

Technical Report			
TRIM Number:	PA20/830	Synergy Number:	PA20/830
Lodgement Date:	04/09/2020	DAU Date:	
Address:	Lot 848, 93 Kalyang Loop, Byford		
Proposal:	Temporary Transportable House		
Land Use:	Use Not Listed	Permissibility:	Refer to land use section
Owner:	Geoffrey and Daphne Stevenson		
Applicant:	As above		
Zoning:	Urban Development	Density Code:	N/A
Delegation Type:	12.1.1	Officer:	Ryan Fleming
Site Inspection:	Yes – 13/05/2019 (previous application)		
Advertising:	Yes – From 11/09/2019 – 02/10/2019		
Outstanding Internal Referrals:	No		
External Referrals:	No		
Within a Bushfire Prone Area:	Yes		
BAL-12.5 received and accepted as part of the previous application.			

Introduction:

A planning application has been received on 4 September 2020 for temporary accommodation at Lot 848, 93 Kalyang Loop, Byford.

The subject lot is zoned 'Urban Development' in accordance with the Shire's Town Planning Scheme No. 2 (TPS2). Temporary accommodation is considered a 'Use Not Listed', which is able to be considered within an 'Urban Development' zone in accordance with the Shire's TPS2.

The proposal is presented to Council for recommending a report be presented to Council for determination. Under delegation 12.1.1 – Determination of Development Applications Officers do not have delegated authority to determine applications that vary Council policies and previous decisions were made by Council.

This report recommends that the temporary accommodation be approved subject to appropriate conditions.

Background:

Site History:

The temporary accommodation was originally brought to the attention of the Shire by way of a complaint in 2017, with retrospective approval being granted at the Ordinary Council Meeting on 18 December 2017 for a period of six months with the option of a further six months, subject to the approval of the Shire. The full 12 month period was taken up by the applicant.

A further approval was subsequently granted for the temporary accommodation by Council at its Ordinary Council Meeting of 17 June 2019 for a period of six months, with the option to

extend also for a further six months with approval from the Shire. This six month extension was granted by the Shire.

The landowners are residing in the temporary accommodation until such as time as their main dwelling has completed construction. To date the construction of the dwelling has significantly progressed, however, has not yet been completed. As such, the application seeks a further extension for temporary accommodation until 31 March 2021.

Application Context:

The applicant has advised that financial constraints has delayed the construction of the dwelling and the temporary accommodation is still being resided in. Further to this, as an owner builder, the applicant has advised of difficulties in sourcing contractors to complete the dwelling which is now partially completed.

The application is presented to Council as the proposal varies Council Policy 4.1.7 – Temporary Accommodation. Officers do not have delegated authority to determine applications where a Council Policy is varied in accordance with Delegation 12.1.1 – Determination of Development Applications.

Existing Development

The subject site is zoned 'Urban Development' under the Shire of Serpentine Jarrahdale Town Planning Scheme No.2 (TPS2). The property is on the southeast side of the Thomas Road and Hopkinson Road intersection. The site has a split designation under the Structure Plan of 'Residential R20' towards the front of the property and 'Light Industry' towards the rear of the property. An existing outbuilding approved for a 'Warehouse' land use is located alongside the existing temporary accommodation within the 'Light Industry' building envelope area.

Since the previous approval was granted, significant progress has been made to the dwelling as seen in the following figures that compare the site between the previous application presented to Council in June of 2019 and this year.

