areas as the addition is located next to a carport on the adjoining property.
- In terms of the impact of overshadowing, the development is fully compliant with deemed to comply requirements of 5.4.2 solar access for adjoining sites. The impact of the proposed reduced setback is not considered to have a detrimental impact on solar access for major openings to habitable rooms or outdoor living areas of the adjoining property. As shown on the horizontal overshadowing diagram, the impact of the proposed laundry does not overshadow the major opening, the extent of overshadowing from the laundry has the same impact that the existing lattice on the boundary fence has on the adjoining property.
- There is not considered to be any additional privacy concerns in relation to the setback variations, as the proposed additions do not include any major openings on the southern boundary.
- Overall, the proposed setback variations are considered to not have a detrimental impact on the amenity of the occupants of the subject site, or the adjoining dwelling as it satisfies the design principles. Furthermore, the proposed development is not considered to have a negative impact on the streetscape.

**POLICY/STATUTORY IMPLICATIONS:**

There are no policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

**FINANCIAL IMPLICATIONS:**

There are no financial implications related to this report.

**STRATEGIC DIRECTION:**

**Our Planned Neighbourhoods**

**Goal 4:** Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs

**Strategy 4.2:** Guide new development which is in harmony with the surrounding area and retains a sense of place

**COMMUNITY ENGAGEMENT:**

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.
OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Chris Della Bona, Planning Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. Development Application plans
2. Summary of applicant's justification and neighbour comment

ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES the application for Additions and Alterations to Single Dwelling submitted by James Taylor at 1075(No. 204) Harborne Street, Wembley as shown on the plans dated 18 March 2018, subject to the following conditions:

(i) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the site for the effective retention of stormwater on site.
SUMMARY:

The purpose of this report is for Council to consider a development application for additions and alterations to an existing single storey dwelling, the additions include a carport, alfresco, retaining, front fence and swimming pool at Lot 25 (No. 6) Kingsland Avenue, City Beach.

Under the Town of Cambridge Town Planning Scheme No. 1 (Clause 39) Council will determine an application for planning approval which does not comply with a standard or requirement of the Scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1a) of the Scheme.

Should Council resolve to approve the application, an absolute majority decision is required.

The Administration recommends that the application should be approved subject to appropriate conditions.

AUTHORITY / DISCRETION

- **Advocacy**: When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- **Executive**: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
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- **Information**: For the Council/Committee to note.

BACKGROUND:

- **Application**: 0362DA-2017
- **Owner**: Mr BE Carr and Mrs SL Carr
- **Applicant**: Paramount Design
- **Zoning**: Residential R12.5
- **Use class**: Dwelling (single) ‘P’ – permitted
- **Land area**: 871sqm
DETAILS:

Development description

A development application for additions and alterations to an existing single storey dwelling was received on 18 December 2017, with three sets of amended plans being provided to the Town, the last of which was provided on 22 March 2018.

The subject site is located within the City Beach Precinct. The site currently comprises of a single storey dwelling and carport, however, this property has been the subject of a compliance investigation. It was found the vehicle access and crossover had in the past (prior to 2008) been relocated towards the north western boundary which was excessively close to the intersection of Kingsland Avenue and Boronia Crescent. It was also found that a large portion of the existing front fence is not contained within the property boundaries and instead located in the verge area. The purpose of this application is therefore to seek approval for remedial works to the property and some additional improvements to the existing dwelling.

The site is located on the corner of Kingsland Avenue and Boronia Crescent, orientating in a north western direction and faces four other corner properties.

The development application proposes the following:

- the retention of the existing single dwelling with some internal modifications to room layouts;
- the replacement of the existing carport structure which was setback from the primary street by 0.3 metres and sees the new carport proposing a 1.5 metres setback from the front boundary in lieu of the required 7.5 metres required under Clause 20 of Town Planning Scheme No 1;
- a new porch addition setback at 6.1 metres, walkway canopy setback 6.4 metres from the primary street and alfresco/terrace roof cover setback 2.38 metres from the corner truncation in lieu of the required 7.5 metres required under Clause 20 of Town Planning Scheme No 1;
- the proposed setback to the secondary street is fully compliant with a proposed minimum of 4.0 metres in lieu of the minimum required 3.75 metres.
- the proposal is fully compliant with building height provisions and open space requirements;
- the application complies with the required 50% landscaping provision within the front setback area and sees the provision of two new advanced trees proposed within the primary street setback area;
- lot boundary setbacks relating to the additions to the north and east are fully compliant with Tables 2a and 2b of the R-Codes. All other lot boundary setbacks remain as is existing.
- a retaining wall height variation is proposed along the primary street and secondary street boundary as the proposed retaining walls are >0.5 metres within 3 metres of the street alignment which is required to retain the existing ground level of the property against the lower natural ground level of the verge area.

An assessment of the application has been conducted against the provisions of the Town Planning Scheme No. 1 (the Scheme), Local Law 43 (Schedule 3), relevant deemed-to-comply requirements of the Residential Design Codes (R-Codes) and the following Local Planning Policies:
3.1 – Streetscape; and
6.1 – City Beach Precinct

The proposal seeks a variation to the Scheme (Clause 20) with regards to the minimum street setback requirement in the City Beach Precinct. A design principle assessment has been undertaken with regards to the variations to Site Works (Clause 5.3.7). The development demonstrates compliance with the relevant design principle.

Community Consultation

The application in respect to the primary street setback variations was advertised for a period of 14 days, from 12 March 2018 to 26 March 2018, to six (6) adjoining properties in accordance with the requirements of the Residential Design Codes of Western Australia. No objections were received against the proposal from any of the neighbouring property owners.

Applicant's justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to the street setback. A summary of the applicant’s justification is attached to this agenda.

Assessment against the design principles

Street Setback (Clause 20 of the Town Planning Scheme No. 1)

In accordance with Clause 20, notwithstanding the above provisions of the Residential Design Codes, street boundary setbacks within the Floreat Precinct shall be a minimum of 7.5 metres from the primary street.

In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.

The Council must therefore be satisfied by absolute majority that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme:

<table>
<thead>
<tr>
<th>Front /primary street setback</th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
</table>
|                              | Min 7.5 metres              | • 1.5 metres to the carport,  
|                              |                             | • 5.6 metres to the porch,  
|                              |                             | • 6.4 metres to the walkway  
|                              |                             | canopy from the primary street and  
|                              |                             | • 2.3 metres to the alfresco/terrace roof cover from the corner truncation of the primary street. |
Clause 39

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied by an absolute majority that:

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality;
(ii) The conservation of the amenities of the locality; and
(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;
(ii) The property in, or the inhabitants of, the locality; or
(iii) The likely future development of the locality

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality

The proposed setback of the carport and alfresco addition are consistent with existing setbacks in the immediate locality. The street comprises of a number of corner sites (including directly abutting the subject site), with their secondary street setbacks to Boronia Crescent, and therefore there is not a consistent setback of 7.5 metres along the street.

The proposed structures are open style and will allow clear views through to the existing dwelling. This will ensure that the impacts of building bulk, as seen from the street, are minimised and will ensure orderly and proper planning in the locality. As the application is to remedy unauthorised works, the alterations will reduce the building bulk impact of the existing carport and front fence and the new works will instead enhance the existing streetscape and the subject site.

It is considered, given the current streetscape, that the proposal would be consistent with the surrounding dwellings in the immediate locality. The site to the south (directly across the road) is setback approximately 4.0 metres from the Kingsland Avenue boundary.

(ii) The conservation of the amenities of the locality; and

The encroachment into the primary street (Kingsland Avenue) setback area is in keeping with the streetscape, as it provides passive surveillance between the subject site and Kingsland Avenue. The proposed carport does not unduly impact on open space requirements, as it provides roof cover to an existing parking area on-site. As the proposed variation relates to a carport, there is no adverse impact on visual privacy to the adjoining property.

(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

The proposal is consistent with the Statement of Intent of the City Beach Precinct, and will provide additions to an existing single residential dwelling consistent with those in the immediate locality.
(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for additions to a single residential dwelling to be occupied by the owners of the property. The reduced street setbacks will not result in an undue adverse effect on the owners of the property. In supporting the proposed street setback variation, the occupiers of the proposed dwelling will be able to enjoy additional outdoor living area to the front of the dwelling which provides a more useable area and enhances the development through the additional opportunities for passive surveillance and interaction with the street.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback will not impact on the inhabitants of the locality as the proposed alfresco and carport are open structures and the proposal therefore does not impact negatively on any adjoining neighboring property and is consistent with existing residential development in the locality.

(iii) The likely future development of the locality.

It is considered that the variation to the front setback would not be out of character with the remainder of the streetscape. Due to the openness of the carport and alfresco structures proposed within the primary street setback area, it is unlikely that the approval of this development would have any impact on future developments of the locality, and could not be used as a precedent.

It is also noted, that the subject site will be heavily landscaped within the 7.5 metres primary street setback and two advanced trees have been proposed to be planted which will be consistent with landscaping on neighbouring properties and further enhance the streetscape.

The proposed non-complying application is therefore supported.

Site works (Clause 5.3.7 of the R-Codes)

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excavation or filling behind a street setback line</td>
<td>Max 0.5 metres</td>
</tr>
</tbody>
</table>

Design principles:

*Development that considers and responds to the natural features of the site and requires minimal excavation/fill.*

*Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.*

The proposed variation relates to the retaining wall height along the primary and secondary street side. As can be seen from the elevations, the height of the retaining wall is necessary to retain the existing ground level of the property against the lower natural ground level of the verge area, as the existing retaining and front fence needs to be removed (including portions that has been constructed within the verge area) and the new retaining and front fence constructed correctly along the property boundary.
The height of the retaining walls along Kingsland Avenue (Primary Street) and Boronia Crescent (Secondary Street) are considered to be in response to the sloping downwards natural ground level of the subject site at the front boundary. Overall, in view of the above comments, it is considered that the proposed site works for the development satisfies the relevant design principles for the following reasons:

- The retaining wall is retaining the established natural ground level of the property, the proposed works proposed as part of this application do not seek to fill or increase the height of the existing ground level within the street setback area of the property. The existing FFL of the dwelling is remaining as is.
- It is also noted, that as there is an existing retaining and front fence along the street boundary, the new retaining and front fence will present as replacement retaining and fencing and not as a new addition of a structure to the streetscape.
- The solid portion of fencing on top of the retaining is a maximum height of 300mm with 1.25 metres high piers and visually permeable vertical infill panels which creates open fencing and ensures the retaining and fencing does not create any building bulk as viewed from the street.

POLICY/STATUTORY IMPLICATIONS:

There are no policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

Should the Council refuse the application for development approval, the applicant may have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs

Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Laura Kelliher, Planning Officer</td>
</tr>
</tbody>
</table>
ATTACHMENTS:
1. Development Application plans
2. Summary of applicant's justification

ADMINISTRATION RECOMMENDATION:
That, in accordance with Clause 68(2) of the Deemed Provisions and Clause 39 (2) of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES by an ABSOLUTE MAJORITY decision the application for Additions and Alterations to a Single Storey Dwelling inclusive of Carport, Alfresco and Swimming pool submitted by Paramount Design at Lot 25 (No. 6) Kingsland Avenue, City Beach as shown on the plans dated 22 March 2018, subject to the following conditions:-

(i) the roof material not to be zincalume or off-white ('Surfmist') Colorbond;

(ii) the landscaping areas, as shown on the approved plan, are to be installed and reticulated within six (6) months of the completion of the dwelling and to be maintained to the satisfaction of the Town;

(iii) the crossover to be no wider than 6.0 metres (excluding splays);

(iv) the carport to remain open on all sides. No solid door is to be installed.

