



City of Nedlands

Planning and Development Reports

Committee Consideration – 9 May 2017

Council Resolution – 23 May 2017

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Council: 23 May 2017

PD19.17	(Lot 5) No. 63 North Street, Swanbourne – Outdoor Seating Areas (Retrospective)
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Committee	9 May 2017
Council	23 May 2017
Applicant	Kirkwood Deli
Landowner	Blueberries Food Basket Pty Ltd
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2016/354
Previous Item	Item D70.08 – December 2008
Delegation	In accordance with Clause 6.7.1a) of the City's Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	1. Photographs of property

1.0 Executive Summary

The Kirkwood Deli (shop) is located on the corner of North Street and Kirkwood Road, Swanbourne.

As a consequence of the City recently undertaking an outdoor dining licence audit it has become aware of 2 unauthorised outdoor seating areas existing adjacent to the shop, one on the Kirkwood Road side and an additional area along the property's North Street frontage. Subsequently a retrospective development application was received for the outdoor seating areas to remain.

In December 2008, Council resolved to approve an application for 3 tables and 6 seats on the Kirkwood Road verge of the property. The approval was valid for 12 months. Approval was not sought for the seating to remain beyond the 12 months.

Consequently, the following 3 issues exist:

- Approval was not sought for the seating approved in 2008 to remain beyond the 12 months.
- An additional 6 seats are proposed along the property's Kirkwood Road frontage.
- Eight (8) seats are proposed along the property's North Street frontage.

The proposal will result in a shortfall of car bays for the premises and was therefore advertised to nearby landowners for comment. During the advertising period 5 objections and 6 non-objections were received.

It is recommended that the application be refused by Council as the proposal results in a significant car parking shortfall. The current car parking situation within the locality is already an issue based on the number and the nature of the concerns received during the advertising period. The proposal will increase the effects from the lack of car parking available as patrons will stay for longer periods.

2.0 Recommendation to Committee

Council refuses the development application for the shop’s outdoor seating areas to remain at (Lot 5) No. 63 North Street, Swanbourne, for the following reasons:

- 1. The proposed land use is inconsistent with Clause 5.5.1 of the City’s Town Planning Scheme No. 2 and Clause 67 (n) (t) and (y) of Schedule 2 – Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* as the land use is considered inappropriate for the zoning and there is inadequate car parking to facilitate the proposal.**
- 2. An insufficient number of car bays are provided for the proposed use, thus potentially creating safety and amenity issues for pedestrians and other road users due to vehicles being illegally parked.**
- 3. An additional shortfall in the required amount of on site car parking bays does not represent the orderly and proper planning of the City and conflicts with cl. 6.5.1 of the City’s Town Planning Scheme No. 2.**

3.0 Site Details

Lot area	443m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Retail Shopping
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject site has frontages to North Street and Kirkwood Road as shown on the locality plan on the following page. Nearby properties contain dwellings, with Allen Park being located within close proximity to the north. Those properties on the southern side of North Street fall within the Town of Cottesloe.



4.0 Background

The premises were originally approved as a shop when the building was initially constructed in 1954. According to the City's records it has continuously been used for retail purposes since.

In December 2008, Council resolved to approve an application for 3 tables and 6 seats proposed on the Kirkwood Road verge of the property. The approval was valid for a period of one year from the date of the decision. No further approval was sought for the seating area to remain beyond December 2009.

5.0 Specific Application Details

The applicant seeks retrospective approval for 2 outdoor seating areas to remain, details of which are as follows:

- An outdoor seating area containing 3 tables and 12 seats is proposed adjacent to the building's eastern façade which falls within the reserve for Kirkwood Road.
- An outdoor seating area containing 2 tables and 8 seats is proposed adjacent to the building's southern façade which falls within the property's boundaries.
- There will be a distance of at least 2m between outdoor seating areas and the nearest kerbing so as to allow for adequate space for pedestrians to pass.
- At any one time there will be a maximum of 7 staff on the premises.
- The seating areas will be available to customers daily between 6.00am and 7.00pm.
- No table service is proposed.
- No cooked meals are to be available.