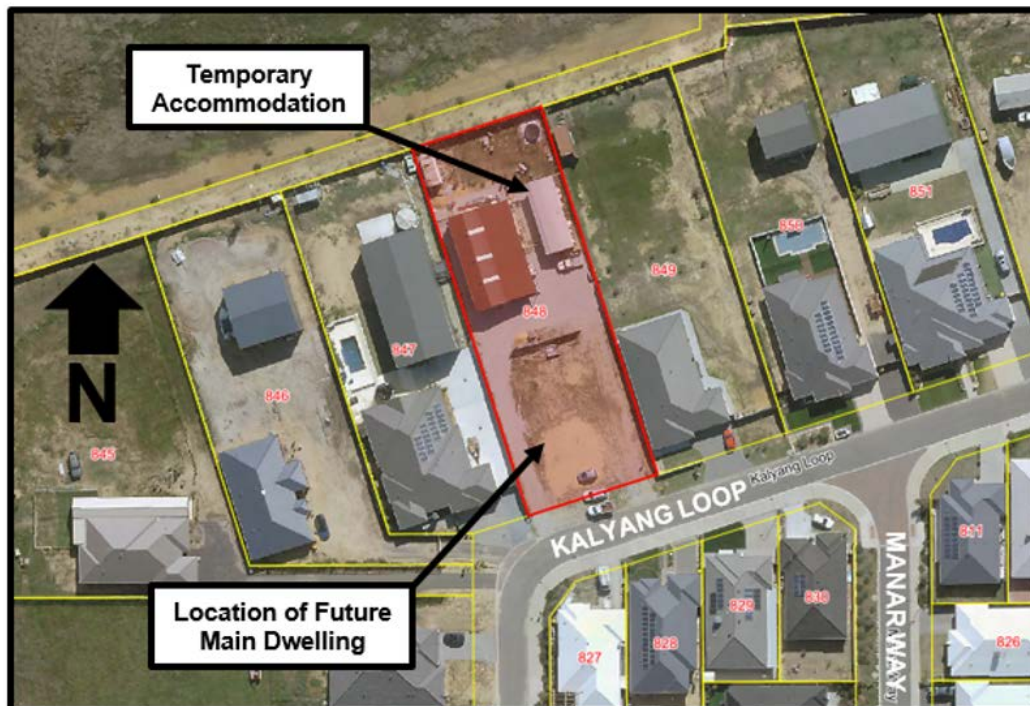


Figure 1: Aerial Image (2019)

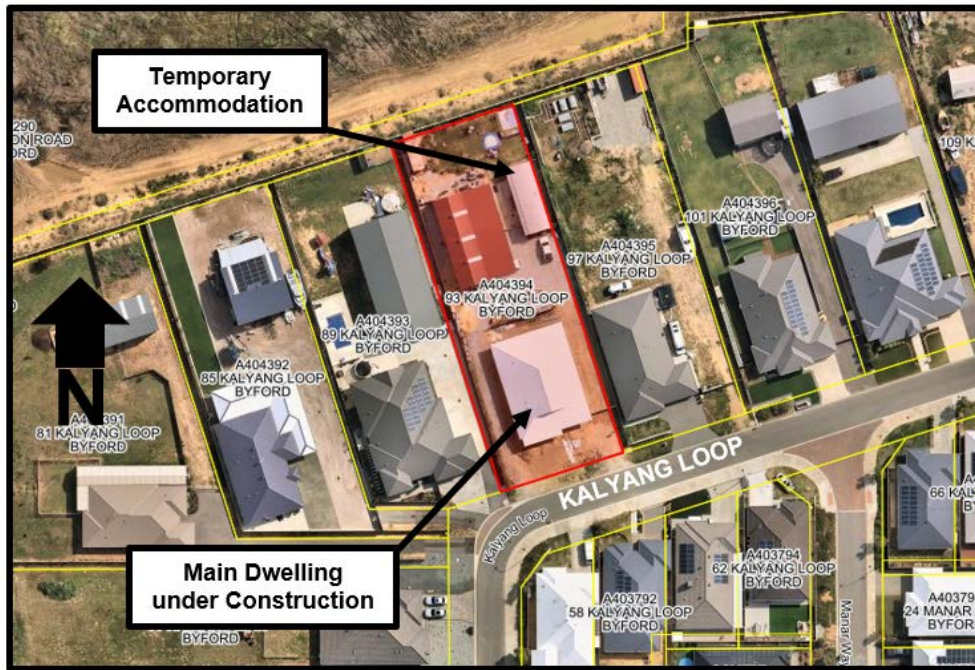


Figure 2: Aerial Image (2020)



Figure 3: Subject site and the dwelling June 2019



Figure 4: Subject site and the dwelling September 2020

Officers have been advised that since September, the roof has been constructed. It is approaching completion, and shows an intent to complete the dwelling.

Proposed Development:

The subject application seeks a continuation of the previously approved land use until 31 March 2021. The previous approval and report to Council is contained within **attachment 1**.

The application details that the additional time would allow the dwelling construction to be finalised given the current difficulties in construction brought about by the COVID-19 economic climate. The temporary accommodation is seen in figure 5 below:



Figure 5: The existing temporary accommodation

Community / Stakeholder Consultation:

Advertising was carried out for a period of 21 days, from 11 September 2020 to 2 October 2020, whereby no submissions were received.

Statutory Environment:

Legislation

- *Planning and Development Act 2005*
- *Planning and Development (Local Planning Schemes) Regulations 2015*

State Government Policies

- Draft South Metropolitan Peel Sub-Regional Framework Towards Perth and Peel 3.5 Million

Local Planning Framework

- Shire of Serpentine Jarrahdale Town Planning Scheme No.2
- Shire of Serpentine Jarrahdale Draft Local Planning Scheme No.3
- Byford District 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:

A comprehensive assessment has been undertaken in accordance with section 67 of the Planning and Development Regulations 2015, the assessment can be viewed as part of the attachment.