(v) the infill panels of the fencing in the front setback area to have a surface with an open to solid ratio of no less than 4:1 and meet the deemed-to-comply provisions of clause 3.1.7 of the Town’s Planning Policy 3.1: Streetscape;

(vi) the carport door to have a surface with an open to solid ratio of no less than 4:1 in accordance with the deemed-to-comply provisions of clause 3.1.4 of the Town’s Planning Policy 3.1: Streetscape;

(vii) the redundant vehicle crossovers (x1) outside the subject site to be removed and the kerbing, verge and footpath to be reinstated to the specifications and satisfaction of the Town; and

(viii) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the site for the effective retention of stormwater on site.

Advice Note:
The applicant be advised that:

1. The applicant is responsible for ensuring that all lot boundaries as shown on the approved plans are correct;

2. All works within the road reserve, such as vehicle crossovers, verge paving and landscaping require a separate application and approval by the Town’s Infrastructure Services. These works must conform to the Town's specifications;
SUMMARY:

The purpose of this report is for Council to consider a development application for additions to the dwelling at No. 23 Kinkuna Way, City Beach.

Under the Town of Cambridge Town Planning Scheme No. 1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the Scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1a) of the Scheme in relation to the setback of the carport from the front boundary.

Should Council resolve to approve the application, an absolute majority decision is required.

The Administration recommends that the application should be approved subject to appropriate conditions.

AUTHORITY / DISCRETION

- **Advocacy**
  When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

- **Executive**
  The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

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- **Information**
  For the Council/Committee to note.

BACKGROUND:

- **Application:** 0360DA-2017
- **Owner:** Mr RFW Godfrey
- **Applicant:** Bektic Design
- **Zoning:** Residential R12.5
- **Use class:** Dwelling (single) ‘P’ – permitted
- **Land area:** 769 m²
DETAILS:

Development description

An application for the subject site was initially submitted 15 December 2017. Amended plans and additional information and justification were received on 15 February 2018 and the plans were subsequently advertised for neighbour comment during February/March 2018.

The subject site is located within the City Beach precinct. The site comprises a two storey dwelling with a front porte-cochere with two crossovers and a curved driveway through the porte-cochere. The applicant proposes to construct a double carport to provide covered car parking. There is no other covered parking on site apart from the porte-cochere.

The existing double crossover and curved driveway configuration also results in an existing shortfall in landscaping within the front setback area. The applicant proposed to provided two mature trees in the existing lawn area in order to assist with a ‘greening’ of the front setback area.

A small kitchen extension towards the rear of the property is also proposed. This meets all the requirements of the R Codes and planning policies and is not discussed further in this report.

Community Consultation

The proposed front setback variation was advertised for a period of 16 days, from 27 February 2018 to 15 March 2018, in accordance with the requirements of Clause 39 of Town Planning Scheme No.1.

No submissions or objections were received.

Applicant’s justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to the proposal. A summary of the applicant’s justification is attached to this agenda.

Assessment against the design principles

Street Setback (Clause 20 of the Town Planning Scheme No. 1)

In accordance with Clause 20, notwithstanding the above provisions of the Residential Design Codes, street boundary setbacks within the City Beach Precinct shall be a minimum of 7.5 metres of the primary street.

In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.

The Council must therefore be satisfied BY ABSOLUTE MAJORITY that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme.
Deemed-to-comply provision | Proposed
---|---
Dwelling setback from Primary Street | Minimum 7.5 metres | 3.75 metres to carport

**Clause 39**

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied by an absolute majority that:-

(a). If approval were to be granted, the development would be consistent with:-
(i) The orderly and proper planning in the locality;
(ii) The conservation of the amenities of the locality; and
(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b). The non-compliance would not have any undue adverse effect on:-
(i) The occupiers or users of the development;
(ii) The property in, or the inhabitants of, the locality; or
(iii) The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

(i) **The orderly and proper planning in the locality**

The proposed carport is adjacent to a solid brick wall within the front setback area on the adjoining property. It is noted that there are also numerous solid walls and other screening devices along this section of Kinkuna Way so that the established streetscape is not open and green in character.

The proposed carport matches the form and materials of the existing dwelling and with the main dwelling being set behind the front setback the reduced setback to the carport does not have a detrimental impact on the subject site or the streetscape. A condition requiring it to remain open on all sides can be applied to any approval.

(ii) **The conservation of the amenities of the locality; and**

It is noted that the porte-cochere (covered driveway entry) for the existing dwelling already intrudes into the front setback area with a setback of 5.0 metres from the front boundary. The remainder of the dwelling is set back 9.0 metres from the front boundary. The articulated frontage reduces the impact of bulk and scale on the streetscape.

The dwelling immediately opposite the subject site is on a corner and has its secondary street setback facing the subject site which further reduces the ability for this section of Kinkuna Way to give the appearance of a streetscape with large open green front gardens that would be impacted by a carport in the front setback area.

(iii) **The statement of intent set out in the relevant Precinct Planning Policy; and**

The proposal will be consistent with the Statement of Intent of the City Beach Precinct, and will provide covered car parking for a single residential dwelling.
(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposed carport allows for appropriate site planning requirements such as a covered car parking area. The reduced street setback will not result in an undue adverse effect on the owners of the property with surveillance between the dwelling and street being maintained.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback will not impact on the inhabitants of the locality as the carport will be screened by solid walls within the front setback area which interrupt lines of sight along the streetscape.

(iii) The likely future development of the locality.

It is considered that the variation to front setback would not be out of character with the remainder of the streetscape. The majority of dwellings in the locality already have covered car parking available so that the proposal is unlikely to set a precedent for carports in the front setback area.

The proposed non-complying application is therefore supported.

**Landscaping (Clause 3.1.9 of Planning Policy 3.1: Streetscape)**

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landscaping in front setback area</td>
<td>60% of front setback area</td>
</tr>
</tbody>
</table>

**Design principles:**

Landscaping in the primary street setback area should:-

- enhance the presentation of homes and gardens as viewed from the street; and
- be predominantly garden, substantial plantings and/or the retention of existing vegetation; and
- minimise the amount of hard surfaces in the front setback area.

It is noted that the existing dwelling has a large amount of paving in the front setback area with a curved driveway and two crossovers. This is softened with landscaping around the edges of the driveways which also screens some of the paved areas. There is also provision of green spaces behind the setback area.

Whilst a small portion of additional hard paving is proposed to access the new carport, this can be offset by requiring additional mature trees within the front setback area. This will assist in enhancing the presentation of the house and garden as viewed from the street as well as providing some screening to the new carport.
POLICY/STATUTORY IMPLICATIONS:

There are no policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs
Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
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<td>Petar Mrdja, Manager Development Assessment</td>
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<td>Contributors</td>
<td>Jenny Bender, Senior Planning Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. Development Application plans
2. Summary of applicant's justification and neighbour comment

ADMINISTRATION RECOMMENDATION:

That in accordance with Clause 68(2) of the Deemed Provisions and Clause 39 (2) of the Town Planning Scheme No. 1, Council APPROVES by an ABSOLUTE MAJORITY the application for a carport and kitchen addition to an existing dwelling as submitted by Bektic Designs at Lot 317 (No.23) Kinkuna Way, City Beach, as shown on the plans dated 15 February 2018, subject to the following conditions:-

(i) the carport to remain open on all sides with no solid door to be installed;
(ii) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the site for the effective retention of stormwater on site; and

(iii) two advanced growth trees, being a minimum 45 litre bag or a minimum of 2 metres in height and diameter, to be provided within the front setback area in accordance with the provisions of clause 3.1.9: Landscaping of the Town's Planning Policy 3.1: Streetscape.
## DV18.39 LOT 188 (NO. 15) TARONGO WAY, CITY BEACH - BALCONY ADDITION AND ALTERATIONS TO EXISTING DWELLING

### SUMMARY:

The purpose of this report is for Council to consider a development application for a balcony addition and alteration for the existing dwelling at No. 15 Tarongo Way, City Beach.

Under the Town of Cambridge Town Planning Scheme No. 1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the Scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1a) of the Scheme in relation to the setback of the balcony addition from the front boundary.

The Administration recommends that the application should be refused as the proposed setback is not consistent with the established streetscape.

Should Council resolve to approve the application, an absolute majority decision is required.

### AUTHORITY / DISCRETION

- **Advocacy**
  - When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

- **Executive**
  - The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

- **Legislative**
  - Includes adopting local laws, town planning schemes & policies.

- **Review**
  - When the Council operates as a review authority on decisions made by Officers for appeal purposes.

- **Quasi-Judicial**
  - When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

- **Information**
  - For the Council/Committee to note.

### BACKGROUND:

- **Application:** 0366DA-2017
- **Owner:** Mr BR Adams and Mrs LJ Adams
- **Applicant:** Lou Marchesani & Associates
- **Zoning:** Residential R20
- **Use class:** Dwelling (single) ‘P’ – permitted
- **Land area:** 798 m²
DETAILS:

Development description

An application for the subject site was initially submitted on 19 December 2017 for the proposal. Amended plans were received on 14 February 2018.

The subject site is located within the City Beach precinct. The site is currently occupied with a two storey dwelling with a curved front porch having a setback of 7.5 metres from the front boundary.

The site is surrounded with dwellings of a similar style and age which predominantly maintain a 7.5 metre setback from the street.

The development application proposes the following:

- A new portico with upper floor balcony extending above with a setback of 6.0 metres in lieu of 7.5 metres from the front boundary. The extension also results in a modification to the roof line so that the overall height of the dwelling at the front is lowered.
- The new balcony also results in a minor variation to visual privacy setback to the north side boundary being 7.4 metres in lieu of 7.5 metres.
- New steps to the front of the portico/balcony results in a retaining wall with a height of approximately 1.0 metre set back 4.0 metres from the front boundary. It is noted that a similar height wall exists and extends to the front boundary.
- Other minor modifications to the dwelling are proposed including the removal of windows, changes to some internal walls and the modification of arched windows to straight windows.
- A minor variation to the ground floor store on the southern side of the garage is also proposed. The extension follows the line of the existing store with a setback of 0.9 metres in lieu of 1.0 metre from the southern side boundary.

Community Consultation

The plans were signed by both adjoining landowners and these landowners have stated no objection to the proposed setback variations.

Applicant’s justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to the proposed setback and visual privacy variations. A summary of the applicant’s justification is attached to this agenda.

Assessment against the design principles

Street setback (Clause 20 of Town Planning Scheme No.1)

In accordance with Clause 20 street boundary setbacks within the City Beach Precinct shall be a minimum of 7.5 metres of the primary street.

In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.
The Council must therefore be satisfied by absolute majority that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme.

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<thead>
<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
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<tbody>
<tr>
<td>Dwelling setback from primary street</td>
<td>Min 7.5 metres</td>
<td>6.0 metres</td>
</tr>
</tbody>
</table>

**Clause 39**

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied my an absolute majority that:-

(a). If approval were to be granted, the development would be consistent with:-

(1) The orderly and proper planning in the locality;

(2) The conservation of the amenities of the locality; and

(3) The statement of intent set out in the relevant Precinct Planning Policy; and

(b). The non-compliance would not have any undue adverse effect on:-

(1) The occupiers or users of the development;

(2) The property in, or the inhabitants of, the locality; or

(3) The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality

Tarongo Way contains a number of large two storey dwellings, all of which are set back a minimum of 7.5 metres from the front boundary. The proposal, which results in a reduced front setback that would not reflect the prevailing streetscape setback, would not be consistent.

