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- NOTE:**
- a) The Council Committee Minutes Item numbers may be out of sequence. Please refer to Section 10 of the Agenda – Information Report - Committee Decisions Under Delegated Authority for these items.
 - b) Declaration of Councillors and Officers Interest is made at the time the item is discussed.

MINUTES OF THE SPECIAL COUNCIL MEETING HELD IN THE COUNCIL CHAMBERS, 6 PATERSON STREET, MUNDIJONG ON TUESDAY, 6 MAY 2008. THE PRESIDING MEMBER DECLARED THE MEETING OPEN AT 5.04PM AND WELCOMED MEMBERS OF THE PUBLIC PRESENT IN THE GALLERY, COUNCILLORS AND STAFF.

1. ATTENDANCE & APOLOGIES:

IN ATTENDANCE:

COUNCILLORS: DL Needham Presiding Member
C Buttfield
C Randall
E Brown
JE Price
KR Murphy
MJ Geurds
S Twine
WJ Kirkpatrick

OFFICERS: Mr S Goode Acting Chief Executive Officer
Mr A Hart Director Corporate Services
Mr B Gleeson Director Development Services
Mrs S van Aswegen Director Strategic Community Planning
Mr M Botte Acting Director Engineering
Mrs L Fletcher Minute Secretary

APOLOGIES: Cr M Harris

GALLERY: 1

2. PUBLIC QUESTION TIME:

Nil

2.1 Response To Previous Public Questions Taken On Notice

Nil

3. PUBLIC STATEMENT TIME:

Nil

4. PETITIONS & DEPUTATIONS:

Nil

5. PRESIDENT'S REPORT:

Nil

6. DECLARATION OF COUNCILLORS AND OFFICERS INTEREST:

Nil

7. RECEIPT OF MINUTES OR REPORTS AND CONSIDERATION OF ADOPTION OF RECOMMENDATIONS FROM COMMITTEE MEETINGS HELD SINCE THE PREVIOUS COUNCIL MEETING:

Nil

8. MOTIONS OF WHICH NOTICE HAS BEEN GIVEN

SCM016/05/08		DETAILED AREA PLAN FOR THE GLADES RESIDENTIAL ESTATE AT BYFORD (A1305/10)
Proponent:	Taylor Burrell Barnett	In Brief To provide a response to the State Administrative Tribunal in relation to the appeal lodged regarding the provisions of the Detailed Area Plan (DAP) adopted by Council, setting out design requirements for the future development of The Glades subdivision at Byford. It is recommended that the State Administrative Tribunal be advised of Council's reconsideration of the DAP.
Owner:	LWP Property Group	
Officer:	Brad Gleeson - Director Development Services	
Signatures Author:		
Senior Officer:		
Date of Report	1 May 2008	
Previously		
Disclosure of Interest	No officer involved in the preparation of this report is required to declare an interest in accordance with the provisions of the Local Government Act	
Delegation	Council	

Date of Receipt: 19 September 2007
 Advertised: N/A
 Submissions: N/A
 Lot Area: N/A
 L.A Zoning: Urban Development
 MRS Zoning: Urban Deferred and Urban
 Byford Structure Plan: Residential
 Local Structure Plan: Not adopted yet. Subdivision of Stage 1 has been approved.
 Municipal Inventory: N/A
 Bush Forever: N/A
 Date of Inspection: Various

Background:

A Detailed Area Plan (DAP) was submitted for Stage 1 of The Glades at Byford. The conditional subdivision approval issued by the Western Australian Planning Commission for this development requires DAP's for those lots abutting public open space areas or rear laneways, having a density coding of R30 or greater and abutting Abernethy or Warrington Road.

The submitted DAP was not consistent with the standard provisions contained in the Council's adopted delegated authority for DAP's. It was considered appropriate to ensure consistency with all DAP's in the Glades estate of Byford, due to the size of this development (approximately 3,500 lots). This will ensure that different DAP's are not produced throughout Byford. Council's decision not only deals specifically with the DAP for Stage 1 but also will apply to all DAP's in The Glades estate.