Land Use:

The temporary accommodation is used for the purposes of human habitation on a temporary basis, until such time as the construction of the dwelling has been completed.

Officers consider the development is consistent with the objectives and purpose of the zone. As such, it is considered that the development is capable of approval in accordance with the provisions of TPS2.

Orderly and Proper Planning:

Clause 67 of the regulations, specifically A – J, considers state and local planning policy frameworks including draft schemes, strategies, state planning policies, local planning policies and the like. These frameworks provide guidance in order to establish if a development is consistent with orderly and proper planning. Therefore, Officers have considered the proposal against the following policies:

TPS2:

Clause 3.2.5 of TPS2 states the following:

“If the use of land for a particular purpose is not specifically mentioned in the zoning table and cannot reasonably be determined as falling within the interpretation of one of the use categories the Council may:

- a) determine that the use is not consistent with the objectives and purpose of the particular zone and is therefore not permitted; or*
- b) determine that the proposed use may be consistent with the objectives and purpose of the zone and thereafter follow the advertising procedures of Clause 64 of the Deemed Provisions in considering an application for planning consent.”*

The temporary accommodation has been previously defined by Officers as falling within the definition of a ‘Use Not Listed’ and therefore can be considered in accordance with Clause 3.2.5 of the TPS2.

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 temporary accommodation is consistent with the purpose and objectives of the ‘Urban Development’ zone, consideration must be given to the applicable Structure Plans.

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, whilst providing flexibility in land use considerations in the form of a composite lot.

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 are now nearing completion, 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 completed, after which the temporary accommodation will need to be removed.

Local Development Plan No.18 Redgum Brook Estate (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:

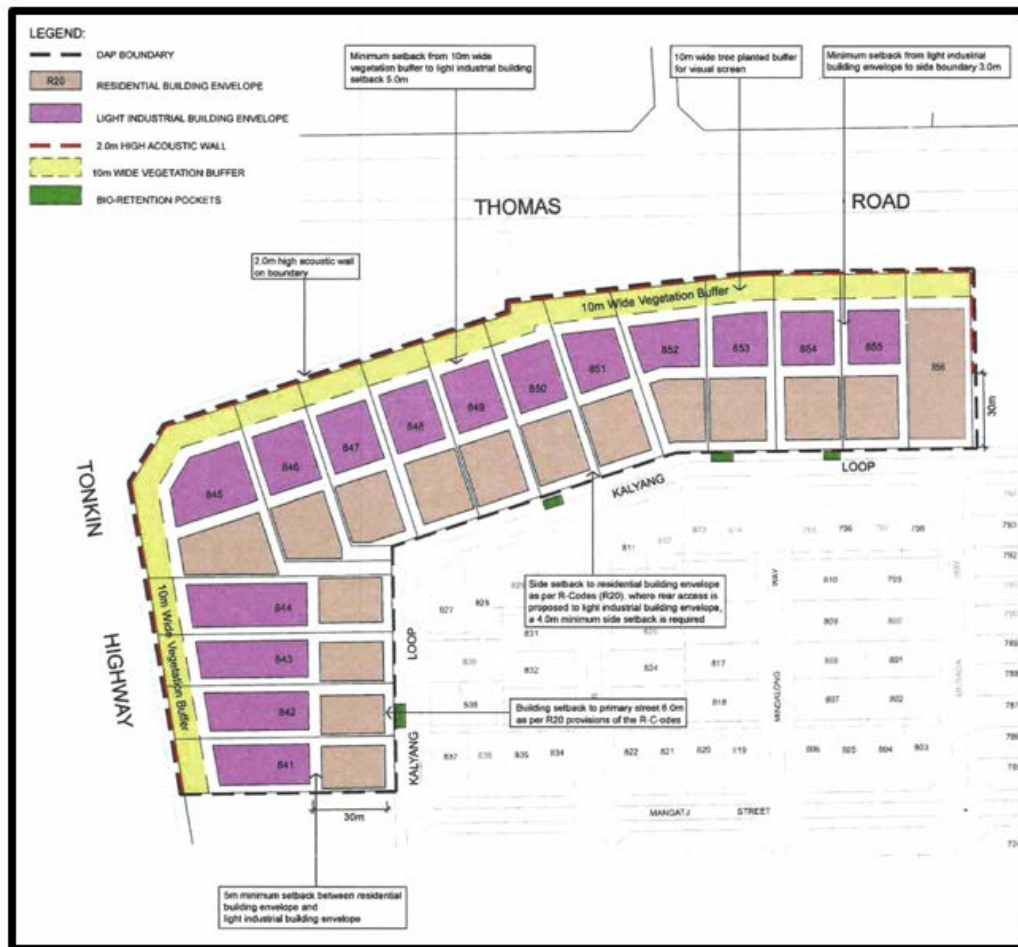


Figure 6: Extract from the LDP

The LDP allows large, bulky 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 unsightly, as shown in figure 5, particularly given the location of the development within the 'Light Industry' portion of the property. Therefore, the form of the development is considered consistent with the intended character of the area under the LDP.