6.0 Consultation

The proposal was advertised to nearby landowners for comment in December 2016 due to variations proposed to the amount of onsite car bays required. During the advertising period 5 objections and 6 non-objections were received.

Concerns received were with regard to the shortfall in car bays resulting in car parking difficulties within the local area, and the operation potentially resulting in excessive levels of noise.

Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.

7.0 Assessment of Statutory Provisions

7.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections.

7.2 Town Planning Scheme No. 2

7.2.1 Amenity

Under clause 5.5.1 of TPS 2 Council may refuse to approve any development if:

“in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any other factor inconsistent with the use for which the lot is zoned.”

Through submission and complaint records, the City is aware of car parking difficulties within the vicinity and the impacts this is having on the amenity of the area. This is also reflected by the number of objections received in relation to the proposal.

Despite there being some on-street car bays available along Kirkwood Road, these are time restricted. It is likely that if the proposal is approved customers will utilise the available parking surrounding the property for convenience.

There is already a significant carparking shortfall on this property. Approval of an additional 10 bay shortfall will likely increase this problem. Vehicles parking illegally due to the limited amount of car bays available are likely to have an impact on traffic flow and therefore have an adverse impact on the local amenity.

7.2.2 Car Parking

Due to the site layout no car parking bays exist on the property, nor is there the ability to provide any. The property currently has a shortfall of 25 car bays.

If the application is approved by Council potentially a further 10 car bays will be required.

The following on street car parking restrictions exist within the local area:

- North Street and Kirkwood Road intersection – No parking at all times
- Kirkwood Road – 30 minutes maximum between Monday and Friday 8.00am to 6.00pm, and Saturdays 8.00am to 1.00pm.
- North Street (southern side) – No parking at all times.

The lack of car bays may result in vehicles parking illegally nearby, which will create safety issues for pedestrians and other road users as well have an adverse impact on local traffic flow.

The current car parking situation within the locality already appears to be an issue based on the number and the nature of the concerns received during the advertising period.

There is no documentation from the applicant to support any claim that the car parking available is adequate.

Considering the above, the proposal is likely have an adverse impact on the local amenity if the application is approved by Council.

If Council resolves to approve the application despite the comments above, it is recommended that it be for a maximum of 3 tables and 6 seats only so as to be consistent with the previous decision made.

8.0 Other Matters of Concern

During the advertising period concerns were also received with regard to noise from the operation potentially being excessive.

In response it is advised that there is no evidence to suggest that noise levels will be excessive if the application is approved. If anything, the levels are likely to be compliant with the *Environmental Protection (Noise) Regulations 1997* due to the relatively small size of the seating areas.

To ensure that noise emitted from service and/or delivery trucks visiting the premises complies with the Noise Regulations, if the application is approved by Council a condition is recommended to be included which restricts the times they can visit. If they are found to have breached this requirement the City has the ability to take enforcement action.

9.0 Budget / Financial Implications

Should Council refuse the application, there may be costs incurred through an appeal of Council's decision.

10.0 Risk Management

There are no known risks for the City.

11.0 Conclusion

The proposal will increase the effects from the lack of car parking available as patrons will stay for longer periods, and therefore the land use is likely to have a greater impact on the amenity of the residential locality. Additionally, it is considered that there is inadequate car parking available for the proposal. Accordingly it is recommended that Council refuses the application.

11.1 Recommendation if Application is Approved

If Council resolves to approve the application the following wording and conditions are recommended.

Council approves the retrospective development application for the shop's existing outdoor seating areas at (Lot 5) No. 63 North Street, Swanbourne, in accordance with the amended plan received on 10 January 2017, subject to the following conditions and advice:

1. The development shall at all times comply with the approved plan.
2. There being a maximum of 3 tables and 6 seats located on the premises.
3. Any seating available for customers which does not form part of this development approval being removed from the premises within 14 days from the date of this decision.
4. Only pre-packaged items are to be available for customers.
5. Service and/or delivery vehicles shall not service the premises before 7.00am or after 7.00 pm Monday to Saturday, or before 9.00 am or after 7.00 pm on Sundays and Public Holidays.

