



— City of —  
**Melville**

**REPORTS AND RECCOMENDATIONS**

**FROM THE**

**DEVELOPMENT ADVISORY UNIT**

**MEETING**

**HELD ON**

**21 APRIL 2009**

- NOTES:**
1. This Meeting makes Recommendations to the Manager Planning & Development Services.
  2. Should any Elected Member want any matter referred and considered by the Council, please contact the Manager Planning & Development Services prior to the Tuesday (or Wednesday if Monday is a public holiday) following the date of this Meeting.
  3. Unless 'called in' by an Elected Member it is expected that the Manager Planning & Development Services will after the 'call in' date approve the recommendations, refer the matter to the Council or back to the Development Advisory Unit for further considerations.

**DISTRIBUTED: 24 APRIL 2009**



— City of —  
**Melville**

10 Almondbury Road Booragoon WA 6154  
Postal Address: Locked Bag 1, Booragoon WA 6954  
Tel: 08 9364 0666  
Fax: 08 9364 0285  
Email: [melinfo@melville.wa.gov.au](mailto:melinfo@melville.wa.gov.au)  
Web: [www.melville.wa.gov.au](http://www.melville.wa.gov.au)

**REPORTS AND RECOMMENDATIONS FROM THE DEVELOPMENT ADVISORY UNIT  
MEETING HELD IN, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD,  
BOORAGOON, COMMENCING AT 1:30PM ON TUESDAY 21 APRIL 2009.**

**PRESENT**

D Vinicombe (Presiding Member)  
J Gonzalez  
P.Prendergast  
D Monteiro  
R Bailey

Manager Planning & Development Services  
Planning Services Coordinator  
Planning Services Coordinator  
Environmental Health Officer  
Technical Officer

**APOLOGIES**

T Capobianco  
R Jessup

Principal Building Surveyor  
Senior Horticultural Technical Officer

**IN ATTENDANCE**

**OBSERVERS**

**DISCLOSURES OF INTEREST**

**ELECTED MEMBERS' ATTENTION**

Nil

**DELEGATED AUTHORITY – PLANNING POLICY (1) 2**

**The following items are recommendations to the Manager Planning & Development Services for decision.**

## DISCLOSURE OF FINANCIAL INTERESTS LOCAL GOVERNMENT ACT 1995

### Members' interests in matters to be discussed at meetings to be disclosed

S.5.65 (1) A member who as an interest in any matter to be discussed at a Council or Committee meeting that will be attended by the member must disclose the nature of the interest -

- (a) in a written notice given to the Chief Executive Officer before the meeting; or
- (b) at the meeting immediately before the matter is discussed.

Penalty: \$10,000 or imprisonment for 2 years.

### Meeting to be informed of disclosures

**S.5.66** If a member has disclosed an interest in a written notice given to the Chief Executive Officer before a meeting then before the meeting -

- (a) the Chief Executive Officer is to cause the notice to be given to the person who is to preside at the meeting; and
- (b) the person who is to preside at the meeting is to bring the notice to the attention of the persons who attend the meeting.

### Disclosing members not to participate in meetings

**S.5.67** A member who makes a disclosure under Section 5.65 must not -

- (a) preside at the part of the meeting relating to the matter; or
- (b) participate in, or be present during, any discussion or decision making procedure relating to the matter,

unless, and to the extent that, the disclosing member is allowed to do so under Section 5.68 or 5.69.

Penalty: \$10,000 or imprisonment for 2 years.