Council at its meeting held on 26 November 2007 resolved to adopt under clause 5.18.5 of Town Planning Scheme No. 2 (TPS 2), delegated authority to approve DAP's for land within The Glades estate including Stage 1, incorporating a number of standard provisions.

A copy of the original Detailed Area Plan 1 The Glades and the approved Detailed Area provisions are with attachments marked SCM016.1/05/08 (IN07/16602) & SCM016.2/05/08.

Appeal

In response to the Council's decision to vary the DAP provisions submitted by the applicant, an application for review was lodged with the State Administrative Tribunal (SAT) on 19 December 2007. The Council did not receive a copy of the applicant's submission to the SAT until 11 January 2008. A Directions Hearing was held on 18 January 2008, and the matter was referred to mediation.

A mediation hearing was held 6 February 2008. The order from this mediation session was that the applicant would provide detailed submissions to the Shire on the variations to the DAP provisions to allow the matter to be referred back to Council. Meetings have been held between the applicant, their consultants and Council officers to identify areas of agreement or disagreement on this issue.

Council review

Council at its meeting held on 28 April 2008 considered a report on this matter and resolved:

"OCM036/04/08 COUNCIL DECISION

Moved Cr Kirkpatrick, seconded Cr Twine that item OCM036/04/08 be deferred to a Special Council meeting with a date to be determined.

CARRIED 10/0

Council Note: The Officers Recommended Resolution was changed to allow further consideration of the report by Officers and the Applicant."

The mediation session at SAT scheduled for 2 May 2008 was vacated and is now rescheduled for 13 May.

Sustainability Statement

Effect on Environment: Draft DAP 1 for The Glades submitted by the applicant does not adequately address issues such as passive solar orientation of indoor and outdoor living areas and stormwater attenuation. These issues were addressed in the DAP provisions adopted by Council.

Use of Local, renewable or recycled Resources: The promotion of energy efficiency will result in reduced energy consumption and dependency upon resources. Additional provisions are included in the DAP provisions to further achieve this objective.

Economic Viability: The modified DAP provisions for The Glades focus on environmental and resource sustainability and appropriate design.

Social – Quality of Life: The modified DAP provisions for The Glades focus on environmental sustainability and particularly an appropriate neighbourhood environment promoting social interaction, attractive streetscape and passive surveillance of public spaces such as parks and rear laneways will be achieved.

Statutory Environment:

Planning and Development Act 2005
Town Planning Scheme No. 2

Policy/Work Procedure

Implications:

Statement of Planning Policy No. 3.1 (*Residential Design Codes*)
Local Planning Policy No. 6 (*Water Sensitive Design*)
Byford Urban Stormwater Management Strategy
Byford Structure Plan

Financial Implications:

There are no financial implications to Council related to this application.

Strategic Implications:

This proposal relates to the following Key Sustainability Result Areas:-

1. People and Community

Objective 1: Good quality of life for all residents

Strategies:

6. Ensure a safe and secure community.

Objective 2: Plan and develop towns and communities based on principles of sustainability

Strategies:

3. Design and develop clustered neighbourhoods in order to minimise car dependency.

4. Foster a strong sense of community, place and belonging.

2. Environment

Objective 1: Protect and repair natural resources and processes throughout the Shire

Strategies:

1. Increase awareness of the value of environmental requirements towards sustainability.

3. Encourage protection and rehabilitation of natural resources.

4. Governance

Objective 3: Compliance to necessary legislation

Strategy:

1. Ensure development and use of infrastructure and land complies with required standards.

Community Consultation:

Not required.

Comment:

The submitted DAP for The Glades proposes significant variations to the Residential Design Codes (Codes) such as setbacks and open space. There was little justification for these variations provided by the applicant when the DAP was initially lodged. After assessment of the proposal, a number of these variations were not supported.