(ii) The conservation of the amenities of the locality; and

The reduced front setback would not conserve the amenity of the locality as it would introduce a reduced front setback into a streetscape of open front gardens and houses meeting the required setback distance. This would not contribute to conserving the amenity of an existing streetscape of dwellings with large open front gardens and a consistent streetscape.

(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

The proposal will be consistent with the Statement of Intent of the City Beach Precinct, and will provide for upgrading of an existing single storey dwelling.
(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for upgrading of an existing dwelling to be occupied by the owners of the property. The reduced street setback will not result in an undue adverse effect on the owners of the property.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback has the potential to impact on the inhabitants of the locality as the two storey dwelling would not be set back consistently with existing residential development in the locality. The reduced setback has the potential to reduce sightlines along the street for adjoining properties and impact on privacy.

It is noted, however, that no objections to the reduced front setback was received from surrounding property owners when the proposal was advertised for public comment.

(iii) The likely future development of the locality.

In this instance, it is considered that the variation to front setback would be out of character with the remainder of the streetscape and therefore undermine the conservation of the locality’s amenity. In addition, the introduction of a reduced setback into the street could impact the likely future development of the locality as it may establish a form of development that is not compatible with garden suburb principles.

The proposed non-complying application is therefore not supported.

Lot boundary setback (Clause 5.1.3 of R Codes)

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<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
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<tbody>
<tr>
<td>Side setback (south)</td>
<td>Min 1.0 metre setback to storey</td>
<td>0.9 metres</td>
</tr>
</tbody>
</table>

Design principles (clause 5.1.3 P3.1 & P3.2 of the R-Codes):

Buildings set back from lot boundaries so as to:
- reduce impacts of building bulk on adjoining properties;
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.

Buildings built up to boundaries (other than the street boundary) where this:
- makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;
- does not compromise the design principle contained in 5.1.3 P3.1;
- does not have any adverse impact on the amenity of the adjoining property;
- ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and
- positively contributes to the prevailing development context and streetscape.
The proposal is to extend an existing store with a setback of 0.9 metres an additional 1.5 metre forward to line up with the corner of the garage. At present, this recessed section is used for the storage of bins.

The additional 1.5 metre length of wall continues at the same setback and is adjacent to the garage and wall on the adjoining property containing no major openings. It therefore does not have any adverse impact on the amenity of the adjoining property in terms of building bulk or overshadowing. The proposal makes more effective use of space by providing an additional undercover storage area.

The proposed setback variation is considered to meet relevant design principles for the following reasons:

- Makes effective use of space by providing more covered storage area;
- Does not have an adverse impact on neighbour amenity in terms of building bulk, overshadowing or overlooking; and
- Positively contributes to the prevailing development context.

Visual privacy

<table>
<thead>
<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
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<tbody>
<tr>
<td>Unenclosed outdoor active habitable spaces</td>
<td>Min 7.5 metres from the lot boundary</td>
<td>7.3 metres</td>
</tr>
</tbody>
</table>

Design principles:

**Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:**
- building layout and location;
- design of major openings;
- landscape screening of outdoor active habitable spaces; and/or
- location of screening devices.

**Maximum visual privacy to side and rear boundaries through measures such as:**
- offsetting the location of ground and first floor windows so that viewing is oblique rather than direct;
- building to the boundary where appropriate;
- setting back the first floor from the side boundary;
- providing higher or opaque and fixed windows; and/or
- screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).

The upper storey balcony results in a minor setback variation to the northern side boundary.

There is minimal (if any) overlooking of active habitable spaces or outdoor living areas which are all oriented to the north side of the adjoining development. The location of a large amount of vegetation on the adjoining property also assists in screening views from the front balcony.
Overall in view of the above comments, it is considered that the location of the proposed front balcony from the northern side boundary satisfies the relevant design principles for the following reasons:

- results in minimal direct overlooking of active habitable spaces and outdoor living areas of the adjacent property.

**POLICY/STATUTORY IMPLICATIONS:**

There are policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

**FINANCIAL IMPLICATIONS:**

There are no financial implications related to this report.

**STRATEGIC DIRECTION:**

Our Planned Neighbourhoods

**Goal 4:** Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs

**Strategy 4.2:** Guide new development which is in harmony with the surrounding area and retains a sense of place

**COMMUNITY ENGAGEMENT:**

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

**OFFICER INVOLVEMENT:**

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
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</thead>
<tbody>
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<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Sonya Hayes, Senior Planning Officer</td>
</tr>
<tr>
<td></td>
<td>Jenny Bender, Senior Planning Officer</td>
</tr>
</tbody>
</table>

**ATTACHMENTS:**

1. Development Application plans
2. Summary of applicant's justification and neighbour comment
ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions of the Town of Cambridge Town Planning Scheme No. 1, Council REFUSES the application for a balcony addition and alterations to the dwelling submitted by Lou Marchesani and Associates at Lot 188 (No. 15) Tarongo Way, City Beach as shown on the plans dated 14 February 2018, for the following reason:-

(i) the proposal does not satisfy the deemed-to-comply provisions of Clause 39 of Town Planning Scheme No. 1 in relation to orderly and property planning and the conservation of the amenities for the locality as it will result in a development that is not consistent or compatible to the prevailing form of development in the locality.
DV18.40 LOT 62 (NO. 122) KIMBERLEY STREET, WEST LEEDERVILLE - 19 MULTIPLE DWELLING DEVELOPMENT - VEHICLE SECURITY GATE AND PEDESTRIAN GATE

SUMMARY:

The purpose of this report is for Council to consider a development application for a vehicle security gate and pedestrian gate for the 19 multiple dwelling development at No. 122 Kimberley Street, West Leederville. The gates require the deletion of a condition imposed by the Development Assessment Panel stating that, no security gates shall be installed in order to allow access to visitor parking bays at all times.

The Development Assessment Panels Secretariat has advised that minor amendments to Development Assessment Panel (DAP) decisions can be dealt with by the local government. A copy of the determination is required to be provided to the DAP.

The gates are visually permeable and match the infill panels of the front fencing. The gates are proposed to be set back from the front boundary, allowing a visitor's vehicle to temporarily park off the road, access the intercom and the gate will be opened by residents from their apartment.

The Administration recommends that the application should be approved.

AUTHORITY / DISCRETION

- **Advocacy** When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- **Executive** The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- **Legislative** Includes adopting local laws, town planning schemes & policies.
- **Review** When the Council operates as a review authority on decisions made by Officers for appeal purposes.
- **Quasi-Judicial** When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
- **Information** For the Council/Committee to note.

BACKGROUND:

<table>
<thead>
<tr>
<th>Application:</th>
<th>0035DA-2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner:</td>
<td>Mr CP Cumming and Mr LG Detata</td>
</tr>
<tr>
<td>Applicant:</td>
<td>Harden Jones Architects</td>
</tr>
<tr>
<td>Zoning:</td>
<td>Residential R40</td>
</tr>
<tr>
<td>Use class:</td>
<td>Dwelling (multiple) 'D' – discretionary</td>
</tr>
<tr>
<td>Land area:</td>
<td>2023m²</td>
</tr>
</tbody>
</table>
On 11 May 2015, the Metro West Development Assessment Panel (DAP) reconsidered an application for 19 multiple dwellings at the above site under section 31 of the State Administrative Tribunal Act 2004 and decided to approve the development subject to a number of conditions including:

7. No security gates shall be installed in order to allow access to visitor parking bays at all times.

The DAP Notice of Determination was issued on 22 May 2015. Building permits were issued for forward works and the multiple dwelling development on 26 February 2016 and 18 May 2016 respectively. The development was completed and an occupancy permit - strata was issued on 22 November 2017.

During the inspection for the occupancy permit, it was noted that security and pedestrian gates had been installed. The security gate was subsequently removed as it did not comply with the above condition.

The applicant was advised to submit a development application for the security and pedestrian gates and this application is the subject of the following report.

DETAILS:

Development description

The development comprises:

- Ground floor: ten (eight single bedroom and two, two bedroom) dwellings and a 100 metre long driveway adjacent to the south side boundary accessing 25 car parking bays (including five visitor bays) perpendicular to the driveway. Five staircases are located between the dwellings to access the dwellings above, and seven stores are located at the rear of the property, adjacent to the south side boundary.
- First floor: nine, two bedroom dwellings with eight dwellings partly overhanging car parking below. The front dwelling has a wide, open balcony facing the street and the remaining dwellings behind have screened balconies facing north.
- Landscaping is provided along the south side boundary, adjacent to the driveway.

The vehicle and pedestrian gates are proposed to be located across the driveway, set back 6.5 metres from the front boundary in line with the wall of the front dwellings. The gates are 1.8 metres high and constructed of visually permeable metal railings, to match the front fence infill panels.

The pedestrian access gate is controlled with a key pad. An intercom allows residents to open the vehicle and/or pedestrian gate for visitors using their key fob within their dwelling. The gates open inwards.

Community Consultation

The application was not required to be advertised.

Applicant's justification

The applicant has provided the following justification for the gates:
1. A pedestrian vehicular access gate is essential for the security of the complex. The driveway length is long (approx. 100 metres) therefore not visible from the road.

2. This situation allows the potential for anti-social behaviour, which could result in a detrimental impact for the property owners at 122 Kimberley Street.

3. For the adjoining property owner, a person/persons could walk down the driveway, jump a fence into an adjoining property and commit possible crime.

4. The scenarios depicted above are perfectly realistic and not in the best interests of the area.

5. Harden Jones Architects has completed many infill residential developments, most are gated at some point, either as part of a Development Approval or post occupancy application.

6. The gate design is simple and in keeping with the context of the overall development.

Assessment against the design principles

Design of car parking spaces (clause 6.3.4 of the R-Codes)

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<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Visitor car parking spaces</td>
<td>Located outside any security barrier</td>
<td>Located inside the security gate</td>
</tr>
</tbody>
</table>

Design principles (clause 6.3.4 P4 of the R-Codes):

Car, cycle and other parking facilities are to be designed and located on-site to be conveniently accessed, secure, consistent with streetscape and appropriately manage stormwater to protect the environment.

The plans approved by the DAP showed the five closest car bays to the street being designated as visitor parking bays. Following the issue of a building permit, the applicant requested the visitor bays to be spread more towards the centre of the carpark to cut travel distances for visitors and residents. The visitor bays have clear signage for visibility.

Condition 7 of the DAP approval was imposed to ensure compliance with the R-Codes deemed-to-comply requirement above. No gates were shown on the approved plans. With regard to the relevant design principle, the main concerns are whether there is still convenient access for visitors and whether there is any detrimental impact on the streetscape.

The 6.5 metre setback of the gate provides a safe waiting area off Kimberley Street for a vehicle, for visitors to access the intercom and wait for the gate to open. Technology allows for the gate to open conveniently by residents in their apartments.