**Please refer to your Handbook for definitions of interests and other detail.**

## TABLE OF CONTENTS

U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT) ..... 3

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

Ward : City Ward  
Category : Operational  
Application Number : DA-2009-61  
Property : Lot 58 (503) Marmion Street, BOORAGOON WA 6154  
Proposal : Change of use from dwelling to dwelling and commercial car park, erection of front fence (retrospective) and proposed carport  
Applicant : Salim Lee Architects  
Owner : Komemo Pty Ltd  
Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.  
Responsible Officer : Mr David Vinicombe  
Manager Planning and Development Services  
Previous Items : Not applicable

**AUTHORITY / DISCRETION**

- |   | <u>Definition</u>  |
|---|--|
| <input type="checkbox"/> Advocacy                         | <i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>  |
| <input type="checkbox"/> Executive                        | <i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i>   |
| <input type="checkbox"/> Legislative                      | <i>includes adopting local laws, town planning schemes &amp; policies.</i>   |
| <input type="checkbox"/> Review                           | <i>when Council reviews decisions made by Officers.</i>  |
| <input checked="" type="checkbox"/> <b>Quasi-Judicial</b> | <b><i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i></b> |

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- Application seeks retrospective consent for the change of use from residential to a mixed use including residential dwelling and commercial car park.
- The commercial car parking element was created to serve the car parking needs of an adjacent commercial user located at Lot 104 (495) Marmion Street and is intended to be an overflow car parking facility for the staff from that property.
- Subject site is located within a “Living Area Precinct” under the provisions of the City of Melville Community Planning Scheme No 5 (CPS No 5)
- Use of part of the site for commercial car parking is defined as “Other Uses Not Listed Above” which is an “S” use by CPS No. 5. As such the use is not permitted unless the Council exercises discretion and grants approval after advertising in accordance with Scheme provisions.
- Details of the application have been duly advertised and one (1) submission was received, objecting to the proposal.
- The creation of a car park in the manner undertaken is not considered to be an appropriate use of land in a residential area such as this. The proposal represents an inappropriate encroachment of commercial land use into the residential environment. It is therefore recommended that the retrospective change of use to authorise the car parking be refused.
- The front fence complies with the performance criteria of the Residential Design Codes in respect of “Street walls and fences” and its retention is therefore supported.
- The proposed carport is required for the use of occupiers of the retained dwelling, in accordance with Council Policy for Residential Development ref 06-PL-008.
- The carport does not comply with provisions of Council Policy in relation to its siting, design and construction. As such, the carport will have a detrimental impact on the streetscape.
- The carport is therefore recommended for refusal.
- With regard to the existing hard stand constructed on the property for the it is considered that its removal is important to ensure that parking does not re-establish on the property.
- Plans for the removal of extensive paved areas and replacement covered parking are required to be submitted and these matters are to be rectified within specified time frames.
- Failure to adhere to the rectification requirements and cease commercial parking on the may result in the initiation of appropriate legal action.

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)****BACKGROUND**

A complaint was received by the City of Melville on 22 October 2007 from the owner of a property on Marmion Street who lives within the immediate vicinity of the subject lot. The letter related to an extensive concrete pad having been laid on the subject lot, and stated that this concreted area was being used as a car park, with approximately 8 to 12 vehicles parking there each day between 6.30am and 3.30pm.

The City of Melville's Compliance Officer wrote to the owner of the subject lot on 19 March 2008 asking for clarification regarding whether a business was operating at the property. A response was received from the owner on 10 April 2008. In the correspondence the following was advised:

- No business operates from the property
- The owners of the subject property also own 495 Marmion Street, Booragoon (an aged care facility approximately 140 metres west of the subject property).
- More visitors than anticipated are visiting the aged care facility, and some visitors were parking on the verge to the detriment of road safety
- With this in mind, the owners of 495 Marmion Street purchased the subject property with the view that 6 or 7 staff could park their vehicles there between the hours of 7am and 3pm, thereby freeing up the use of car parking bays for visitors to the aged care facility at 495 Marmion Street.

The property at 495 Marmion Street is located in a Mixed Business precinct, and is approved as an Aged Care Facility (Regents Garden Four Seasons Booragoon).