The specific provisions of the DAP the subject of this appeal are as follows:

- Setbacks
- Solar Setbacks
- Open space
- Width of garages
- Driveways/ Crossovers
- Fencing
- Sheds/ Outbuildings
- Lots abutting major roads

Submission from applicant – 28 April 2008

The applicant submitted further information to the Council in relation to specific matters associated with the DAP provisions ie solar setback, open space and fencing.

A copy of this document is with the attachments marked SCM016.3/05/08 & SCM016.4/05/08.

1. SETBACKS

R20 lots – Front setback

Residential Design Codes requirements	Average setback 6 metres	Minimum setback 3 metres
Applicants original DAP provision	Average setback 4 metres	Minimum setback 2 metres
Council adopted DAP provision	Average setback 4 metres	Minimum setback 2 metres Minimum setback 4.5 metres for carport/ garage
Revised provision now suggested (by applicant)	Minimum of 3 metres (no average)	Minimum setback 4.5 metres for carport/ garage

The original justification for the variation to the Codes by the applicant was to provide an improved streetscape and maximise the street prominence of dwellings. This new approach was supported because:

1. The reduced setback will have the effect of narrowing the feel of the streetscape which is considered to have a beneficial effect in reducing traffic speeds. Given the long straight street blocks this outcome is desirable.
2. There is more opportunity for passive surveillance of the street if dwellings are closer to the road.
3. Larger backyards would be able to be provided if the front setback is reduced.

However, whilst this reduced setback is supported for dwellings, it is not supported for garages or carports because it is considered important to enable a car to be parked in the driveway without impeding the verge and/or public footpath.

Further Submission from Applicant

The applicant has submitted a revised proposal in relation the front setback. The 4.5 metre minimum setback for the carport/garage is now accepted. However, it is proposed to reduce the front setback from an average of 4 metres to a minimum of 3 metres (no average).

In support of this request the applicant advises:

It is proposed that given the increased 4.5 metre minimum setback to the garage that the front setback to the main dwelling should be brought back to a minimum 3 metres (no average). This slight variation should still achieve the greater street presence being sought for R20 dwellings whilst achieving a better relationship with an increased garage setback.

Officer comment

This change will result in dwellings having a 3 metre setback to the front boundary, rather the 2 metre minimum setback with a 4 metre average, as adopted by Council. This revised proposal is supported.

R40 lots

1. Rear setback – Dwellings

Original DAP submission	1.5 rear setback for dwellings	0.5 metre rear setback for carport/ garage
Council adopted DAP provisions	2 metre rear setback for dwellings	1 metre rear setback for carport/garage

Dwellings:

The Codes require a 1.5 metre rear setback and the submitted DAP did not propose a variation to the R-Codes on this matter. A reduction in the rear setback from 2 metres back to 1.5 metres is supported.

2. Rear setback - Carport/Garage:

The applicant advises:

- *A 0.5 metre setback requirement is considered adequate from a traffic manoeuvrability perspective and also provides for a greater ability to accommodate larger portions of northern facing open space. This is evidenced in numerous developments.*
- *A 1.0 metre setback, with fencing provided to the rear boundary creates a portion of space with very poor surveillance (essentially a concealed hiding space).*
- *This DAP has a short length of laneway where issues of manoeuvrability and vehicle speed are minimised.*
- *Increasing the garage setback reduces sight lines when reversing / existing the laneway lots where fencing is provided on the boundary.*

The reduction of the rear setback/from 1 metre back to 0.5 metres for carport/garages is supported.

3. Front setback – Dwellings:

The applicant is seeking to increase the front setback to a 2.5 metre minimum, not 2 metres as adopted in the DAP. This change is supported.

R10 lots

Proposed Lot 516 contains an existing house. The applicant sought Code variations for this existing dwelling that is being retained.

Officer comment:

The existing house can remain on this property as of right under the WAPC subdivision approval. If the current house is demolished and a new house was to be built, then the relevant Codes will apply, as well as the DAP provisions.

2. SOLAR SETBACK

The applicant originally applied solar setback principles in the DAP for single and double storey developments for R40 lots only, subject to some exemptions. The Council adopted a generic provision in the DAP requiring a minimum 2 metre solar setback to be provided to any north facing boundary (all lots).