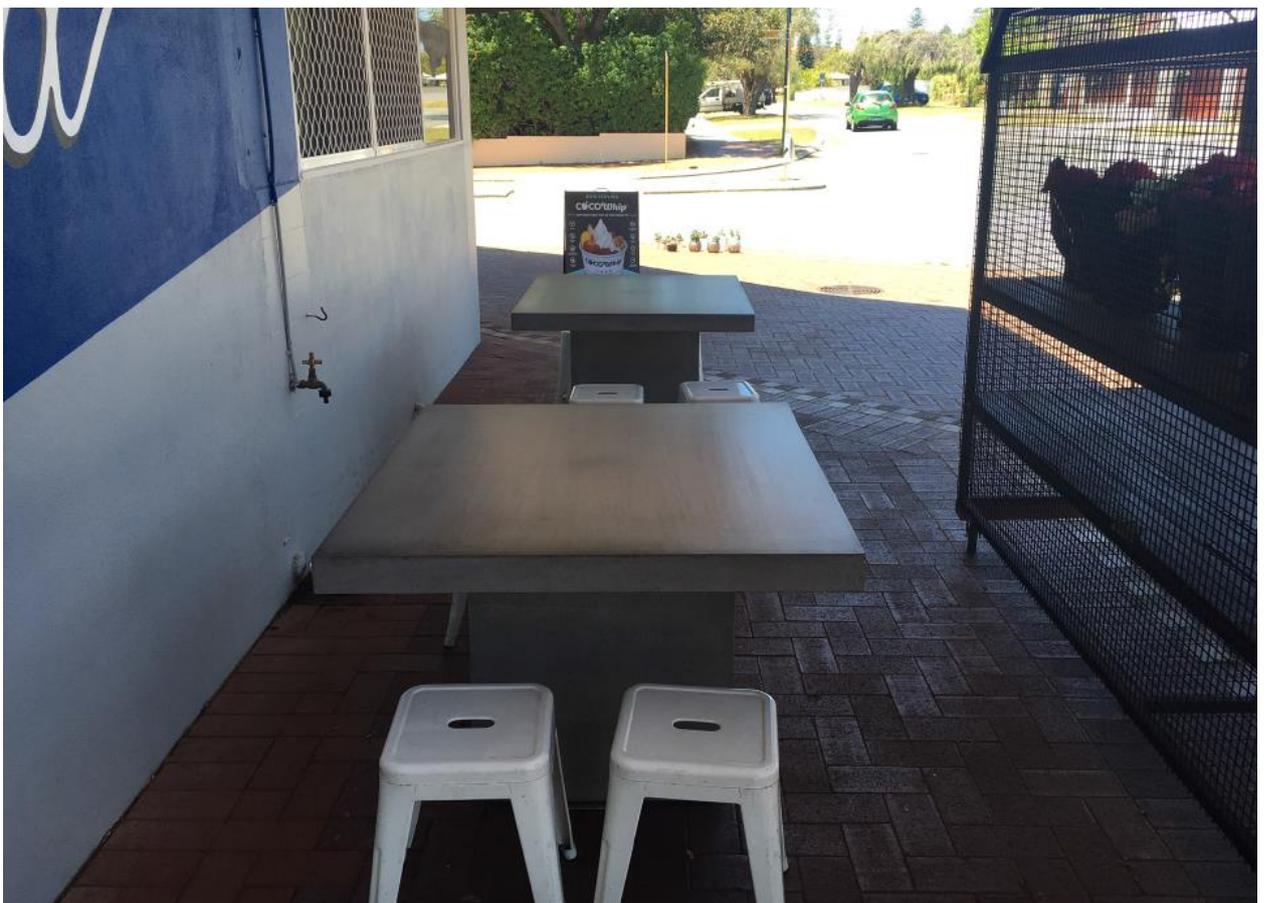
Advice Notes specific to this proposal:

1. The applicant is advised that a separate development application is required to be submitted to and approved by the City if they intend on either increasing the seating area and/or seating numbers on the premises.
2. An Outdoor Dining Licence is required to be obtained from the City for the outdoor seating areas.