With regard to streetscape, the gates match the infill panels of the front fencing. The gates are at a lower level and set back from the street and therefore have no detrimental impact on the streetscape.
It is therefore recommended that the gates be approved, condition 7 of the DAP Notice of Determination dated 22 May 2015 be deleted and the DAP Secretariat be advised accordingly.

POLICY/STATUTORY IMPLICATIONS:

There are no policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs

Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

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ATTACHMENTS:

1. Plan and photograph of the gates
2. DAP Notice of Determination and approved plans dated 22 May 2015

ADMINISTRATION RECOMMENDATION:

That:

(i) in accordance with Clause 68(2) of the Deemed Provisions of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES the application for a vehicle security gate and a pedestrian gate submitted by Harden Jones Architects at Lot 62 (No. 122) Kimberley Street, West Leederville as shown on the plans dated 1 February 2018;
(ii) Condition 7 of the Metro West Joint Development Assessment Panel Notice of Determination dated 22 May 2015 stating:

No security gates shall be installed in order to allow access to visitor parking bays at all times.

be deleted;

(iii) the Development Assessment Panels Secretariat be notified of this decision.
SUMMARY:

The purpose of this report is for Council to consider a development application for a Carport at Lot 260 (No. 20) Linden Gardens, Floreat.

Under the Town of Cambridge Town Planning Scheme No. 1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the Scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1b) of the Scheme. A side setback variation is also sought in relation to the setback of the carport from the southern boundary. This variation was advertised to the adjoining owners. No objections were received. This variation has been assessed under the Design Principles of the R-Codes and is not discussed further in this report.

Should Council resolve to approve the application, an absolute majority decision is required.

The Administration recommends that the application should be approved subject to conditions.

AUTHORITY / DISCRETION

- **Advocacy**: When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- **Executive**: The substantial direction setting and oversight role of the Council. E.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- **Legislative**: Includes adopting local laws, town planning schemes & policies.
- **Review**: When the Council operates as a review authority on decisions made by Officers for appeal purposes.
- **Quasi-Judicial**: When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
- **Information**: For the Council/Committee to note.

BACKGROUND:

- **Application**: 0040DA-2018
- **Owner**: AGB Pinto and Y Liu
- **Applicant**: Perth Patios & Home Improvements
- **Zoning**: Residential R12.5
- **Use class**: Dwelling (single) ‘P’ – permitted
- **Land area**: 736sqm
DETAILS:

Development description

The subject site is located within the Floreat Precinct. The site currently comprises of a single storey dwelling to the front, with a skillion building to the rear. A shade sail structure was previously located within the front setback area to provide shade to the approved parking bays. This has since been removed. A double width driveway is located to the southern side of the site.

The surrounding sites consist predominantly of single storey dwellings featuring both single and double width garages. A number of double carports are located within the front setback area.

The development application proposes the following:

- a double carport, 6.0 metres deep and 5.2 metres wide, to be constructed over the existing vehicle crossover with a 1.5 metre setback from the western (front) boundary and a setback of between 0.5 metres and 1.4 metres from the southern (right) side boundary;
- the carport features a flat roof;
- the carport has a maximum height of 2.64 metres as measured from the existing natural ground level; and
- the carport is open on all sides, and abuts a 0.75 metre solid dividing wall which is located with the front setback area.

An assessment of the application has been conducted against the provisions of the Town Planning Scheme No. 1 (the Scheme), Local Law 43 (Schedule 3), relevant deemed-to-comply requirements of the Residential Design Codes (R-Codes) and the following Local Planning Policies:

3.1 – Streetscape; and
6.3 – Floreat Precinct.

The proposal seeks a variation to the Scheme (Clause 20) with regards to the street setback in the Floreat Precinct.

Community Consultation

The application was advertised for a period of 19 days, from 23 February 2018 to 12 March 2018, to the five (5) surrounding properties in accordance with the requirements of the Residential Design Codes of Western Australia. No objections were received.

Applicant’s justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to Street Setbacks and Lot Boundary Setback. A summary of the applicant’s justification is attached to this agenda.
Assessment against the design principles

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary street setback</td>
<td>Minimum 9.0 metres</td>
</tr>
</tbody>
</table>

Clause 39

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied my an absolute majority that:-

(a). If approval were to be granted, the development would be consistent with:-
   (i) The orderly and proper planning in the locality;
   (ii) The conservation of the amenities of the locality; and
   (iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b). The non-compliance would not have any undue adverse effect on:-
   (i) The occupiers or users of the development;
   (ii) The property in, or the inhabitants of, the locality; or
   (iii) The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

(i) The orderly and proper planning in the locality

The proposed setback of the carport is consistent with existing setbacks in the immediate locality. Eight (8) carports in the front setback area are evident on the subject street, with six (6) being located on the eastern side of the street, the same side as the subject site.

The proposed structure is open style and will allow clear views through to the existing dwelling. This will ensure that the impacts of building bulk, as seen from the street, are minimised and will ensure orderly and proper planning in the locality. The applicant is proposing to enhance the existing streetscape and the subject site with the proposal.

It is considered, given the current streetscape, that the proposal would be consistent with the surrounding dwellings in the immediate locality.

(ii) The conservation of the amenities of the locality; and

The encroachment into the primary street (Linden Gardens) setback area is in keeping with the streetscape, as it provides passive surveillance between the subject site and the street. The proposed carport does not unduly impact on open space requirements, as it provides roof cover to the existing vehicle access on-site. As the proposed variation relates to a carport, there is no adverse impact on visual privacy to the adjoining property.
(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

The proposal will be consistent with the Statement of Intent of the Floreat Precinct, and will provide additions to an existing single residential dwelling consistent with those in the immediate locality.

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for a double carport to provide a covered parking area for vehicles. The reduced street setback will not result in an undue adverse effect on the owners of the property. The proposed reduced setback to the front boundary will have no impact on the usability of the subject site, and will still allow sunlight from the north to the dwelling.

(ii) The property in, or the inhabitants of, the locality;

The proposed reduced street setback will not impact on the inhabitants of the locality as the proposed carport will abut a driveway of the adjoining property to the south. The proposal does not impact negatively on any adjoining neighboring property due to the open nature of the structures and is consistent with existing residential development in the locality. The adjoining owners in the immediate locality have no objections to the proposal.

(iii) The likely future development of the locality.

It is considered that the variation to front setback would not be out of character with the remainder of the streetscape. A number of similar structures are constructed within the street setback area of the surrounding dwellings.

The proposed non-complying application is therefore supported.

POLICY/STATUTORY IMPLICATIONS:

The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

Should the Council refuse the application for development approval, the applicant may have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.
STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs; and

Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place.

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

| Responsible Executive | Marlaine Lavery, Director Planning and Development |
| Responsible Manager   | Petar Mrdja, Manager Development Assessment       |
| Contributors          | Ciara Slim, Statutory Planning Officer            |

ATTACHMENTS:

1. Development Application plans; and
2. Summary of applicant's justification.

ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions and Clause 39 (2) of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES by an ABSOLUTE MAJORITY decision the application for a Carport submitted by Perth Patios & Home Improvements at Lot 260 (No. 20) Linden Gardens, Floreat as shown on the plans dated 12 February 2018, subject to the following conditions:-

(i) the carport to remain open on all sides. No solid door is to be installed; and
(ii) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the site for the effective retention of stormwater on site.

Advice Note:

The applicant be advised that:

1. The applicant is responsible for ensuring that all lot boundaries as shown on the approved plans are correct.
SUMMARY:

The purpose of this report is for Council to consider a development application for a carport, verandah and front fence at Lot 466 (No. 17) Marimba Crescent, City Beach.

Under the Town of Cambridge Town Planning Scheme No.1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1a) of the Town Planning Scheme No.1. Council determination is also required in relation to lot boundary setbacks as an objection has been received.

Should Council resolve to approve the application, an absolute majority decision is required.

The Administration recommends that the application should be approved subject to conditions.

AUTHORITY / DISCRETION

☐ Advocacy  When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

☐ Executive  The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

☐ Legislative  Includes adopting local laws, town planning schemes & policies.

☐ Review  When the Council operates as a review authority on decisions made by Officers for appeal purposes.

☑ Quasi-Judicial  When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

☐ Information  For the Council/Committee to note.

BACKGROUND:

Application: 0338DA-2017
Owner: Mr GM Walker and Mrs CM Walker
Applicant: Mr GM Walker and Mrs CM Walker
Zoning: Residential R12.5
Use class: Dwelling (single) ‘P’ – permitted
Land area: 789sqm
DETAILS:

Development description

The subject site is located within the City Beach Precinct. The site currently comprises of a single storey dwelling with a single garage and crossover located to the western side of the site.

The surrounding developments consist of both single and double storey dwellings, set back between 4.0 metres and 7.0 metres from Marimba Crescent.

The development application proposes the following:

- the extension of the existing verandah around the front of the master bedroom, setback 4.77 metres from the primary street (Marimba Crescent);
- a double carport located to the western side of the site. An objection has been received, however, the objections are not planning related and do not comment on the impact of the carport on the adjoining dwelling;
- a new double crossover which complies with the Town's requirements; and
- a front fence with a maximum solid wall height of 0.75 metres, and an overall height of 1.8 metres. The infill panels are to comply with the visual permeability requirements of the Streetscape Policy.

An assessment of the application has been conducted against the provisions of the Town Planning Scheme No. 1 (the Scheme), Local Law 43 (Schedule 3), relevant deemed-to-comply requirements of the Residential Design Codes (R-Codes) and the following Local Planning Policies:

- 3.1 – Streetscape;
- 3.3 – Building Height; and
- 6.1 – City Beach Precinct.

The proposal seeks a variation to the Scheme (Clause 20) with regards to the street setback in the City Beach Precinct.

Community Consultation

The application was advertised for a period of 16 days, from 28 November 2017 to 14 December 2017, to the two (2) surrounding properties in accordance with the requirements of the Residential Design Codes of Western Australia. One (1) objection was received.

The adjoining owner to the east has commented on the plans stating that they have no objections to the lot boundary setback of the verandah or the visual privacy variation. This has been assessed under the design principles of the R-Codes and is deemed to satisfy the criteria, and therefore will not be assessed further in this report.

The table below provides a summary of the comments and issues raised during the community consultation process and an Officer technical response to each comment and issue.
Summary of Comments Received:  

| Officer Technical Comment: |  
|---------------------------|--|  
| During a discussion with our neighbours, it was indicated that there is a plan to attach the post to the foundations of our house. At that point, the house is a two storey building on pillars. We are concerned that any disturbance of the soil under and around those pillars could cause serious damage to our house. | This is not a planning related objection. The carport will be free standing. |  
| There are trees close to the boundary which are likely to be damaged during the construction of the retaining wall. If work has to be done from our side of the boundary line. | This is a civil issue between adjoining owners. Trees are located on private property. |  
| In the event of work having to be done from our side of the boundary line there is likely to be damage to the driveway. | This is not a planning related objection. |  
| There is an old asbestos fence between the two properties up to the construction point. If the asbestos is damaged or disturbed it would be a potential health hazard. | This is not a planning related objection. |  
| We have two dogs - so if part of the fence or gate needs to be removed some sort of temporary fence would need to be erected to keep the dogs from getting out. | This is a civil issue between adjoining owners. This is not a planning related objection. |  
| If, as a result of heavy machinery working so close to our house, there is cracking or other damage who is responsible for the cost of repairs. | This is not a planning related objection. |  

**Applicant's justification**

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to setbacks and visual privacy. A summary of the applicant's justification is attached to this agenda.

