

10.1.2 – Temporary Accommodation – Lot 848, 93 Kalyang Loop, Byford (PA19/234)

Responsible Officer:	Manager Statutory Planning and Compliance
Senior Officer:	Director Development Services
Disclosure of Officers Interest:	No officer involved in the preparation of this report has an interest to declare in accordance with the provisions of the <i>Local Government Act 1995</i> .

Authority / Discretion

Quasi-Judicial	When Council determines an application/matter that directly affect 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 local planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.
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Proponent:	G and D Stevenson
Owner:	G and D Stevenson
Date of Receipt:	11 March 2019
Lot Area:	2,002m ²
Town Planning Scheme No 2 (TPS2) Zoning:	'Urban Development'
Metropolitan Region Scheme (MRS) Zoning:	'Urban'

Report Purpose

The purpose of this report is for Council to consider a retrospective development application for temporary accommodation at Lot 848, 93 Kalyang Loop, Byford.

The application is presented to Council as an objection was received during the advertising process and the retrospective application varies Council Policy 4.1.7 – Temporary Accommodation. Officers do not have delegated authority to determine applications where objections cannot be satisfied by way of amendments or conditions or where a Council Policy is varied in accordance with Delegation 11.1.1 – Determination of Development Applications.

The report recommends that Council approve the development application subject to conditions.

Relevant Previous Decisions of Council

PA17/877 – Officers resolved to approve a development application for a shed for the purposes of 'Light Industry' under Delegated Authority 11.1.1 – Determination of Development Applications, subject to conditions.

OCM169/12/17 – Council resolved to approve a development application for temporary accommodation subject to conditions.

Background

In 2017, the Shire received a complaint in relation to the construction of an unauthorised building used for accommodation at the subject site. Following an investigation, the landowner was required to submit a retrospective development application for this. The development application sought approval for temporary accommodation until such time that the main dwelling had been constructed.

The retrospective development application for temporary accommodation was approved at the Ordinary Council Meeting on 18 December 2017. Conditions were imposed requiring the temporary accommodation to be removed within 6 months of the approval, with the option of an additional 6 months subject to the consent of the Director Development Services.

On 24 July 2018, the Shire advised the occupants that the 6 month approval period had expired and a further extension would need to be sought. Given that no progress had been made on the construction of the primary dwelling and no application had been received for the extension to the approval timeframe, a written direction was issued to the landowner. This direction required the development to remove the temporary accommodation no later than 30 November 2018.

The written direction was not complied with by 30 November 2018. As such, a Section 214 Directions Notice was issued on 12 December 2018 formally requiring the development to be removed.

The proponent subsequently sought review of the Directions Notice by the State Administrative Tribunal (SAT) on 22 January 2019. The applicant advised at the proceedings that due to an illness and issues with their builder, they were unable to significantly progress with the construction of the main dwelling. Officers note that between the time of the Directions Notice being issued and the SAT process commencing, a sand pad and concrete slab had been established. As a result, the Shire agreed to consider a new development application to permit the temporary accommodation for a further 12 months in light of the progress of construction. A development application was received by the Shire on 11 March 2019, which is the subject of this report.

Council should note that during the period between the initial development approval being granted and the lapse of the approval, the applicant has undertaken efforts to obtain the necessary approvals for the construction of the main dwelling to commence. A building permit was issued on 16 April 2018, however this was cancelled as the builder withdrew their services. As a result, development on site was significantly delayed. The latest building permit (Owner Builder Permit) was issued by the Shire on 17 December 2018.

Existing Development

The subject site lies within a predominantly residential area of Byford. Kalyang Loop runs along the southern boundary of the site and Thomas Road runs along the northern boundary of the site. The immediate surrounding area consists of lots designated for residential to the front and light industrial to the rear under the Redgum Brook Estate North Local Structure Plan.

The subject property is currently developed with an outbuilding, sea container, temporary accommodation and preliminary works for a single house.