The prior approval of the Council was not sought and the change of use and the creation of the car parking area was classed as unauthorised development. A further letter dated 5 August 2008 requested that a retrospective planning application for the change of use and works associated with it be submitted. An application was lodged on 29 August 2008 (DA-2008-1111). Upon assessment a further breach was identified in the form of a solid masonry front fence which had been erected along the frontage of the site to Marmion Street without Council approval. The retrospective planning application was refused under delegated authority on 17 December 2008 as, despite repeated requests, the applicant failed to provide the Council with additional information in respect of the unauthorised front fence and failed to satisfy the requirements of CPS No 5 with regard to advertising.

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

An application was lodged with Planning Services on 23 January 2009 for retrospective approval for change of use and the solid front fence. It was also identified during the assessment that the subject lot did not comply with the City's Residential Development Policy 06-008 with regard to provision of at least one covered car bay for the residential dwelling. The applicant was requested to address this, and as such, the proposed carport has been included as part of the subject application.

**Scheme Provisions**

MRS Zoning	:	Urban
CPS 5 Zoning	:	Living Area (BG1 – Booragoon)
R-Code	:	R20
Use Type	:	Other uses not listed above
Use Class	:	S

**Site Details**

Lot Area	:	711 sqm
Retention of Existing Vegetation	:	N/A
Street Tree(s)	:	N/A
Street Furniture (drainage pits etc)	:	N/A
Site Details	:	See aerial picture on next page

[U09\\_0065\\_April\\_2009.pdf](#) A copy of the plans forms part of the Attachments to the Agenda, which were distributed to Members of the Council on Friday 24 April 2009.

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**



**DETAIL**

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

**Development Requirements**

**Non-residential (Change of Use)**

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
<b>Carparking</b>	<b>Parallel bays with a depth of 7.0m</b>	<b>3 parallel bays with a depth of 6.8m</b>	<b>Does not comply</b>	<b>MPDS</b>	
	<b>Right angled bays with a depth of 6.2m (5.5m, plus 0.7m for wheel stops), and a distance of 6.0m from the end of the bays to the nearest impediment, as per the Australian Car Parking Standard AS2890.1</b>	<b>5 right angled bays with a depth of 5.0m, and a distance of 6.0m to the nearest impediment for manoeuvring depth.</b>	<b>Does not comply</b>	<b>MPDS</b>	
<b>Landscaping</b>	<b>33.3% (237sqm)</b>	<b>None proposed</b>	<b>Does not comply</b>	<b>MPDS</b>	

(Note: Non compliance is emphasised in bold)

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

**Residential (carport)**

**Setbacks**

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
East (Side)	1.0m, as per Table 2a of the R-Codes	0.8m	Does not comply	MPDS	

(Note: Non compliance is emphasised in bold)

**PUBLIC CONSULTATION/COMMUNICATION**

Advertising Required: Yes – six (6) letters sent, and ‘S’ advertising undertaken.  
 Comments Supplied: Yes – one (1) response.  
 Reason: ‘Other Uses Not Listed Above is ‘S’ Use and requires advertising.  
 Support/Object: One (1) objection.

*NB. As the change of use application stems from an initial complaint being made and investigated, the complainant’s submission has also been included in the table below (2).*

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

Submission Number	Summary of Submission	Support/Objection	Officer's Comment	Action (Condition/Uphold/Not Uphold)
1.	<p>Queries why an application for planning approval has only just been submitted when work was completed months ago.</p> <p>Queries whether concrete surfacing and restoration of garden will be required if approval is not granted.</p>	Objection.	<p>Development was carried out without Council approval being sought. The application has been submitted in response to an investigation of a complaint stemming from the unauthorised development, and is seeking retrospective approval.</p> <p>In order to reduce the propensity of the site to provide parking, it is recommended that the paving area be substantially reduced and the applicant should be requested to submit plans to Council which substantially reduce the hard surface parking area and following approval of these plans reduce the hardstanding area. In addition, the existing former crossover on Marmion Street is to be removed.</p>	<p>Uphold.</p> <p>Uphold</p>