**Assessment against the design principles**

**Street Setback (Clause 20 of the Town Planning Scheme No. 1)**

In accordance with Clause 20, notwithstanding the above provisions of the Residential Design Codes, street boundary setbacks within the City Beach Precinct shall be a minimum of 7.5 metres from the primary street (Marimba Crescent).

In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.

The Council must therefore be satisfied BY ABSOLUTE MAJORITY that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme:
Deemed-to-comply provision | Proposed
---|---
Primary street setback | Minimum 7.5 metres | Verandah: 4.77 metres to 6.8 metres
| Carport: 1.96 metres to 3.5 metres

Clause 39

(3) The Council cannot grant planning approval for a non-complying application unless it is satisfied my an absolute majority that:-

(a). If approval were to be granted, the development would be consistent with:-
   (i) The orderly and proper planning in the locality;
   (ii) The conservation of the amenities of the locality; and
   (iii) The statement of intent set out in the relevant Precinct Planning Policy; and

(b). The non-compliance would not have any undue adverse effect on:-
   (i) The occupiers or users of the development;
   (ii) The property in, or the inhabitants of, the locality; or
   (iii) The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) If approval were to be granted, the development would be consistent with:-

   (i) The orderly and proper planning in the locality

   The proposed setback of the carport and verandah are consistent with existing setbacks in the immediate locality. The street comprises of a number of corner sites (including directly abutting the subject site), with secondary street setbacks to Marimba Crescent, and therefore there is not a consistent setback of 7.5 metres along the street.

   The proposed structures are open style and will allow clear views through to the existing dwelling. This will ensure that the impacts of building bulk, as seen from the street, are minimised and will ensure orderly and proper planning in the locality. The applicant is proposing to enhance the existing streetscape and the subject site with the proposal.

   It is considered, given the current streetscape, that the proposal would be consistent with the surrounding dwellings in the immediate locality. The site to the north (directly across the road) is set back approximately 4.0 metres from the Marimba Street boundary. A number of carports located as close as 0.3 metres are evident on the subject street and within the immediate locality.
(ii) The conservation of the amenities of the locality; and

The encroachment into the primary street (Marimba Crescent) setback area is in keeping with the streetscape, as it provides passive surveillance between the subject site and Marimba Crescent. The proposed carport does not unduly impact on open space requirements, as it provides roof cover to the existing vehicle access on-site. As the proposed variation relates to a carport, there is no adverse impact on visual privacy to the adjoining property.

(iii) The statement of intent set out in the relevant Precinct Planning Policy; and

The proposal will be consistent with the Statement of Intent of the City Beach Precinct, and will provide additions to an existing single residential dwelling consistent with those in the immediate locality.

(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for a single residential dwelling to be occupied by the owners of the property. The reduced street setback will not result in an undue adverse effect on the owners of the property. In supporting the proposed street setback variation, the occupiers of the proposed dwelling will be able to enjoy the extension of the verandah which provides a more useable area and enhances the existing development.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback will not impact on the inhabitants of the locality as the proposed verandah and carport are screened from the adjoining properties by mature vegetation. The proposal does not impact negatively on any adjoining neighboring property due to the open nature of the structures, and is consistent with existing residential development in the locality.

(iii) The likely future development of the locality.

It is considered that the variation to front setback would not be out of character with the remainder of the streetscape. Due to the size and nature of the street, it is unlikely that the approval of this development would have any impact on future developments of the locality, and could not be used as a precedent.

The proposed non-complying application is therefore supported.

Lot Boundary Setback (Clause 5.1.3 of the R-Codes)

<table>
<thead>
<tr>
<th>Setback carport from western (right) boundary</th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 metre</td>
<td>0.75 metres</td>
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<tr>
<td></td>
<td>(average 1.35 metres)</td>
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</tbody>
</table>

**Design principles:**

P3.1 Buildings set back from lot boundaries so as to:

- reduce impacts of building bulk on adjoining properties;
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.
The applicant seeks variations to the lot boundary setback of the carport from the western side boundary.

Under the Residential Design Codes, a variation can be supported where it is considered that the application satisfies the relevant design principles. It is considered, that the proposal does satisfy the above design principles for the following reasons:

- the reduced setback to the west is to a portion of the boundary, with the proposed carport being set back an average of 1.35 metres from the side boundary. This will minimise the overall impact on the adjoining dwelling in terms of building bulk;
- the proposed finished floor level of the garage will be approximately 1.16 metres below the natural ground level of the adjoining property to the east, and therefore will ensure minimal impact in terms of loss of sunlight and ventilation to the adjoining property;
- the carport is located within the front setback area, and will not abut any habitable room windows or outdoor living areas on the adjoining site; and
- the proposed carport is open style, therefore still allowing sunlight and ventilation to the subject site, and minimising the impact on the adjoining property.

Overall, the proposed carport will be located approximately 1.16 metres lower than the adjoining properties natural ground level, and will be open style, therefore minimising the overall impact on building bulk and access to sunlight. The proposal is therefore considered to satisfy the design principles of the R-Codes.

POLICY/STATUTORY IMPLICATIONS:

The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

Should the Council refuse the application for development approval, the applicant may have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs
Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Engagement Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.
OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Ciara Slim, Statutory Planning Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. Development Application plans
2. Summary of applicant's justification and neighbour comment

ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions and Clause 39 (2) of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES by an ABSOLUTE MAJORITY the application for a Carport, Verandah and Front Fence submitted by Mr GM Walker and Mrs CM Walker at Lot 466 (No. 17) Marimba Crescent, City Beach as shown on the plans dated 22 December 2017, subject to the following conditions:-

(i) the roof material not to be zincalume or off-white ('Surfmist') Colorbond;

(ii) a minimum of 50% of the front setback area to be landscaped to the satisfaction of the Town;

(iii) the crossover to be no wider than 6.0 metres (excluding splays);

(iv) the carport to remain open on all sides. No solid door is to be installed.

(v) the infill panels of the fencing in the front setback area to have a surface with an open to solid ratio of no less than 4:1 and meet the deemed-to-comply provisions of clause 3.1.7 of the Town's Planning Policy 3.1: Streetscape;

(vi) the garage door to have a surface with an open to solid ratio of no less than 4:1 in accordance with the deemed-to-comply provisions of clause 3.1.4 of the Town's Planning Policy 3.1: Streetscape;

(vii) the redundant vehicle crossovers (x2) outside the subject site to be removed and the kerbing, verge and footpath to be reinstated to the specifications and satisfaction of the Town; and

(viii) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the site for the effective retention of stormwater on site.
Advice Note:

The applicant be advised that:

1. The applicant is responsible for ensuring that all lot boundaries as shown on the approved plans are correct; and

2. All works within the road reserve, such as vehicle crossovers, verge paving and landscaping require a separate application and approval by the Town’s Infrastructure Services. These works must conform to the Town’s specifications.
AGENDA - DEVELOPMENT COMMITTEE - 17 APRIL 2018

DV18.43 LOT 258 (NO. 24 LINDEN GARDENS, FLOREAT - PROPOSED CARPORT AND TWO PATIOS

SUMMARY:

The purpose of this report is for Council to consider a development application for a carport and two patios at No.24 Linden Gardens, Floreat.

Under the Town of Cambridge Town Planning Scheme No.1 (Clause 39), Council will determine an application for planning approval which does not comply with a standard or requirement of the scheme. In this instance, the proposed application does not meet the deemed-to-comply provisions of Clause 20(1b) of the Town Planning Scheme No.1.

Should Council resolve to approve the application, an absolute majority decision is required.

The Administration recommends that the application should be approved subject to appropriate conditions.

AUTHORITY / DISCRETION

- Advocacy: When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- Executive: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- Legislative: Includes adopting local laws, town planning schemes & policies.
- Review: When the Council operates as a review authority on decisions made by Officers for appeal purposes.
- Quasi-Judicial: When the Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
- Information: For the Council/Committee to note.

BACKGROUND:

Application: 0290DA-2017
Owner: Mr AF Arundell & Mrs KT Arundell
Applicant: Addstyle Constructions Pty Ltd
Zoning: Residential R12.5
Use class: Dwelling (single) ‘P’ – permitted
Land area: 880sqm²

This application was originally submitted on the 12 October 2017 with plans illustrating a front fence, carport and two (2) patios. As the front fence was exempt from clause 20 of the Town Planning Scheme No.1, revised plans were received on the 22 January 2018 removing the front fence structure. It is the latter set of plans that are the subject of the following report.
Officers note that the fence was approved under delegated authority on the 2 February 2018.

DETAILS:

Development description

The subject site is located within the Floreat Precinct. The site features an existing single storey dwelling. The site is a corner lot which two street frontages, The Boulevard and Linden Gardens.

The surrounding sites consist of single storey dwellings featuring double garages, carports and shade sails within the front setback area. As the dwelling is set back furthest from "The Boulevard", Linden Gardens is the secondary street.

The development application proposes the following:

- A double carport, 5.5 metres long and 6.0 metres wide, is to be constructed over an existing vehicle crossover with a 600mm setback from the southern side boundary and (1.245m - 3.560m) from the front western boundary;
- The carport features a flat roof;
- The height of the carport from ground level is 2.657 metres to the ceiling and maximum height of 2.90 to the top of the roof.
- The carport is open on all sides, however, is adjacent to an open style dividing fence (height 0.6 - 1.8 metres) along the southern side boundary and the rear of the carport abuts the front of the dwelling.
- Patio one (1), as illustrated on the site and elevation plan features a western side boundary setback of 6 metres.
- Patio two (2), as illustrated on the site plan and elevation plans features a western side boundary setback of 0.6 metres.

Applicant's justification

The applicant has provided written justification for the variations to the deemed-to-comply provisions relating to setbacks. A summary of the applicant's justification is attached to this agenda.

Neighbour submission

The application was advertised for a period of 14 days, from 13 November 2017 to 27 November 2017, to one (1) adjoining property in accordance with the requirements of the Residential Design Codes of Western Australia. No objections or submissions were received during the notice period.

Officers note that the applicant provided an adjoining property owner comment form to which the neighbour stated no objection to the proposed development.

Assessment against the design principles

Street setback (Clause 20 of the Town Planning Scheme No.1)

In accordance with Clause 20, notwithstanding the above provisions of the Residential Design Codes, street boundary setbacks within the Floreat Precinct shall be a minimum of 4.5 metres from the secondary street.
In considering variations to these provisions, Council shall have regard to Clause 39 of Town of Cambridge Town Planning Scheme No. 1, which deals with non-complying applications and Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, which deal with matters to be determined by a Local Government in considering an application for development approval.

The Council must therefore be satisfied BY ABSOLUTE MAJORITY that, in approving an application for development approval for a non-complying application, that the development would be consistent with the objectives as detailed in Clause 39 of the Scheme:

<table>
<thead>
<tr>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
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<tbody>
<tr>
<td>Secondary street setback</td>
<td>Min 4.5 metres</td>
</tr>
</tbody>
</table>

**Clause 39**

(3) **The Council cannot grant planning approval for a non-complying application unless it is satisfied my an absolute majority that:**

(a) **If approval were to be granted, the development would be consistent with:**
   1. The orderly and proper planning in the locality;
   2. The conservation of the amenities of the locality; and
   3. The statement of intent set out in the relevant Precinct Planning Policy; and

(b) **The non-compliance would not have any undue adverse effect on:**
   1. The occupiers or users of the development;
   2. The property in, or the inhabitants of, the locality; or
   3. The likely future development of the locality.