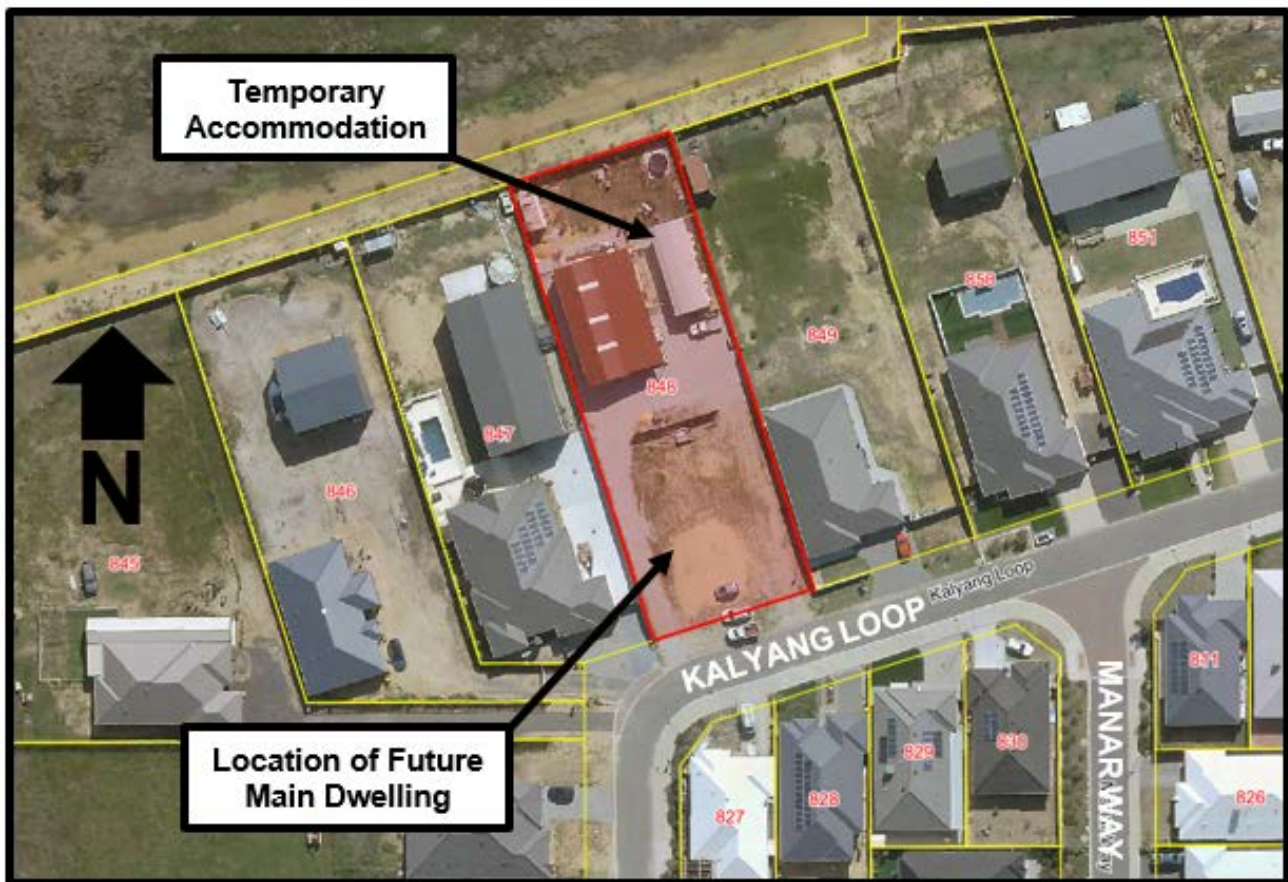


Figure 1: Aerial photograph.

Development

The application seeks retrospective approval for temporary accommodation at the subject site for 6 to 12 months.

The temporary accommodation is currently located 2.1m from the eastern boundary, 13.9m from the northern boundary, 20.5m from the western boundary and 47.5m from the southern boundary. The temporary accommodation is a single storey structure with a wall height of 2.9m and a ridge height of 3.3m. It would measure 14.4m x 4.7m equating to 67.68m² in area. Full details of the retrospective application are contained within **attachment 1** of this report.