Photograph of the seating area along Kirkwood Road



Photograph of the seating area along North Street



PD20.17	(Lot 91) No. 7 Shann Street, Floreat – Single Storey Single Dwelling
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Committee	9 May 2017
Council	23 May 2017
Applicant	R Dohmen
Landowner	R Dohmen
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2017/54
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1 of the City’s Instrument of Delegation, Council is required to determine the application as discretion exists for Council to approve the variation under the City’s Town Planning Scheme No. 2.
Attachments	1. Photograph of 7 Shann Street currently

1.0 Executive Summary

Development approval is being sought to construct a single storey single dwelling on the property.

A garage with a nil setback (boundary wall) is proposed on the eastern (side) boundary in lieu of 1m as required under the Residential Design Codes (R-Codes). No objections were received during the advertising period.

It is recommended that the application be refused by Council as it is considered to not comply with the design principles of the R-Codes due to the location of the garage and the likely impact this will have on the streetscape.

2.0 Recommendation to Committee

Council refuses the development application for the proposed single storey single dwelling at (Lot 91) No.7 Shann Street, Floreat, received on 10 March 2017, and the amended plans dated 3 April 2017, for the following reasons:

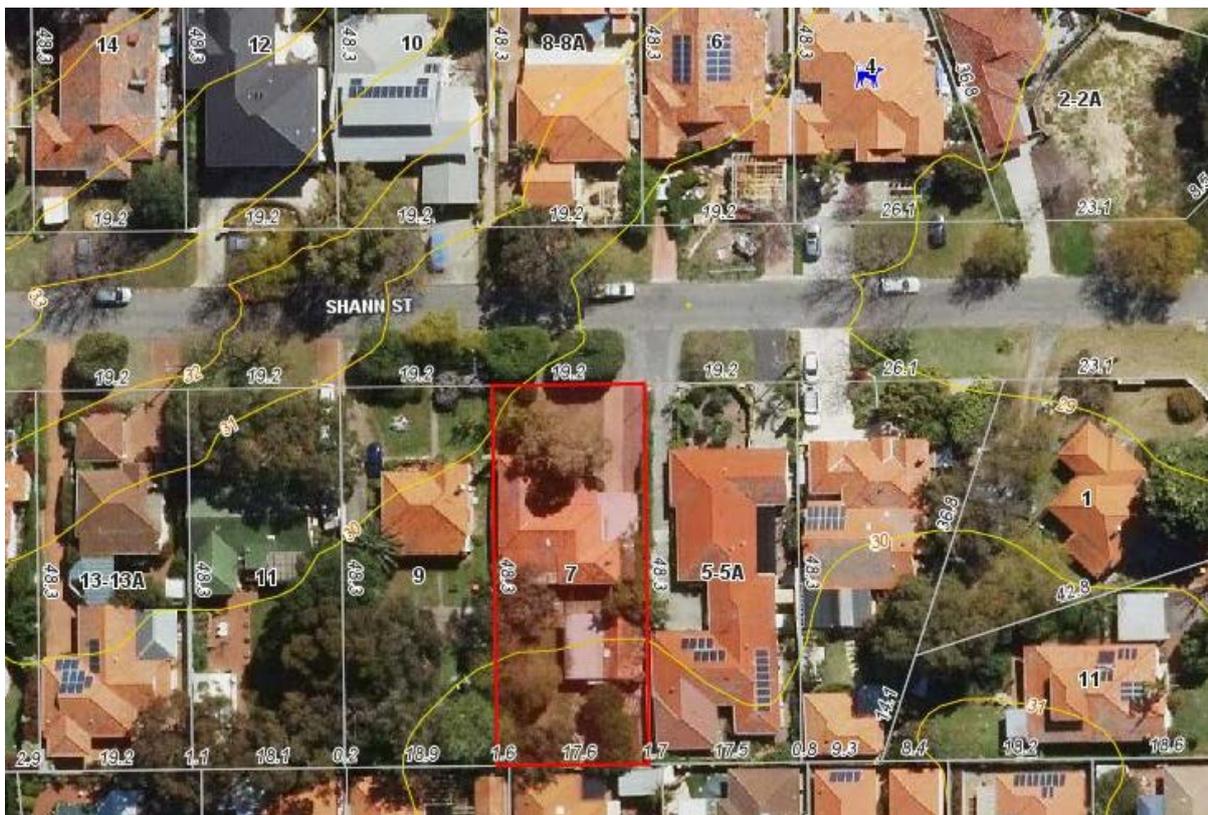
- 1. The proposal not satisfying the design principles stipulated under clause 5.1.3 (Lot Boundary Setback) of the Residential Design Codes due to the proposed nil boundary setback of the garage increasing the impacts of building bulk on adjoining properties.**
- 2. The proposal setting an undesirable precedent in terms of a boundary wall being visible from the primary street on a low density property.**
- 3. The boundary wall in the R12.5 zone does not represent the orderly and proper planning of the City and conflicts with cl. 6.5.1 of Town Planning Scheme No. 2.**