An assessment of the application against the objectives is provided below:

(a) **If approval were to be granted, the development would be consistent with:**

   1. the orderly and proper planning in the locality

   The proposal involves the construction of a carport and two patios to an existing single dwelling. As indicated in Figures (1,2 & 3) attached to this report, the street setback to the carport is consistent with the streetscape as viewed from Linden Gardens, whereby there are carports located within the street setback area on numerous properties.

   2. The conservation of the amenities of the locality; and

   The amenities in the locality will not be compromised by the approval of this application. The proposal is for an open carport and two patios. The proposal will not impact or cause any disturbance on the amenities in the locality.

   3. The statement of intent set out in the relevant Precinct Planning Policy; and

   The proposal consistent with the Statement of Intent of the Floreat Precinct, as the development proposes minor additions to an existing single residential dwelling to occupy the property which is consistent with those in the immediate locality.
(b) The non-compliance would not have any undue adverse effect on:-

(i) The occupiers or users of the development;

The proposal is for two patios and a carport which provide increased amenity for the occupiers/users of the development. The reduced street setback will not result in an undue adverse effect on the owners of the property. In supporting the proposed street setback variation, the occupiers of the proposed dwelling will be able to enjoy additional outdoor living area to their rear of the dwelling and have covered parking for cars whilst still allowing for passive surveillance of the street.

(ii) The property in, or the inhabitants of, the locality; or

The proposed reduced street setback will not impact on the inhabitants of the locality as the proposed carport does not impact negatively on any adjoining neighboring property and as previously mentioned is setback consistently with existing residential development in the locality.

(iii) The likely future development of the locality.

It is considered that the variation to front setback would not be out of character with the remainder of the streetscape. Due to the size and nature of the street setback, it is unlikely that the approval of this development would have any impact on future developments of the locality, and could not be used as a precedent.

It is further noted that the addition is to an existing dwelling which is set at an angle to the primary and secondary streets making it difficult to provide a carport in a location behind the street setback line.

The subject site retains existing landscaped within the front setback area. The application is fully compliant with all landscaping requirements.

The proposed non-complying application is therefore supported.

Lot boundary setback (Clause 5.1.3 of the R-Codes)

<table>
<thead>
<tr>
<th></th>
<th>Deemed-to-comply provision</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Side setback</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carport</td>
<td>Min 1.0 metre</td>
<td>0.6m</td>
</tr>
<tr>
<td>Patio (2)</td>
<td>Min 1.0 metre</td>
<td>0.6m</td>
</tr>
</tbody>
</table>

Design principles:
Buildings set back from lot boundaries so as to:
- reduce impacts of building bulk on adjoining properties;
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.
Buildings built up to boundaries (other than the street boundary) where this:
- makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;
- does not compromise the design principle contained in 5.1.3 P3.1;
- does not have any adverse impact on the amenity of the adjoining property;
- ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and
- positively contributes to the prevailing development context and streetscape.
Carport

The proposed side setback variation does not result in any undue building bulk on the street, as the carport is a relatively open structure, flat roofed and has been designed with features to complement the dwelling.

The proposed side setback variation is adjacent to the neighbours front yard and therefore any amenity impact on the neighbouring property in relation to direct sun and ventilation is considered significant. It is noted that the proposal is fully compliant with the deemed-to-comply provisions of Clause 5.4.2 'Solar Access for Adjoining sites' C2.1 of the R-Codes.

As the proposed variation relates to a carport there is no adverse impact on visual privacy to the adjoining property. It is noted that the proposal is fully compliant with the deemed-to-comply provisions of Clause 5.4.1 'Visual Privacy' C1.1 of the R-Codes.

Patio (No.2)

The setback variation to the patio will not directly impact the adjoining property as the proposal is adjacent to an existing solid dividing fence that is approximately 2 metres in height. Therefore, the patio does not adversely affect the property with respect to building bulk, privacy or the provision of sunlight and ventilation and is therefore supported.

POLICY/STATUTORY IMPLICATIONS:

There are no policy or statutory implications related to this report. The proposal was assessed against the provisions of the Residential Design Codes of Western Australia, Town Planning Scheme No.1, and the Town Planning Scheme Policy Manual.

FINANCIAL IMPLICATIONS:

There are no financial implications related to this report.

STRATEGIC DIRECTION:

Our Planned Neighbourhoods

Goal 4: Neighbourhoods that are well planned, attractive, respectful of the character and responsive to future needs
Strategy 4.2: Guide new development which is in harmony with the surrounding area and retains a sense of place

COMMUNITY ENGAGEMENT:

This matter has been assessed under the Community Consultation Policy. The requirements for consultation have been satisfied under the statutory provisions of the Town Planning Scheme.

OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>Petar Mrdja, Manager Development Assessment</td>
</tr>
<tr>
<td>Contributors</td>
<td>Marcel Bridge, Statutory Planning Officer</td>
</tr>
</tbody>
</table>
ADMINISTRATION RECOMMENDATION:

That, in accordance with Clause 68(2) of the Deemed Provisions and Clause 39 (2) of the Town of Cambridge Town Planning Scheme No. 1, Council APPROVES by an ABSOLUTE MAJORITY decision the application for a Carport and two Patios submitted by Addstyle Constructions Pty Ltd at Lot 248 (No.24) Linden Gardens, Floreat, as shown on the plans dated 22 January, 2018, subject to the following conditions:-

(i) the carport to remain open on all sides. No solid door is to be installed; and

(ii) water draining from roofs, driveways, paths and other impermeable surfaces shall be directed to garden areas, sumps or rainwater tanks within the site for the effective retention of stormwater on site.
DV18.44 WEMBLEY ACTIVITY CENTRE PLAN - CONSIDERATION OF WESTERN AUSTRALIAN PLANNING COMMISSION MODIFICATIONS

SUMMARY:

A report was presented to Council at the Ordinary Council Meeting held on 28 November 2017, outlining the modifications required by the Western Australian Planning Commission (WAPC) to the Wembley Activity Centre Plan (the Plan). At this meeting, Council resolved to support some modifications (1-9) and not support other modifications (10-13), and resubmit the Plan to the WAPC for determination.

The Plan was considered by the WAPC's Statutory Planning Committee (SPC) on 27 February 2018, where the WAPC determined that modifications 10-13 are required prior to the Plan being resubmitted and approved.

The purpose of this report is to consider the WAPC's modifications and to recommend that the modifications be undertaken so the Plan can take statutory effect.

AUTHORITY / DISCRETION

- **Advocacy**
  - When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.

- **Executive**
  - The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.

- **Legislative**
  - Includes adopting local laws, town planning schemes & policies.

- **Review**
  - When the Council operates as a review authority on decisions made by Officers for appeal purposes.

- **Quasi-Judicial**
  - When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

- **Information**
  - For the Council/Committee to note.

BACKGROUND:

For an outline of the history of the Plan, please refer to the Council Minutes of November 2017 (item DV17.125 - Attachment 2).

On 27 February 2018, the SPC resolved:

*That in accordance with clause 38(1)(b), Schedule 2 - Deemed provisions for local planning schemes of the Planning and Development (Local Planning Schemes) Regulations 2015, the Statutory Planning Committee resolves to require the Town of Cambridge to:*
1. Modify the draft Wembley Activity Centre Plan in accordance with the attached schedule of Modifications as appended in Attachment 4; and

2. Resubmit the modified plan to the Western Australian Planning Commission for approval.

(refer Attachment 1)

The outstanding modifications are outlined within the table below.

<table>
<thead>
<tr>
<th>Modification No.</th>
<th>Modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Following the Primary Controls table for Anchor Site 1, the text relating to Local Development Plan for Anchor Site 1 is to be clarified so as to list all matters to be addressed by the Local Development Plan, including the number of public parking spaces, the public open space areas to be provided and the street setback to Cambridge Street, and as a subset of this, additional matters to be addressed regarding Lot 78.</td>
</tr>
<tr>
<td>11</td>
<td>Modify page 33 to ensure consistency with Council modifications for Precinct 1 – Anchor Site 1 to be made to pg 34, 35 and Primary Controls table.</td>
</tr>
<tr>
<td>12</td>
<td>Modify pg 33 Development Precincts table - Specific Development Requirements for A1 – Anchor Site to retain reference to public parking bays and public opens spaces to be provided, with reference to specific numbers and amounts being removed.</td>
</tr>
<tr>
<td>13</td>
<td>Primary controls table for Anchor Site 1 to be modified to remove the Cambridge Street setback, with this to be determined through the Local Development Plan.</td>
</tr>
</tbody>
</table>

DETAILS:

The modifications not agreed to previously by Council relate solely to Anchor Site 1, which includes the Wembley Hotel. Since Council's decision in November 2017, Amendment 33 to Town Planning Scheme No. 1 (TPS1) has been gazetted that includes specific requirements relating to Anchor Site 1. These requirements are that:

- a local development plan (LDP) is prepared for the site;
- 'the LDP is to include provisions relating to building heights and setbacks which are consistent with the approved Wembley Activity Centre Plan;
- the LDP is to depict the location of a public parking facility, as agreed between the Town and the landowner/applicant; and
- the LDP is to depict the location and indicative design of open space within the site boundaries, as agreed between the Town and the landowner/applicant, including a public plaza fronting both Cambridge Street and the common western boundary with Lot 78.'

Given the specific reference to the Wembley Activity Centre Plan in TPS1 it is necessary to finalise the Plan to ensure the proper operation of TPS1. It is also necessary for the Plan to be approved for the Town to meet its obligations under State Planning Policy 4.2: Activity Centres for Perth and Peel, as well as to complete a project that has involved considerable community input and Town resources since its inception in 2014.

Whilst the modified development controls to be included in the Plan are not as specific as intended by Council, there are still appropriately worded requirements to ensure that public benefits will be achieved through the LDP process for the site. Importantly, the overall building height limits and setback requirements from adjoining residential buildings are still to be included in the Plan and the LDP will need to be consistent with those provisions.
A 2 metre setback from Cambridge Street will still be pursued through the LDP process, however, some flexibility may be required to cater for the future buildings' design and to incorporate the public plaza and parking.

It is also recognised that the WAPC are the determining body for structure plans and that the Plan forms an important part of other strategic projects (i.e. the Local Planning Strategy).

Whilst it is open for Council to consider not undertaking the modifications to the Plan or to respond again to the WAPC advising that the modifications are not supported, these options are not recommended.

It is therefore recommended that the modifications be made and the plan resubmitted to the WAPC for determination.

### Appeal to the State Administrative Tribunal

There is a right of appeal for a person who prepared an activity centre plan to apply to the State Administrative Tribunal (SAT) for a review, in accordance with the [Planning and Development Act 2005](#) Part 14, of a decision by the WAPC not to approve the activity centre plan. However, this right of appeal does not extend to an activity centre plan prepared by a local government, as distinct from a 'person'. This interpretation has been confirmed with legal advice sought by the Town.

### POLICY/STATUTORY IMPLICATIONS:

There are no policy/statutory implications associated with the recommendation of this report.

### FINANCIAL IMPLICATIONS:

The preparation of the Wembley Activity Centre Plan was funded as part of the Town Planning Scheme Review budgets between 2014 and 2016. The modifications recommended by this report will be funded under the Planning operational budget for 2017/18.