Figure 2: The temporary accommodation as viewed from the south.

Community / Stakeholder Consultation

Advertising was carried out for a period of 21 days from 18 March 2019 – 8 April 2019. A total of eight letters were sent to surrounding landowners in accordance with Local Planning Policy 1.4 – Public Consultation for Planning Matters (LPP 1.4).

During the advertising period one submission was received objecting to the retrospective development and two were received in support of the retrospective development. A full summary of the submissions is contained within **attachment 2**. The issues raised in the objection are summarised as follows:

- Impact of the development on the amenity of neighbouring properties
- Stormwater flowing onto neighbouring property
- Setback on plans is incorrect

These issues are discussed within the relevant sections of the report.

Statutory Environment

Legislation

- *Planning and Development (Local Planning Schemes) Regulations 2015*

State Planning Framework

- Metropolitan Region Scheme
- State Planning Policy 3.1 – Residential Design Codes

Local Planning Framework

- Shire of Serpentine Jarrahdale Town Planning Scheme No.2 (TPS2)
- Byford Structure Plan
- Redgum Brook Estate North Local Structure Plan
- Local Development Plan No.18 Redgum Brook Estate
- Local Planning Policy 1.4 – Public Consultation for Planning Matters Policy
- Local Planning Policy 4.5 – Temporary Accommodation

Planning Assessment

Schedule 2, Part 9, Clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Deemed Provisions) lists matters to be considered in the determination of development applications. A full assessment carried out against the applicable matters relevant to this proposal can be viewed within **attachment 3**. For the purposes of this report, the objection and policy variations resulting in the proposal being presented to Council are discussed as well as where Council is required to exercise discretion.

Land Use

The temporary accommodation is intended to be used for human habitation on a temporary basis, until such time as a permanent dwelling has been constructed. In determining the land use classification, Officers have considered the following definitions from State Planning Policy 3.1 – Residential Design Codes:

Single House – *A dwelling standing wholly on its own green title or survey strata lot, together with any easement over adjoining land for support of a wall or for access or services and excludes dwellings on titles with areas held in common property.*

To determine whether the development falls within the definition of a 'Single House', Officers have considered whether it meets the definition of a 'Dwelling'.

Dwelling – *A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family.*

Officers consider that the development cannot be considered a 'Dwelling' and therefore cannot be considered a 'Single House' land use as the accommodation is not intended to be used on a permanent basis.

There are no other land use definitions that the development can reasonably fall within, as such the development is considered to be a 'Use Not Listed'. Under clause 3.2.5 of TPS2, Council can approve a 'Use Not Listed' where it is considered to be consistent with the objectives and purpose of the zone, and where the application has been advertised and any submissions taken into account.

As discussed in further detail in this report, Officers consider the retrospective development is consistent with the objectives and purpose of the zone, and that the objection received during the advertising period has been addressed. As such, it is considered that the development is capable of approval in accordance with the provisions of TPS2.

Orderly and Proper Planning:

Town Planning Scheme No.2 (TPS2)

The provisions of TPS2 allow the consideration for approval of a 'Use Not Listed' where such development has been advertised and is considered to be consistent with the objectives and purpose of the zone. The subject site is zoned 'Urban Development', the purpose of this zone being:

"to provide for the orderly planning of large areas of land in a locally integrated manner and within a regional context, whilst retaining flexibility to review planning with changing circumstances."

Clause 5.18 of TPS2, relating to the 'Urban Development' zone, further details that the purpose of the zone is intended to be facilitated by means of the establishment of Structure Plans. As such, the Structure Plans are considered to form part of the purpose and objectives for the 'Urban Development' zone in which they apply. In order to determine whether the retrospective development is consistent with the purpose and objectives of the 'Urban Development' zone, consideration must be given to the applicable Structure Plans.

Byford Structure Plan (BSP)

The BSP designates the subject site as 'Residential R20', and includes an overlay noting that the area is subject to detailed structure planning. The overlay requires regard to be given to the alignment of the Tonkin Highway.