4. The proposal not satisfying provisions (m) and (n) of the Planning and Development (Local Planning Schemes) Regulations 2015 cl.67, as the proposal for a boundary wall is incompatible with low density zone and will negatively impact the character of the locality.

3.0 Site Details

Lot area	926m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R12.5
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those nearby contain single dwellings and associated outbuildings. Its topography is relatively flat as shown on the locality plan below.



4.0 Specific Application Details

The applicant seeks approval to construct a single storey single dwelling and install a below ground swimming pool at the rear of the property.

The development is compliant with the R-Codes, Town Planning Scheme No. 2 and Council's policies with the exception of a proposed garage.

The parapet wall for the garage is proposed on the eastern (side) boundary in lieu of 1m as required under the R-Codes, and is proposed to be 6.4m in length and 3.1m in height above natural ground level.

By way of justification in support of the proposal the applicant has advised the following:

“To produce an understated variation, we have set back the parapet wall over 10.5 metres from the front boundary. Thus the deviation will have minimal impact on the neighbouring property. Noticeably there is an existing driveway parallel to proposed eastern boundary wall, therefore we will not affect the neighbours sunlight or overshadow any outdoor living areas

We have designed a home that coincides and compliments its location. It works in a seamless manner, and the overall look of the proposal we believe is aesthetically pleasing.”

5.0 Consultation

The proposal was advertised to nearby landowners for comment in April 2017. During the advertising period no concerns were received.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections.

6.2 Residential Design Codes - State Planning Policy 3.1

6.2.1 Side Boundary Setback

Deemed-to-Comply Requirement	Proposed	Complies
In accordance with Table 2a of the R-Codes the garage is required to be setback 1m from the eastern boundary.	The garage is proposed to have a nil setback from the eastern boundary.	No
<p>Design Principles</p> <p>Variations to the deemed-to-comply requirements can be considered subject to satisfying the following design principle provisions:</p> <p><i>“Buildings set back from lot boundaries so as to:</i></p> <ul style="list-style-type: none"> • <i>reduce impacts of building bulk on adjoining properties;</i> • <i>provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i> • <i>minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”</i> 		
<p>Administration Comments</p> <p>If the boundary wall was approved it would set an undesirable precedent which may result in a proliferation of boundary walls usually associated with areas of higher residential density coding's.</p> <p>The vast majority of properties facing Shann Street do not have boundary walls visible from the street. Nearby properties have carports within their primary street setback areas however as these are open sided they do not have as significant an impact on the streetscape compared with what the proposed garage would do if constructed on the eastern boundary.</p> <p>There is an ample amount of space available for the proposed garage to be setback at least 1m from the eastern boundary.</p> <p>Considering the above, the garage is likely to have an adverse impact on the character of the locality and set an undesirable precedent due to its scale and location on the property.</p>		

7.0 Budget / Financial Implications

Should Council refuse the application, there may be costs incurred through an appeal of Council's decision.