### STRATEGIC DIRECTION:

The projects identified in this report relate directly to key actions and strategies from the Strategic Community Plan (5.1: Facilitate commercial development within the Town) and Corporate Business Plan (5.1: Activity Centres Policy).

### COMMUNITY ENGAGEMENT:

Community engagement for the draft Wembley Activity Centre Plan was guided by the Community Engagement Strategy. The Wembley Activity Centre Plan was endorsed by Council at its meeting held on 22 March 2016.

The [Planning and Development (Local Planning Schemes) Regulations 2015](#) outline requirements for Activity Centre Plans, including that a local government must take any steps considered appropriate to advertise the Activity Centre Plan.

Pursuant to Schedule 2, Part 5, Clause 35(3) modifications to any activity centre plan may not be advertised on more than one occasion without the approval of the Commission.
OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery, Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>Brett Cammell, Manager Planning Strategies and Economic Development</td>
</tr>
<tr>
<td>Contributors</td>
<td>Simon Shub, Senior Strategic Planning Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. WAPC correspondence dated 16 March 2018
2. Council minutes 27 November 2017 - Item DV17.125

ADMINISTRATION RECOMMENDATION:

That:-

(i) the Western Australian Planning Commission's modification Nos 10 to 13 to the Wembley Activity Centre Plan be undertaken, as contained in the Schedule of Modifications as provided in Attachment 1 to this report; and

(ii) the Wembley Activity Centre Plan be resubmitted to the Western Australian Planning Commission for determination.
DV18.45 HEALTH AND COMPLIANCE POLICIES - REVIEW AND ADOPTION

SUMMARY:
To advise Council of the review and amendment of existing Council Policies and to adopt a new relating to 'Verges - Use for Temporary Storage of Goods and Items'..

AUTHORITY / DISCRETION

- **Advocacy**: When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.
- **Executive**: The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.
- **Legislative**: Includes adopting local laws, town planning schemes & policies.
- **Review**: When the Council operates as a review authority on decisions made by Officers for appeal purposes.
- **Quasi-Judicial**: When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.

The Town’s Health and Compliance Section, comprising of the Heath Services Unit, Ranger Services Unit and Compliance Unit, is responsible for enforcing the Town’s Local Laws and associated Council policies.

DETAILS:
The Health and Compliance Section has recently commenced enforcement of signs in a public place and on public property. As part of this enforcement programme, a review of the relevant Council policies has been carried out. This review has revealed that the policies are in need of amendment to remove ambiguity and update with current procedures and practices.

1. **Policy No: 4.2.1 - ‘Paving and Draining of Rights of Way’**.
   
   This Policy has been amended to reflect the new title of the Director Planning and Development and an update of legislation. It does not alter the intent of the Policy.

2. **Policy No: 4.2.2 - ‘Revocation of Environmental Protection Act Notices’**.
   
   This Policy has been amended to update of legislation. It does not alter the intent of the Policy.

3. **Policy No: 4.2.3 - ‘Control of Ants and Termites on Local Government Property’**.
   
   This Policy has had minor amends to include wording relating to action to be taken where there is a risk to health and safety.
4. **Policy No: 4.2.4 - ‘Out of Hours Construction Projects’**.

This Policy has been significantly amended to reflect the new title of the Manager and to include requirements for improved communication with potentially affected persons.

5. **Policy No: 4.2.5 - ‘Outdoor Eating Facilities’ and Guidelines.**

This Policy has been amended to update of legislation. It does not alter the intent of the Policy.

6. **Policy No: 4.2.6 - ‘Temporary Storage of Items, Materials and Goods on a Verge or Local Government Property’**.

This is a new policy with formalises the Town's current practices and procedures relating to the storage of items, material and goods on a verge or on local government property. It also includes bulk waste bins.

7. **Policy No: 4.2.7 - ‘Dust Suppression At Demolition Sites’**.

This policy has been renumbered from 4.4.4 and moved from the Building Section to Heath and Compliance Section, as the policy relates to enforcement procedures. The policy has been significantly amened to reflect new requirements for Dust Management Plans and increased requirements to be taken to suppress dust.

**Comment**

It is essential that the new policies and guidelines are adopted to comply with the Town's Local Law requirements and are clear, concise and reflect the view of the Council. The relevant Policy amendments (changes shown marked up) are attached to this report.

**POLICY/STATUTORY IMPLICATIONS:**

The changes proposed will amend the current Council Policies and adopt a new Policy.

**FINANCIAL IMPLICATIONS:**

Not Applicable

**STRATEGIC DIRECTION:**

Consideration of this policy is consistent with the Town's Strategic Community Plan 2013 - 2023 and responds to:-

**Our Community Life**

**Goal 3**  
An active, safe and inclusive community  
Strategy 3.4: Create and maintain safe environments

**Our Council**

**Goal 11:** A strong performing local government  
Strategy 11.5: Continuously strive to improve services delivered to the community.
COMMUNITY ENGAGEMENT:

Community Engagement is not required.

OFFICER INVOLVEMENT:

<table>
<thead>
<tr>
<th>Responsible Executive</th>
<th>Marlaine Lavery - Director Planning and Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Manager</td>
<td>John Giorgi, JP - Manager Health and Compliance Services</td>
</tr>
<tr>
<td>Contributors</td>
<td>Steven Cleaver - Coordinator Health and Compliance, M Merenda Compliance Officer, P Keogh Compliance Officer</td>
</tr>
</tbody>
</table>

ATTACHMENTS:

1. Policy No: 4.2.1 - 'Paving and Draining of Rights of Way'.
2. Policy No: 4.2.2 - 'Revocation of Environmental Protection Act Notices'.
3. Policy No: 4.2.3 - 'Control of Ants and Termites on Local Government Property'.
4. Policy No: 4.2.4 - 'Out of Hours Construction Projects'.
5. Policy No: 4.2.5 - 'Outdoor Eating Facilities' and Guidelines.
6. Policy No: 4.2.6 - 'Temporary Storage of Items, Materials and Goods on a Verge or Local Government Property'.
7. Policy No: 4.2.7 - 'Dust Suppression At Demolition, Building and Construction Sites'.

ADMINISTRATION RECOMMENDATION:

That the following amended and new Council policies and guidelines be adopted:-

(i) Policy No: 4.2.1 - 'Paving and Draining of Rights of Way', as shown in Attachment 1;
(ii) Policy No: 4.2.2 - 'Revocation of Environmental Protection Act Notices, as shown in Attachment 2;
(iii) Policy No: 4.2.3 - 'Control of Ants and Termites on Local Government Property', as shown in Attachment 3;
(iv) Policy No: 4.2.4 - 'Out of Hours Construction Projects', as shown in Attachment 4;
(v) Policy No: 4.2.5 - 'Outdoor Eating Facilities' and Guidelines, as shown in Attachment 5;
(vi) Policy No: 4.2.6 - 'Temporary Storage of Items, Materials and Goods on a Verge or Local Government Property', as shown in Attachment 6; and
(vii) Policy No: 4.2.7 - 'Dust Suppression At Demolition, Building and Construction Sites', as shown in Attachment 7.
**SUMMARY:**

To obtain Council approval to enforce various notices issued under the Health Act to remedy unsatisfactory conditions at Lot 41 (No. 25) Pandora City Beach, which involves removal of accumulated rubbish and disused items, removal of overgrown vegetation and flammable material on the property, also requiring demolition of the derelict house due to unauthorised dangerous building alterations.

**BACKGROUND:**

The property has been the subject of numerous complaints and unsatisfactory conditions, almost on a monthly basis since the 2013. A detailed chronology of events is shown at Attachment 1. The recent history is shown below:

**6 December 2013**

Complaints received regarding the state of property and its potential fire risk from WA Police and neighbours.

**9 December 2013**

Freezing order placed on title by the Department of Public Prosecutions under proceeds from crime.

**26 November 2015**

Complaints continued to be received about the derelict property and overgrown vegetation on the property. Health Act notices served declaring property unfit for human habitation.

**30 November 2015**

Bushfire notice issued

**21 April 2016**

Order lifted following sanitary facilities being installed.

**25 August 2016**

Premises inspected in August 2016. Notices issued under Health Act declaring the house 'unfit for human habitation', requiring cleaning and disinfection, a Notice under the Local Government Act to remove accumulated rubbish and disused items from the property and a Notice under the Town of Cambridge Private Property Local Law to reduce the amount of vegetation on the property. The Notices required cleaning and disinfection by 1 September 2016 and repair of the house.

A Notice pursuant Section 3.25(1) of the Local Government Act 1995 required the Owner to clean the yard of all disused materials by 23 December 2016.

The notices were affixed to the front door and posted by registered mail to the address.
28 September 2016
Inspection by EHO's revealed owners son undertaking some clean-up work.

8 November 2016
Inspection by EHO's revealed owners son undertaking some clean-up work.

10 November 2016
Inspection by EHO's revealed owners son undertaking some clean-up work.

19 December 2016 - 28 Mar 2017
Property Locked and uninhabited.

26 March 2018
Following a complaint an inspection was carried out by Councils EHO's, premises being inhabited by associate of owner's son. Large dog present so inspection rescheduled.

28 March 2018
Inspection by Councils EHO's and Rangers. Squatter was vacating premises at the time of inspection. Inspection revealed premises in poor and dangerous condition, namely:

- Unapproved and dangerous building alterations
- Illegal plumbing
- Illegal wiring
- Overgrown vegetation
- Premises unclean with significant amounts of accumulated rubbish.

DETAILS:
An inspection of the house and property on 28 March 2018 by the Coordinator Health and Compliance and Environmental Health Officer revealed the following:

External
The property is overgrown with weeds and vegetation and is in an untidy, unsightly, unkempt and is being used for storage which contains numerous disused materials. A detailed list is shown at Attachment 2.

House Cleanliness and Vermin Control: Attachment 3
1. The house is unclean with a build-up of dirt and filth- It is to be thoroughly cleansed and disinfected.
2. The house contains accumulated rubbish, refuse and disused materials throughout all rooms- to be cleaned and rubbish removed.
3. There is accumulated rubbish, refuse and disused materials throughout the rooms, which provide ideal harbourage for rats and vermin. All materials are to be stored in a manner so as not to cause potential harbourage.
4. Due to the accumulated rubbish, refuse and disused materials, effective measures to eradicate rodents and other vermin by providing rodenticide baits and/or traps are to be placed throughout the house and property.
5. The house is unsecured, providing access to the interior - all open or damaged windows, are to be appropriately secured so as to prevent unauthorised access and human habitation.