The LDP requires a 10m wide vegetation strip to the rear of the property and a 5m buffer from the vegetation to the light industry 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.

Local Planning Policy 4.5 Temporary Accommodation:

Local Planning Policy 4.5 (LPP4.5) and Council Policy 4.1.7 – Temporary Accommodation. provides guidance for temporary accommodation within the Shire. As such, 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 further extension to the timeframe permitted within LPP4.5 as the development has already been present for over 24 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	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 5, 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. 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.
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	Given the primary residence is now nearing completion, Officers consider a variation to this requirement to be reasonable despite the temporary accommodation development already existing onsite for a period of approximately than 2 years.
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 as it does not compromise the amenity or intended character. This would meet objective 3 of LPP4.5, which seeks to ensure that temporary accommodation does not compromise the amenity of the locality.

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 (if planning approval is obtained). An assessment of the proposed development against the Conditions 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 less visual impact than that of a commercial building, which are commonly found within the 'Light Industry' zone and the works done to the exterior of the temporary structure as seen in figure 5.

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 occupy the temporary accommodation is withdrawn.	Y	Officers consider that a condition of approval is satisfactory to address this requirement. Should the primary residence not be completed prior to 31 March 2021, the Shire will have the opportunity to undertake compliance action.
5. With a schedule of work for the erection of the permanent dwelling.	N	The applicant has not provided a schedule of work to the Shire. However, Officers consider it unnecessary to provide a schedule of work as the building permit has already been issued, with work well underway and approaching completion.
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 are nearly completed.
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 nearing completion and the current economic climate ensuing from the impact of COVID-19, Officers consider a variation to this requirement to be reasonable.
9. Payment of the application fee as set by Council each year.	Y	The applicant has paid the required Development Application fees upon submitting applications for extension of the temporary accommodation.

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.

Form of Development and Amenity:

Clause 67 of the Deemed Provisions, specifically K, L, M, N, P, all relate to the form and amenity of the development that is required to be assessed. In addition, objective 3 of LPP

4.5 is, “*To ensure that temporary accommodation does not compromise amenity*”. Therefore, Officers have conducted an assessment of the proposal against the requirements of the TPS2 and the LDP that the subject property falls within.

In the LDP, the Light Industrial Land Use section of the provides the intention, permitted uses and development standards for the ‘Light Industry’ zoned area on the property. Clause 2 of that section states that, “*Any development for light industrial purposes shall be subject to those provisions of the scheme relating to light industrial zone, front and side setbacks, however shall be as follows*”. However, Officers consider that as the proposed temporary accommodation is not classified as “*development for light industrial purposes*”, there are no applicable development standards. Despite this, Officers have assessed the temporary accommodation against the development standards of the LDP to determine the impact of the proposal against other development within the ‘Light Industry’ zone.

Local Development Plan No.18 Redgum Brook Estate Assessment			
Provision	Requirement	Proposed	Compliance
Street Setback	Minimum 30m	46m	Y
Side Setback	Minimum 3m	21m (west) 2.1m (east)	Y N
Rear Setback	Minimum 15m	Between 13m to 14m	N
Separation	Minimum 5m	5m	Y
Floor Area	Maximum 300m ²	67.68m ²	Y
Height	Maximum 6m	Approx. 4m	Y

The proposal is mostly located within the ‘Light Industry’ zoned portion of the property, with 1.7m of the proposal being located within the 5m buffer between the ‘Light Industry’ area and the 10m vegetation buffer to the rear. A minor variation is proposed in relation to the side (east) setback of the proposal. Officers consider that as the proposal is only temporary in nature, there is a negligible adverse impact on the neighbouring property due to the minor variations in the LDP setback requirements. Additionally, as mentioned previously, as the proposal is not classified as “*development for light industrial purposes*”, the development standards of the LDP are not considered applicable.