Further submission from applicant

The applicant advises that the second storey solar setback is supported but not for the R20 lots, where solar penetration is more easily achieved.

Officer comment

The application of a 2 metre solar setback in the R20 zone is not considered necessary. The normal Codes would apply for setbacks in this instance as increasing the setback to 2 metres would only have a minimal benefit on solar penetration to the dwelling. A solar setback for lots sizes above R20 is still supported by the applicant. .

The DAP provisions can be reworded to state:

“Setbacks for development shall be in accordance with the following:

Solar setback

On lots with a density greater than R20, the requirements of the R-Codes will apply to any north facing window.

3. OPEN SPACE

R-Code requirements	DAP suggested by Applicant
R20 – 50% (minimum)	R20 – 40% (minimum)
R40 – 45% (minimum)	R40 – 35% (minimum)

The applicants originally provided no justification to this major variation to the R Codes in the original submission for the DAP or in the grounds for the appeal. Further information was submitted during the mediation process in support of the request to reduce the open space requirement and increase the permissible site coverage on lots. These grounds are outlined below:

- *Varying the R Codes minimum open space requirement gives the first home buyer the option to construct a slightly larger dwelling without having to build a second storey with significant additional cost.*
- *Any concern the Shire have relating to the ability to create usable outdoor living areas is recognised and protected under the R Codes with mandates minimum dimensions for open space.*
- *Examples are provided in Ellenbrook where these site coverage provisions are applied eg 70% site coverage for R40 and 60% site coverage for R20 lots.*
- *It must be recognised that the provisions being sought are minimums only and research undertaken indicates that generally, the application of the minimums is rarely sought. Average of 50% of site coverage is achieved in Stage 15B of Ellenbrook.*
- *Examples provided to show how open space requirements can be achieved in building designs in Ellenbrook.*
- *The area is located in close proximity to public open space (including multiple use corridor areas).*
- *There is minimal difference in terms of square metres of open space between a 60/40% and a 50/50% split of open space.*
- *The overall estate provides in excess of 12% POS as opposed to the required WAPC 10% POS.*

Revised proposal

The applicants have discussed the site coverage variations with the landowner, LWP. They advise that they are willing to vary their position on the original site coverage requirements as follows:

R-Code requirements	Revised suggested by Applicant	DAP by Applicant
R20 – 50% (minimum)	R20 – 45% (minimum)	45%
R40 – 45% (minimum)	R40 – 40% (minimum)	40%

A 5% variation is being sought, rather than the original 10% variation in open space. This is based on significant precedents being provided in many new urban areas. The applicant advises that evidence suggests that parts of Ellenbrook where these allowances exist, the majority of new developments do not seek to increase the amount of site coverage above the current R Codes standards, however some people will utilise this flexibility in their house designs.

Officer comment:

This issue has been investigated in detail by Council officers including discussions with other Local Governments on how they deal with such matters. It is noted that there are differences of opinion on this matter between technical experts (planners, building surveyors, urban designers and even between local authorities).

Officers have carefully considered this matter and the information provided by the applicant in support of their arguments to increase site coverage/reduce open space on these lots.

One of the major arguments against this proposal is that it will reduce the amount of private open space on lots and the ability to plant vegetation/trees/shrubs. The amount of land that would potentially be lost as open space on a typical 500m² R20 lot would be around 50m². This is not considered a small amount of land and cumulatively, over major developments in Byford the amount of open space on lots that could be lost to development (buildings) is large.

Further on a typical 500m² R20 lot, increasing the site coverage means that a landowner could increase the size of a dwelling from 250m² to 300m². In addition, the owners can still apply to build patio/alfresco (open sided structures) and outbuildings. Again, cumulatively the amount of land available to open space is being reduced on these lots.

Ultimately, Council has discretion under the Codes and its Town Planning Scheme to consider individual requests to vary elements of the Codes (such as site coverage, setbacks etc) subject to a performance based assessment of a proposal. These would be considered on their planning merits after neighbour consultation has occurred.