The retrospective development, being proposed for residential use, is considered to be consistent with the residential designation of the land under the BSP. However, the provisions of the BSP require further detailed structure planning to be undertaken. As such, further consideration must be given to the Redgum Brook Estate North Local Structure Plan.

Redgum Brook Estate North Local Structure Plan (LSP)

The LSP designates the subject site as 'Residential' at the front and 'Light Industry' at the rear. The intent of the composite designation is to ensure a buffer is provided between residential development and the noise impacts generated from Thomas Road and the future Tonkin Highway.

While the temporary accommodation is currently located within the area designated for 'Light Industry' and is not consistent with that designation, the development is temporary in nature and will be removed upon completion of the main dwelling. Given the development has historically been approved and the works on the main dwelling have now commenced, Officers consider the development will not prejudice the intent of the LSP. Rather, the temporary approval of the development will allow for a compliant development to be constructed, after which the temporary accommodation must be removed.

Officers consider the retrospective development generally complies with the intent of the LSP and have recommended a condition be imposed to ensure the development is removed after 12 months or at such time that the main dwelling is completed, whichever is the lesser.

Redgum Brook Estate Local Development Plan (LDP)

The site lies within an LDP which sets out development standards for the subject site including setbacks. The front of the lot is designated for residential (R20) purposes and industrial to the rear as shown on the figure below:

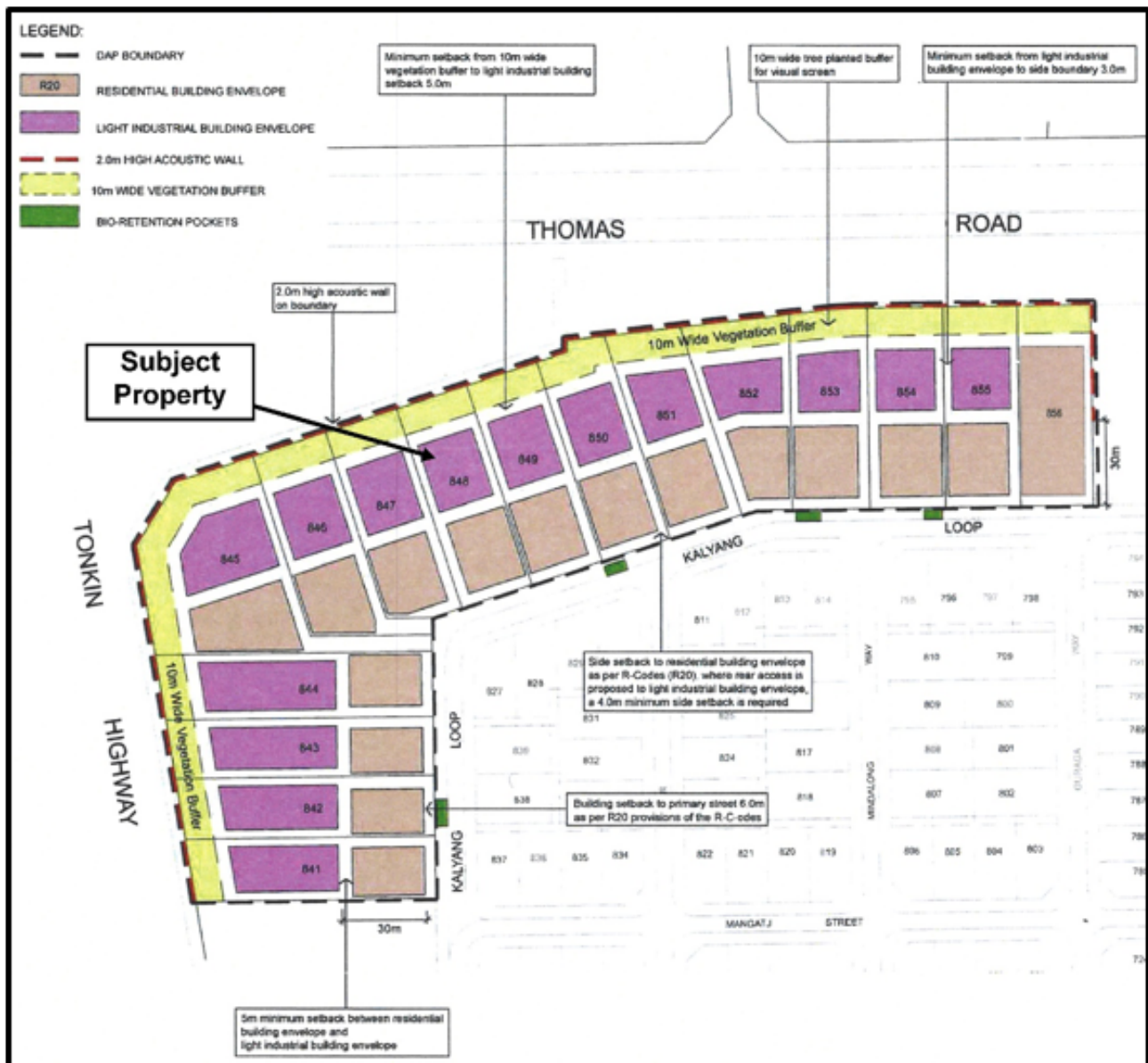


Figure 3: Redgum Brook Estate Local Development Plan

During the advertising period, an objection was received by a neighbour raising concerns about the impact of the development on their amenity. The objection specifically related to the imposing form and unsightliness of the development due to exposed utilities.

The LDP allows large developments to occur within the 'Light Industry' portion of the property. Officers consider the existing development to be low scale (compared to what otherwise could be approved) and not imposing in size or is unsightly, as shown in figure 2, particularly given the location of the development within the 'Light Industry' portion of the property.

The objection received during the advertising period also noted that the temporary accommodation appears to be located closer to the northern boundary than 15m as shown on the plans. As such, an amended plan has been received depicting the correct setback of 13.9m.

The LDP requires a 10m wide vegetation strip to the rear of the property and a 5m buffer from the vegetation to the light industrial building envelope. The temporary accommodation is located 1.1m within this buffer area. Officers consider that despite being located within the 5m buffer area, the

variation can be accepted due to the temporary nature of the development. Furthermore, there is no vegetation to which the retrospective development would impact.

In regard to the objection received relating to the unsightliness of the utilities at the rear of the temporary accommodation, Officers can advise that the applicant has already increased the height of the fence for the full length of the eastern boundary to address this concern. This is considered to address the issues of screening the utilities associated with the temporary accommodation.

Local Planning Policy 4.5 Temporary Accommodation

Local Planning Policy 4.5 (LPP4.5) provides guidance for temporary accommodation within the Shire. This policy was created to replace the Council Policy 4.1.7 – Temporary Accommodation. However, as Council Policy 4.1.7 has not yet been rescinded, Officers are required to give due regard to both. LPP4.5 allows for temporary accommodation for a period of 6 months and allows for an extension of a further 6 months to be considered. This application is seeking a timeframe beyond what is permitted within LPP4.5 as the development has already been present for over 12 months. The table below provides an assessment of compliance against the policy provisions:

Local Planning Policy 4.5 – Temporary Accommodation Assessment		
Provision	Compliance	Officer Comment
1. Within the Rural, Farmlet, Rural Living A and B, Special Rural, Special Residential, Special Use and Urban Development zones, lots greater than 10 000m ² may have one caravan on a lot for the use of temporary accommodation for a maximum period of twelve months.	N	<p>A transportable structure is existing on the property instead of a caravan. Officers consider that this will have less of a visual impact than a caravan. As seen in Figure 2, the transportable structure has been painted and landscaped to lessen its visual impact. Officers consider that it has similar or less visual impact than outbuildings that are commonplace within the 'Light Industry' zone.</p> <p>Despite variation to the lot size requirements under LPP4.5, Officers consider that the transportable structure is of a small scale and necessary to provide temporary accommodation for the owners.</p>
2. Temporary accommodation may be approved for a period of six months. An extension of up to six months may be considered if the construction of the single house has been substantially commenced.	Y	<p>Given the primary residence is now under construction, Officers consider a variation to this requirement to be reasonable despite the development already existing onsite for a period of 12 months.</p> <p>Acknowledging that the applicants have not significantly progressed with the build due to personal circumstances and that the applicants now have an Owner Builder Permit which is generally considered to be a slower process, Officers consider that the approval should be granted for 6 months with the flexibility to extend subject to the satisfaction</p>