The external appearance of the temporary accommodation is considered to not be out of character with what would normally be found within ‘Light Industry’ zones. It has been painted the same colours as the outbuilding on the same property. This is a cream colour for the walls with a form of red for the roof. In addition, Officers consider that bulky sheds are permissible within the ‘Light Industry’ zone in accordance with the LDP requirements. Therefore, visual amenity impacts from the scale of the temporary accommodation are not considered to be of an adverse nature as the proposal is generally complies with those LDP requirements.

Officers also consider that the visual impact of the temporary accommodation on the neighbour’s property is negligible, due to the fence height being increased by 3 planks (as seen in Figure 3) to an estimated 1.

Regarding the streetscape, Officers consider that due to the 46m setback of the temporary accommodation to the streetscape there is no adverse impact on amenity. Figure 3 shows the face of the temporary accommodation that is visible from the streetscape. The presence of

landscaping and the painting of the building to cream and red reduce any adverse visual amenity impacts posed from the temporary accommodation.

Options and Implications:

Option 1: DAU may resolve to approve the application subject to conditions.

Option 2: DAU may resolve to refuse the application subject to reasons.

Option 1 is recommended.

Conclusion:

The temporary accommodation facilitates the 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 proposed extension to 31 March 2020 is supportable due to delays as a result of COVID-19 to the construction of the dwelling and the near completion of the dwelling would give Council confidence that no further extensions should be required. Therefore, Officers recommend the application be approved subject to conditions.

Attachments:

Deemed Provisions – Cl 67 Matters to be considered by local Government

Land Use:

a) The aims and provisions of this Scheme and any other local planning scheme operating within the area	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Refer to comments on TPS2.			
b) The requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> or any other proposed planning instrument that the local government is seriously considering adopting or approving	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: The property is to be rezoned from 'Urban Development' to 'Residential – R20' under LSP3. The site would also be subject to additional uses in Schedule 1 of LPS3 that formalise the additional uses found within the current LDP within the future scheme document. Officers consider that there is no significant change to the intent of the area under LSP3 and as the development is currently considered consistent with TPS2, it is considered not to adversely prejudice the implementation of LSP3.			

c) any approved State planning policy	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

d) any environmental protection policy approved under the <i>Environmental Protection Act 1986</i> section 31(d) – None Applicable to this area from what I can determine	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

e) any policy of the Commission	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

f) any policy of the State	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

g) any local planning policy for the Scheme area	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

h) any structure plan, activity centre plan or local development plan that relates to the development	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
<p>Comment: Refer to comments on the Redgum Brook Estate North Local Structure Plan and Local Development Plan No. 18 Redgum Brook Estate.</p> <p>The property also has a broad 'Residential R20' designation under the Byford District Structure Plan and is indicated as an area that is subject to further detailed planning regarding the Tonkin Highway alignment. This further detailed planning has been done through the LSP and LDP which the technical assessment has focused in on.</p>			

i) any report of the review of the local planning scheme that has been published under the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i>	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

j) in the case of land reserved under this Scheme, the objectives for the reserve and the additional and permitted uses identified in this Scheme for the reserve	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

Development:

k) the built heritage conservation of any place that is of cultural significance	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

l) the effect of the proposal on the cultural heritage significance of the area in which the development is located	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Refer to the Form of Development and Amenity section. Officers consider that the form and scale of the building is acceptable given its location within the 'Light Industry' zone.			

n) the amenity of the locality including the following – I. Environmental impacts of the development II. The character of the locality III. Social impacts of the development	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: Officers consider the retrospective development will not negatively impact the character of the locality due to its temporary nature.			

o) the likely effect of the development on the natural environment or water resources and any means that are proposed to protect or to mitigate impacts on the natural environment or the water resource	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

q) the suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bushfire, soil erosion, land degradation or any other risk	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

r) the suitability of the land for the development taking into account the possible risk to human health or safety	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

s) the adequacy of – I. The proposed means of access to and egress from the site; and II. Arrangements for the loading, unloading, manoeuvring and parking of vehicles	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

t) the amount of traffic likely to be generated by the development, particularly in relation to the capacity off the road system in the locality and the probable effect on traffic flow and safety	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

u) the availability and adequacy for the development of the following – I. Public transport services II. Public utility services III. Storage, management and collection of waste IV. Access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities) V. Access by older people and people with disability	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

v) the potential loss of any community service or benefit resulting from the development other than potential loss that may result from economic competition between new and existing businesses	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

w) the history of the site where the development is to be located	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

y) any submissions received on the application	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
Comment: No objections received during advertising.			
Za) the comments or submissions received from any authority consulted under clause 66	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			

Zb) any other planning consideration the local government considers appropriate	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Comment:			