After a detailed review of this proposal including discussion with a range of people and examination of other similar DAP provisions adopted by other local governments, it is recommended that the revised proposal to slightly reduce the open space provisions be approved.

4. WIDTH OF GARAGES

The DAP provision specified that a garage is to be a maximum of two car width (6 metres external width). The applicant agrees with this provision for the R40 lots, but not the R10 and R20 lots where larger garages should be permitted.

Officer comment:

It is agreed that bigger garages on the larger R10 lots is acceptable. Concern is raised about allowing larger garages in the R20 area, beyond the normal acceptable double garage. Such proposals would adversely impact upon the streetscape. It is considered that the existing Codes provision should apply which allows for a maximum of 50% of the lot width to be for garages. Therefore the DAP provision should be removed, and the Codes provisions will then prevail.

5. DRIVEWAYS/CROSSOVERS

The DAP provisions require driveway/crossovers to be brick paved or asphalt sealed. The developer is striving to achieve a higher quality of the built form/landscape and developers design guidelines do not permit asphalt.

Officer comment:

The change to this provision is supported to restrict the use of asphalt.

6. FENCING

This provision requires that all fencing in the street setback area, including rear laneways, to use open style fencing above 1.2 metres. Open style fencing is also required where lots abut public open space (POS).

The applicant advises that:

- In accordance with the Developer Design Guidelines, they are seeking to achieve an open landscape and contemporary rural design and do not permit any side or front fencing beyond the front building line.
- It seeks clarification on whether lots abutting POS will be permitted to have some solid fencing along a portion of the boundary, adjacent to the dwelling.
- They do not support the requirement for open style fencing on the rear boundaries of the lots abutting laneways or the rear setback area. The applicant acknowledges the need to provide a certain level of surveillance to the laneway. There also needs to be consideration to privacy and overlooking. Based on the small length of the laneway and that appropriate lighting will be provided, the open style fencing is not supported.
- Fencing will be provided and installed by the developer as part of a package.
- In relation to fencing along the laneway, solid fencing up to 1.8 metres is required. The proposed laneways are only 60 metres in length and allow for sufficient surveillance and cross movement of vehicles. The lots immediately adjacent are R20 and will provide a greater level of surveillance than if the laneway serviced two rows of R40 lots. The laneways will be provided with street lighting at each end of the lane.

Officer comment:

(a) Fencing forward of the building line:

The proposal by the developer to restrict any fencing in the front building setback area is supported.

(b) Side fencing:

The intent of the provisions relating to open style fencing abutting the laneway and the street setback area, only relates to the fence along the rear boundary. It does not relate to the side fences between adjoining lots which can be solid fences at 1.8 metres high.

(c) Fencing on lots

The issue of passive surveillance is considered very important to ensure that residents can “keep an eye” on activities in the laneway. If the rear boundary of each lot contains a 1.8 metre high solid fence and garage doors, then no surveillance to the laneway can occur from adjoining lots.

Removal of this provision is not supported and open style fencing above 1.2 metres is required. If landowners desire privacy, they are at liberty to plant trees/shrubs inside their property boundary, but visual surveillance can still be achieved.

The requirement for open style fencing on lots abutting POS can be reviewed. A number of lots have POS along their side boundaries and it is considered reasonable to modify this provision. It is proposed that solid fencing is permitted on the side boundaries of R20 lots (except in the front street setback area, as per the developers Design provisions). Solid fencing can be permitted on the R10 lots abutting POS, adjacent to the dwelling for a maximum of 50% of the total length of the boundary

7. SHEDS/OUTBUILDINGS

This clause requires that no additional sheds or outbuildings are permitted on lots abutting POS and the applicant seeks clarification and justification for this requirement.

Officer comment:

It is acknowledged that landowners should have the right to build a shed/outbuilding on their lot. The intent of the clause was to ensure that there would be no visual amenity impacts occurring with the construction of sheds/outbuildings on lots, adjacent to areas of POS. This is particularly relevant with the requirements that lots abutting POS have permeable fencing. The condition can be reworded to allow for sheds/outbuildings subject to adequate screening.