Local Planning Policy 4.5 – Temporary Accommodation Assessment		
		of the Director Development Services.
3. An application for temporary accommodation must be accompanied by an application for a single house, or have an existing approval for a single house.	Y	An Owner Builder Permit for a dwelling was issued by the Shire on 11 December 2018.

In relation to non-compliance with provision 1, Officers consider that the variation is reasonable and capable of being supported. It does not compromise the amenity or intended character and the temporary accommodation will be removed as per the timeframes discussed in this report.

Council Policy 4.1.7 – Temporary Accommodation

The objective of this Policy is to provide direction in relation to the conditions for the establishment of temporary accommodation during the construction of a permanent residence. An assessment of the retrospective development against the provisions of the Policy is provided below:

Council Policy 4.1.7 – Temporary Accommodation Assessment		
Provision	Compliance	Officer Comment
1. The only form of temporary accommodation to be approved will be within a caravan.	N	A transportable structure is existing on the property instead of a caravan. Officers consider that this will have less of a visual impact than a caravan. This is due to the temporary accommodation having similar or less visual impact than that of an outbuilding, which are commonly found within the 'Light Industry' zone.
2. On land one hectare and over.	N	The subject property is 2,002m ² . Officers consider that there is a reasonable need for the temporary accommodation and capable of being supported on land less than one hectare in size.
3. Accompanied by an application for a permanent dwelling.	Y	A building permit for a dwelling was issued by the Shire on 11 December 2018.
4. With a statutory declaration acknowledging that approval will not exceed 12 months with the temporary accommodation to be vacated at the time or sooner, on completion of the dwelling, or if the Shire's permission to	N	Officers consider a condition of approval satisfactory to address this requirement. Should the primary residence not be completed within 12 months the Shire will have the opportunity to undertake compliance action.

Council Policy 4.1.7 – Temporary Accommodation Assessment		
occupy the temporary accommodation is withdrawn.		
5. With a schedule of work for the erection of the permanent dwelling.	N	The applicant has not provided this information. Officers consider it unnecessary to provide a schedule of work as the building permit has already been issued, with work now underway.
6. With a letter from the lending institution confirming that finance is available for the construction of the dwelling.	N	The applicant has not provided this information. Officers consider it unnecessary to provide a letter from the lending institution confirming that finances have been secured, as the building works have already commenced.
7. Toilet, shower and laundry must be provided and connected to an approved effluent disposal system and use of the temporary accommodation will not be commenced until facilities are inspected by an Environmental Health Officer.	Y	The temporary accommodation is connected to the necessary facilities such as water, sewage and electricity.
8. Temporary accommodation will be approved for a period of six months and an extension of up to six months may be granted subject to reasonable progress in building the permanent residence.	N	Given the primary residence is now under construction, Officers consider a variation to this requirement to be reasonable despite the development already existing onsite for a period of 12 months. Acknowledging that the applicants have not significantly progressed with the build due to personal circumstances and that the applicants now have an Owner Builder Permit which is generally considered to be a slower process, Officers consider that the approval should be granted for 6 months with the flexibility to extend for a further 6 months subject to the satisfaction of the Director Development Services.
9. Payment of the application fee as set by Council each year.	Y	The applicant has paid the required Development Application fee.

Officers consider that the variations to Council Policy 4.1.7 are reasonable and justification provided to be able to consider the temporary accommodation for approval.

Stormwater Management

An objection received during the advertising period raised concerns about stormwater management on site. Officers note that there are no gutters or downpipes on the transportable structure as seen in Figure 2. A condition has been recommended requiring stormwater to be managed on site. This would allow the Shire to require the applicant to address the issue and undertake any necessary measures to prevent roof run-off from running into the neighbour's lot. Officers consider such a condition would adequately address the objection.