8.0 Risk Management

There are no known risks for the City.

9.0 Conclusion

The boundary wall would not positively contribute to the streetscape, and its approval would set an undesirable precedent for low density coded properties.

There is an ample amount of space available on the property for the garage to be setback from the eastern boundary.

The location of the proposed garage will mean that it will likely have an adverse impact on the local amenity.

Accordingly it is recommended that the application be refused by Council.

9.1 Recommendation if Application is Approved

If Council resolves to approve the application the following wording and conditions are recommended.

Council approves the development application for the proposed single storey single dwelling at (Lot 91) No.7 Shann Street, Floreat, received on 10 March 2017, and the amended plans dated 3 April 2017, subject to the following conditions and advice:

1. The development shall at all times comply with the approved plans.
2. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.
3. The parapet wall being finished to a professional standard by the landowner within 14 days of the garage's practicable completion, and be maintained thereafter by the landowner, to the City's satisfaction.
4. All footings and the buildings shall be constructed wholly inside the site boundaries of the Certificate of Title.

Advice Notes specific to this approval:

1. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block.
2. Any construction in the verge will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Engineering section, prior to construction.
3. The landowner is advised that all mechanical equipment (e.g. air-conditioners, swimming pool pump) is required to comply with the *Environmental Protection (Noise) Regulations 1997*, in relation to noise.
4. The swimming pool fencing installed is to comply with the *Building Act 2011*, the *Building Regulations 2012* and Australian Standard S 1926.1-1992.

5. The swimming pool, whether partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
6. Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill which accepts ACM.

Removal and disposal of ACM shall be in accordance with *Health (Asbestos) Regulations 1992*, Regulations 5.43 - 5.53 of the *Occupational Safety and Health Regulations 1996*, *Code of Practice for the Safe Removal of Asbestos 2nd Edition*, *Code of Practice for the Management and Control of Asbestos in a Workplace*, and any Department of Commerce Worksafe requirements.

Where there is over 10m² of ACM or any amount of friable ACM to be removed, it shall be removed by a Worksafe licensed and trained individual or business.

7. All street trees on the verge are to be retained and shall not be removed without written approval from the Manager Parks Services.
8. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.



PD21.17	(Lot 146) No. 159A Rochdale Road, Mount Claremont – Home Business (Retrospective)
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Committee	9 May 2017
Council	23 May 2017
Applicant	B Marwick-Apfel
Owner	M Apfel and B Marwick-Apfel
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2017/69
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1a) of the City's Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	Nil.

1.0 Executive Summary

Retrospective development approval is being sought for a home business (paramedical micropigmentation) to continue operating from the property.

The application was advertised for comment and 2 objections and 2 non-objections were received.

It is recommended that the application be approved by Council as it is unlikely to have an adverse impact on the local amenity.

2.0 Recommendation to Committee

Council approves the retrospective development application for the home business (paramedical micropigmentation) to continue operating at (Lot 146) No. 159A Rochdale Road, Mount Claremont, received on 3 April 2017, subject to the following conditions and advice notes:

- 1. The development shall at all times comply with the approved plans.**
- 2. The proposed use complying with the home business definition stipulated under the City's Town Planning Scheme No. 2 (refer to advice note 1).**
- 3. Clients visiting the property by prior appointment only.**
- 4. A maximum of one client per day.**

5. The home business only being permitted to operate between Tuesday and Friday 10.00am to 5.00pm, including public holidays.
6. Vehicles belonging to clients only being parked on 159A Rochdale Road.