8. LOTS ABUTTING MAJOR ROADS

These provisions would not apply to the Stage 1 subdivision for the Glades.

Conclusion

Shire officers have spent a considerable amount of time on reviewing the approved DAP and the many provisions that are under review through the SAT appeal process. The consultants for the developers have worked closely with Council officers throughout the appeal process including mediation and provided more information as requested. The co-operation of the proponents planning consultants in assisting the Shire officers to consider each specific DAP provision under review is appreciated.

It is considered that the additional information provided by the applicant on 28 April 2008 and the suggested changes to the DAP as outlined in this report, still provides a good urban design outcome for the estate and the overall Byford area. These changes are recommended to Council for adoption.

Voting Requirements: Simple Majority

Officer Recommended Resolution

Further to the State Administrative Tribunal order of 6 February 2008, Council submits to the State Administrative Tribunal its review of the Detailed Area Plan for Stage 1 only of The Glades estate as outlined in the Officers report.

SUPPLEMENTARY INFORMATION

In reference to the agenda report submitted to Council for the Special Council meeting on 6 May 2008, concerns have been raised by the Engineering Services team regarding elements of the Detailed Area Plan (DAP). These are raised with Council as outlined below:

1. Rear setback to carport/ garage

The DAP originally proposed a 0.5 metre rear setback for R40 lots, however Council required a 1 metre rear setback.

The applicants opposed this setback and was one of the issues raised in their appeal to the State Administrative Tribunal (SAT). The report before Council agreed to a 0.5 metre rear setback.

Engineering Services have raised concerns about this 0.5 metre rear setback being insufficient distance to allow for the opening of garage doors and turning area for vehicles in the laneways. Ideally, they would prefer 1.5 metres however support a 1 metre setback. Their concerns are based on feedback from other local governments where these issues have been raised.

Conclusion

That Council not support the variation to the rear setback for carports/garages on R40 lots from 1 metre to 0.5 metres.

2. Bin storage areas for laneway lots

Engineering Services have raised concerns regarding bin pick up issues with lots backing onto laneways. Rubbish would normally be picked up in the rear laneway and not the front of these lots. Feedback from other local governments on laneway lots was that rubbish collection in these laneways has caused problems.

It is requested that a bin pad/bulk rubbish set out hardstand (1m deep x 2m wide) at the rear of each laneway lot be provided. The bin pad/hardstand must be accessible from the rear laneway at all times (this hardstand cannot be within the area of driveway/garage access).

Conclusion

That the following DAP provision be included:

All lots (R40) are to provide one bin pad (2 metres wide and 1 metre deep) with access from a laneway. The maximum setback of a bin pad from the rear boundary is 1.5 metres and the minimum setback is nil.

SCM016/05/08 COUNCIL DECISION/Revised Officer Recommended Resolution

Moved Cr Kirkpatrick, seconded Cr Price

Further to the State Administrative Tribunal order of 6 February 2008, Council submits to the State Administrative Tribunal its review of the Detailed Area Plan for Stage 1 only of The Glades estate as outlined in the Officers report, including:

- 1. The requirement for a 1 metre rear setback to carports/garages on R40 lots.**
- 2. The inclusion of the following provision:**

All lots (R40) are to provide one bin pad (2 metres wide and 1 metre deep) with access from a laneway. The maximum setback of a bin pad from the rear boundary is 1.5 metres and the minimum setback is nil.

CARRIED 8/1

9. ACTING CHIEF EXECUTIVE OFFICER'S REPORT

Nil

10. URGENT BUSINESS:

Nil

11. COUNCILLOR QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN:

Nil

12. CLOSURE:

There being no further business, the Presiding Member closed the meeting at 5.21pm.

I certify that these minutes were confirmed at the
Ordinary Council meeting held on 26th May 2008.

.....
Presiding Member

.....
Date