Options and Implications

With regard to the determination of the application for development approval under Town Planning Scheme No. 2, Council has the following options:

Option 1: Council approves the application subject to appropriate conditions.

Option 2: Council refuses the application giving reasons for its decision.

Option 1 is recommended.

Conclusion

The retrospective development will facilitate use of the subject site in a manner which is generally consistent with the land use intent of the Local Structure Plan and Local Development Plan. The application seeks an extension of approval for development that has previously been approved by Council. Officers consider that the objections have been satisfactorily addressed and that the variations to Council Policy 4.1.7 – Temporary Accommodation are reasonable. As a result, Officers recommend the application be approved subject to conditions.

Attachments

- [Attachment 1](#) – Development Plans (E19/6256)
- [Attachment 2](#) – Summary of Submissions (E19/3754)
- [Attachment 3](#) – Technical Assessment (E19/5847)

Alignment with our Strategic Community Plan

Outcome 3.1	A commercially diverse and prosperous economy
Strategy 3.1.1	Actively support new and existing local business within the district.
Outcome 4.2	A strategically focused Council
Strategy 4.2.1	Build and promote strategic relationships in the Shire's interest.

Financial Implications

Nil.

Risk Implications

Risk has been assessed on the basis of the Officer's Recommendation.

Risk	Risk Likelihood (based on history and with existing controls)	Risk Impact / Consequence	Risk Rating (Prior to Treatment or Control)	Principal Risk Theme	Risk Action Plan (Controls or Treatment proposed)
Council not approving the development application.	Possible (3)	Insignificant (1)	Low (1-4)	Reputation - 1 Insignificant - Unsubstantiated, localised low impact on key stakeholder trust, low profile or no media item	Accept Officer Recommendation

Risk Matrix

Consequence Likelihood		Insignificant	Minor	Moderate	Major	Catastrophic
		1	2	3	4	5
Almost Certain	5	Medium (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely	4	Low (4)	Medium (8)	High (12)	High (16)	Extreme (20)
Possible	3	Low (3)	Medium (6)	Medium (9)	High (12)	High (15)
Unlikely	2	Low (2)	Low (4)	Medium (6)	Medium (8)	High (10)
Rare	1	Low (1)	Low (2)	Low (3)	Low (4)	Medium (5)

A risk rating of 3 has been determined for this item.

Any items with a risk rating over 10 (considered to be high or extreme risk) will be added to the Risk Register, and any item with a risk rating over 17 will require a specific risk treatment plan to be developed.

Voting Requirements: Simple Majority

OCM108/06/19

COUNCIL RESOLUTION / Officer Recommendation:

Moved Cr Coales, seconded Cr Gossage

1. That Council **APPROVES** the development application contained within attachment 1 for the 'Use Not Listed' (temporary accommodation) at Lot 848, 93 Kalyang Loop, Byford under the Shire of Serpentine Jarrahdale Town Planning Scheme No. 2 and the Metropolitan Region Scheme subject to the following conditions:

a. The development is to be carried out in compliance with the plans and documentation listed below and endorsed with the Shire of Serpentine Jarrahdale stamp, except where amended by other conditions of this consent.

Plans and Specifications	Plans P1 received at the Shire's Offices on 27 December 2018.
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b. The temporary accommodation hereby approved shall be removed from the site on completion of the construction of the permanent residence or 6 months after the date of this approval, whichever is the earliest.

c. Subject to the approval of the Director Development Services, one (1) further extension period of up to 6 months may be granted.

d. All stormwater shall be retained within the property to the satisfaction of the Shire of Serpentine Jarrahdale. Direct disposal of stormwater onto the road, neighbouring properties, watercourses and drainage lines is not permitted.

Advice Note:

a. The applicant is required to contact the Shire of Serpentine Jarrahdale prior to the 6 month expiry.

b. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act* Part 14. An application must be made within 28 days of the determination.

CARRIED UNANIMOUSLY 8/0