Advice Notes specific to this approval:

1. With regard to Condition 2, The applicant is advised that the use 'Home Business' is defined as being the following under the City's Town Planning Scheme No. 2:

"Home Business - means a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which:

- i) does not employ more than 2 people not members of the occupier's household;*
 - ii) will not cause injury to or adversely affect the amenity of the neighbourhood;*
 - iii) does not occupy an area greater than 50 square metres;*
 - iv) does not involve the retail sale, display or hire of goods of any nature;*
 - v) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and*
 - vi) does not involve the use of an essential service of greater capacity than normally required in the zone."*
2. Prior to commencing an *Application for Establishment of Skin Penetration Premises* shall be lodged with and approved by the City.
 3. Prior to commencing the premises shall receive an inspection from the City's Environmental Health section which cites the establishment may commence operation.
 4. A hand basin supplied with hot and cold water through a single outlet (hands free operation), soap and paper towels must be available in the immediate area where skin penetration procedures are undertaken.

3.0 Site Details

Lot area	1,012m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R20
Detailed Area Plan	Yes
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those nearby contain single dwellings. A double carport exists in front of the dwelling as shown on the locality plan below.



4.0 Specific Application Details

Retrospective development approval is being sought for a home business (paramedical micropigmentation) to continue operating from the property, details of which are as follows:

- The home business will only be operated by those residing at the property.
- Clients will visit the property by prior appointment only.
- The home business is proposed to operate between Tuesday and Fridays 10.00am to 5.00pm, including public holidays.
- The home business is proposed to occupy up to 20sqm in the dwelling.
- No signage is proposed. The home business is currently being advertised online.

5.0 Consultation

During the advertising period 2 objections and 2 non-objections were received. The following is a summary of the concerns received:

- The proposal potentially creating car parking difficulties within the local area.
- The use being inappropriate within a residential area.
- The proposal potentially reducing the value of properties within the local area.

Note: A full copy of the feedback received by the City has been given to the Councillors prior to the Council meeting.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) of the Regulations stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections.

6.2 Town Planning Scheme No. 2

6.2.1 Car Parking

A double carport exists on the property. As the carport is setback approximately 4.2m from the front boundary there is an inadequate amount of space available for any further vehicles to park in front of it on the property.

No parking restrictions currently exist along the section of Rochdale Road within close proximity to the property.

Town Planning Scheme No. 2 (TPS 2) does not contain a prescribed minimum number of car bays for a home business, therefore the number of car bays required is at the City's discretion.

Administration Comments

During the advertising period concerns were raised regarding the proposed use potentially creating car parking issues within the locality.

The applicant has advised that clients will visit the premises by prior appointment only, and they will instruct clients to park beneath the carport.

The applicant has also advised that only one client will visit the property each day.

There is no record of the City receiving any complaints regarding car parking associated with the home business currently operating at the property.

Considering the above, the proposal is unlikely to have an adverse impact on the local amenity if approved by Council.

7.0 Other Matters of Concern

During the advertising period concerns were also received with regard to the following:

- The proposal potentially reducing the value of surrounding properties.
- The use being inappropriate within a residential area.

7.1 Potential Impact on Property Value Concerns

The potential impact a proposed use may have on nearby properties is not a matter due regard is to be given to when determining the application, in accordance with Schedule 2, Part 9, clause 67 (Matters to be considered by local government) of the Regulations.

7.2 The Appropriateness of the Use in a Residential Area

In accordance with Table I (Use Class Table) of TPS 2 the use 'Home Business' can be considered on a Residential zoned property subject to development approval being obtained.

8.0 Budget / Financial Implications

Should Council refuse the application, there may be costs incurred through an appeal of Council's decision.

9.0 Risk Management

There are no known risks for the City.

10.0 Conclusion

Considering the nature and the scale of the proposed home business is it unlikely to have an adverse impact on the local amenity.

The proposal complies with the home business requirements stipulated under TPS 2.

Accordingly it is recommended that the application be approved by Council.