**House Structural Condition:** Attachment 4

1. The roof has tiles missing and is to be repaired and made weatherproof.
2. All rusted or missing gutters and down pipes are to be repaired or replaced and be made weatherproof.
3. All downpipes are to be connected to rainwater soak-wells.
4. All broken windows to be repaired.
5. All broken doors to be repaired or replaced.
6. All missing eaves to be replaced and/or repaired.
7. All pipes, fittings and fixtures connected to the water supply, drainage and sewerage are to comply with the provisions of the By Laws made under the Metropolitan Water Supply Sewerage and Drainage Act.
8. A certificate to be provided by a licensed plumber certifying that the water supply complies with the relevant Codes, Town of Cambridge Health Local Law and with the provisions of the By Laws made under the Metropolitan Water Supply Sewerage and Drainage Act.
9. The electrical supply and wiring shall comply with the relevant Codes, Town of Cambridge Health Local Law and Western Power requirements.
10. A certificate to be provided by a Licensed Electrician certifying that the electrical supply and wiring complies with the relevant Codes, Town of Cambridge Health Local Law and Western Power requirements.
11. A compliant laundry and washing facilities is to be provided.
12. A compliant kitchen and cooking facilities is to be provided.
13. Several illegal alteration/additions of the house has taken place, namely
   a. An internal wall in the lounge room has been removed and replaced with a steel column and beam.
   b. A room consisting of an entry door has been created to the northern side of the house. The room is non-compliant with low head heights, inadequate waterproofing, structural inadequacy and use on non-energy efficient materials.
   c. A two storey addition containing three small rooms has been created on the western elevation. The rooms are non-compliant with low ceiling heights, non-compliant stairs.
   d. Several small unapproved rooms have been created on the southern elevation. The walls are constructed of single leaf masonry which is not supported by engaged piers. One wall has collapsed. Waterproofing is inadequate resulting in water pooling in the additions. Wood is subject to termite damage and wood rot. All rooms are non-compliant with low head heights resulting in life safety issues.
   e. The patio masonry balustrade has been removed resulting in risk of falls.
   f. A deck and patio has been created on the eastern elevation. The deck is not structurally sound and is in risk of collapse.
   g. A masonry front wall has been constructed without engaged piers and has several structural cracks. The wall is not structurally sound and is in risk of collapse.
Local Government Act Notice Attachment 5

On 28 March 2018, the property still contained excessive disused materials, accumulated rubbish along grass overgrown vegetation and trees. (Refer attachment 2)

Bush Fires Act Notice Attachment 5

As a result of a further complaint on 30 November 2015, a Notice pursuant to the Bush Fires Act was posted to 25 Pandora Drive, City Beach, Western Australia 6015. This Notice requires the Owner to remove the potential bushfire risk on the land by removing the excess vegetation, long grass, tall trees and flammable material which is a potential bush fire risk, by 16 November 2015.

When the long grass cures, a serious fire hazard will be created, which could also potentially affect adjoining properties. The lot has been declared bushfire prone by the Department of Planning.

Comment

The property at 25 Pandora drive, City Beach has been the source of on-going complaints about unsatisfactory health conditions, accumulated rubbish, bush fire risk and overgrown vegetation since 2013. Whilst action has been taken to rectify the problems over the years, the failure of the Owner estate to comply and maintain the property to the required standards, has now reached a stage where the Council is required to take firm action to address the unsatisfactory situation. The adverse impact on the neighbours has been evident by the regular and numerous complaints which are continued to be received.

The house has now deteriorated to a state where it requires extensive work to bring it up to the required health and building standards. Previous and current owners have undertaken several illegal additions and alterations which provide life safety risks to the occupants of the building, this includes risk of crush, risk of falls, risk of electrocution, risk of infection from illegal plumbing and waterproofing.

Also of concern, is the serious bush fire risk, as the property is overgrown with vegetation and is within a bushfire prone area of the Town providing an elevated risk. Action by the Town will be required to abate the extreme risk which will occur and which potentially affects the adjoining properties. Failure to act will potentially expose the Council to possible liability and litigation, in the event of a fire.

Whilst the Town has been reacting to the complaints, in view of the on-going nature and persistent complaints, legal advice was previously obtained from the Town's solicitors. The Town's solicitors have recommended the following action:

1. Submit a report to Council to approve re-issuing of Health Act and Local Government Act notices.
2. Solicitors to review all notices prior to service.
3. Serve notices in accordance with prescribed statutory procedures.
4. Enforce the Bush Fires Act notice, prior to the long grass and flammable material drying out- (this can occur at any time after 16 November 2017)
5. Prosecute the Owner for failing to comply with the notices.
6. Subject to a successful prosecution being achieved, carry out the provisions of the notices to demolish the house and clean-up the property.
7. Implement action in a court to recover all costs incurred.
8. Place a caveat on the title of the subject property and/or if costs cannot be recovered by the court, eventually sell the subject property and recover costs.
The following is an indicative timeline:

<table>
<thead>
<tr>
<th>Item</th>
<th>Indicative Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report to Development Committee</td>
<td>17 April 2018</td>
</tr>
<tr>
<td>Council meeting to consider Item</td>
<td>24 April 2018</td>
</tr>
<tr>
<td>Serve notices</td>
<td>25 April 2018</td>
</tr>
<tr>
<td>Investigate compliance of Notices</td>
<td>31 May 2018</td>
</tr>
<tr>
<td>Report to solicitors for legal action</td>
<td>6 July 2018</td>
</tr>
<tr>
<td>Prosecution for non-compliance with notices</td>
<td>July-August 2018</td>
</tr>
<tr>
<td>Take-down and remove house and clear property of disused materials</td>
<td>August 2018</td>
</tr>
<tr>
<td>and excess vegetation</td>
<td></td>
</tr>
<tr>
<td>Recover Town's costs in a court</td>
<td>August - September 2018</td>
</tr>
<tr>
<td>Report to Council for sale of property to recover costs (if required)</td>
<td>October -December 2018</td>
</tr>
</tbody>
</table>

**POLICY/STATUTORY IMPLICATIONS:**

**Health Act 1911:**
- s.135 - Power to declare a house 'unfit for human habitation'.
- s.137 - Power to order a house to be repaired or taken down.
- s.140 - Power of Local government to act in default of Owner and power to recover costs
- s.354 - Service of notices

**Local Government Act 1995:**
- s.3.25 - Power to require property Owners to do certain things.
- s.3.26(2) - Power to act in default of Owner.
- s.3.26(3) - Power to recover costs incurred in enforcing notices.
- s.9.50 - Service of notices.

**Bush Fires Act 1954:**
- s.33(1) - Power to require property Owners to remove flammable material from properties.
- s.33 (2) - Service of notices.
- s.33(4) - Power to act in default of Owner.
- s.33(5) - Power to recover costs incurred in enforcing notices

**Interpretation Act 1995:**
- s.75 and 76 - Service of notices

**Local Government Act 1995 - s 9.6 - Right of Objection**
A person dissatisfied with the requisitions in a Notice issued by a local government, has the right, within twenty eight (28) days of the service of the Notice, to apply to the local government and object to the decision to issue a Notice (“the decision”). The objection must be made in the prescribed form and lodged with the local government.

**Local Government Act 1995 - s 3.25 (5) Appeal to the State Administrative Tribunal (SAT)**
A person aggrieved by a decision of the Town of Cambridge has the right of appeal against such Notice in accordance with the *State Administrative Tribunal Act 2004*. An appeal regarding orders or decisions is to be lodged in writing detailing reasons within 28 days of the making of the order or decision to the *State Administrative Tribunal* to have the order or decision reviewed by that Tribunal.

The right to an appeal to the SAT applies to the Health Act Notices, the Local Government Act Notice and the Town of Cambridge Private Property Local Law Notice.
The Town’s solicitors have recommended that the notices be re-issued, as there is some doubt that the proof of service by post (in July 2015) legally complies with the Health Act and Local Government Act requirements.

FINANCIAL IMPLICATIONS:

The cost of enforcing the various Notices is indicatively as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Requirement</th>
<th>Indicative Cost</th>
<th>Recoverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Act Notice</td>
<td>Demolition of the two storey house #</td>
<td>$16,000</td>
<td>Yes</td>
</tr>
<tr>
<td>Local Government Act</td>
<td>Removal and disposal of rubbish and miscellaneous</td>
<td>$2,000</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>materials</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bush Fires Act Notice</td>
<td>Removal of vegetation and flammable material</td>
<td>$3,000</td>
<td>Yes</td>
</tr>
<tr>
<td>Legal Costs</td>
<td>Legal advice *</td>
<td>$6-10,000</td>
<td>Partly say 50%</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$27-31,000</td>
<td>$22-26,000</td>
</tr>
</tbody>
</table>

# cost based on a recent quotation of demolition of a two storey house in Cambridge Street.
* Cost is for advice and simple prosecution.
Legal costs for recovery of costs incurred will be additional.

In the event that the Council approves action to enforce the provisions of the notices, considerable expenditure will be incurred. There are no specific funds on the Budget 2017-18 for this matter, as the matter was unforeseen and only arose after the adoption of the budget. All costs incurred will be able to be recovered in a court, however, this will take some time. Should the owner's estate not pay, it may ultimately result in the Council selling the property to recover the costs incurred.

STRATEGIC DIRECTION:

Consideration of this policy is consistent with the Town’s Strategic Community Plan 2013-2023 and responds to:-

Our Community Life

Goal 3: An active, safe and inclusive community
Strategy 3.4: Create and maintain safe environments

COMMUNITY ENGAGEMENT:

A letter has been sent to the neighbouring properties in Pandora Drive, City Beach advising of the proposed action by the Town.

ATTACHMENTS:

1. Detailed Chronology of events 2013-2018
2. Detailed list of disused materials on the property.
3. Photographs of disused materials and rubbish
4. Photographic record - House structural condition
5. Photographic record - Untidy land and bushfire hazard
ADMINISTRATION RECOMMENDATION

That:-

(i) the following action be approved:-

(a) pursuant to s135 of the Health Act 1911, the house situated at Lot 41, Volume 1275, Folio 154, Plan 7575 and known as (No. 25) Pandora Drive, City Beach be declared 'Unfit for Human Habitation', and such vacant house to remain vacant thereafter the service of the Notice until compliance with the notice has been achieved;

(b) pursuant to s137 of the Health Act 1911, the house situated at Lot 41, Volume 1275, Folio 154, Plan 7575 and known as (No. 25) Pandora Drive, City Beach be required to be taken down and the resultant land cleaned to the satisfaction of the Town within thirty (30) days of the service of the Notice;

(c) pursuant to s3.25(1) and Schedule 3.1 of the Local Government Act 1995, the house situated at Lot 41, Volume 1275, Folio 154, Plan 7575 and known as (No. 25) Pandora Drive, City Beach, be required to be cleaned and all disused materials on the land to be removed to the satisfaction of the Town, within thirty (30) days of the service of the Notice;

(d) the notice issued be enforced, pursuant to s33 of the Bush Fires Act 1954, the land situated at Lot 41, Volume 1275, Folio 154, Plan 7575 and known as (No. 25) Pandora Drive, City Beach, to be cleared of 'flammable material' and the land cleaned to the satisfaction of the Town;

(ii) the Chief Executive Officer be authorised to:-

(a) initiate legal action against the Owner of the house situated at Lot 41, Volume 1275, Folio 154, Plan 7575 and known as (No. 25) Pandora Drive, City Beach, if the Notices are not complied with, within the specified time frames;

(b) carry out the requirements of the Notices, in the event that the Owner fails to comply within the specified time frames;

(c) initiate legal action against the Owner the house situated at Lot 41, Volume 1275, Folio 154, Plan 7575 and known as (No. 25) Pandora Drive, City Beach, to recover the costs incurred in enforcing the above Notices;

(iii) an amount of up to $31,000 be re-allocated to enable the Notices issued under the Health, Bush Fires and Local Government Acts to be effected, in the event that the Owner fails to comply within the specified time frames; and

(iv) it be noted that the majority of the Town's costs incurred in enforcing the legal Notices can be recovered by applying to the Courts and/or lodging a caveat on the title of the subject property.
8. CLOSURE