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

	<p>States that the change is not very pleasing and has probably led to a reduction in property values.</p> <p>States that if the change is to be left in place, attention should be given to tidying up the front verge.</p>		<p>Noted. The reduction in property values is not a material planning consideration.</p> <p>The City requires that the applicant remove the portion of unused crossover from the verge which will improve visual amenity.</p>	<p>Not Uphold</p> <p>Uphold</p>
2.	<p>States concern over a concrete pad having been laid around the house on the subject property, which is being used as a carpark. States that there are 8-12 cars parked there each day between the hours of 6.30am and 3.30pm.</p>	Objection.	<p>Development was carried out without Council approval being sought. The application has been submitted in response to an investigation of a complaint stemming from the unauthorised development, and is seeking retrospective approval.</p>	Uphold
	<p>States that they spoke with one of the people parking at the property and was told it was a "business related car park".</p>		<p>Noted. This statement has been confirmed with the owners of the subject property. The use of the property for a car park is not supported.</p>	Uphold

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

	<p>States that an enquiry was made with the City, where they were informed that “one could not have any sort of car park in a residential zoned area”, and he was asked to submit their concerns in writing.</p>		<p>Subject to the appropriate consents being in place, a car park within a Living Area may be permissible. Car parking uses are not specifically defined by the Use Classes Table of CPS No 5., They are classed as ‘S’ Uses when located within Living Area Precincts, and are not permitted unless the Council exercises discretion and grants planning approval after advertising. In this case authorisation for the use of land as a car park within the Living Area precinct requires the Special Majority approval of Council, however, such is not supported.</p>	<p>Uphold.</p>
	<p>Requests that they be informed of what action will be taken, and to be advised of any outcome.</p>		<p>Once application has been determined, anyone who has made a submission in relation to the proposal will be notified of the outcome in accordance with the Council's requirements.</p>	<p>Uphold</p>

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

#### **REFERRALS TO GOVERNMENT AGENCIES**

Not applicable.

#### **STATUTORY AND LEGAL IMPLICATIONS**

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

#### **FINANCIAL IMPLICATIONS**

Not applicable.

#### **STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Not applicable.

#### **POLICY IMPLICATIONS**

##### *Council Policy (06-PL-024) - Car Parking (Non-residential)*

This policy exists to control the provision of non residential car parking, and provides guidance for the minimum size specifications for various types of car parking bay.

##### *Council Policy (06-PL-008) – Residential Development*

This policy exists to control the quality of residential development, including carports. Clause 1.4 requires that carports designed with a flat roof should be sited behind a 6.0m front setback. This will ensure that the amenity of the streetscape is not prejudiced.

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)****ALTERNATE OPTIONS & THEIR IMPLICATIONS**

Not applicable.

**COMMENTS**

The main issue for consideration in determining this proposal relates to whether the retention of a commercial car parking facility is acceptable in principle in land use terms in this location in accordance with CPS No 5, and if so whether it can be retained without prejudice to residential amenity or road safety. The issues pertaining to the retention of the front fence to the property as well as the proposed flat roofed carport also require consideration.

**Land Use Considerations**

Under the provisions of CPS No 5, the application site is located within a Living Precinct. Such areas are characterised as being primarily residential in character, although home occupations, corner shops, parks, religious, recreational and educational activities may be accommodated in land use terms provided they are complement rather than detract from the character of the area.

A car parking facility such as is proposed for retention in this case, is defined by CPS No 5 as “a site or building used primarily for parking private cars or taxis whether as a public or private car park...” The Use Class Table of CPS No 5 does not contain a specific classification for “car park” and accordingly the use is listed as an “Other Uses Not Listed Above”. This use is classed as an “S” use and as such is not permitted unless the Council exercises discretion and grants planning approval after advertising in accordance with Clause 7.5(d) of CPS No 5.

The application has been the subject of advertising in accordance with these requirements. One letter was received in response objecting to the development (refer to separate table in this report).

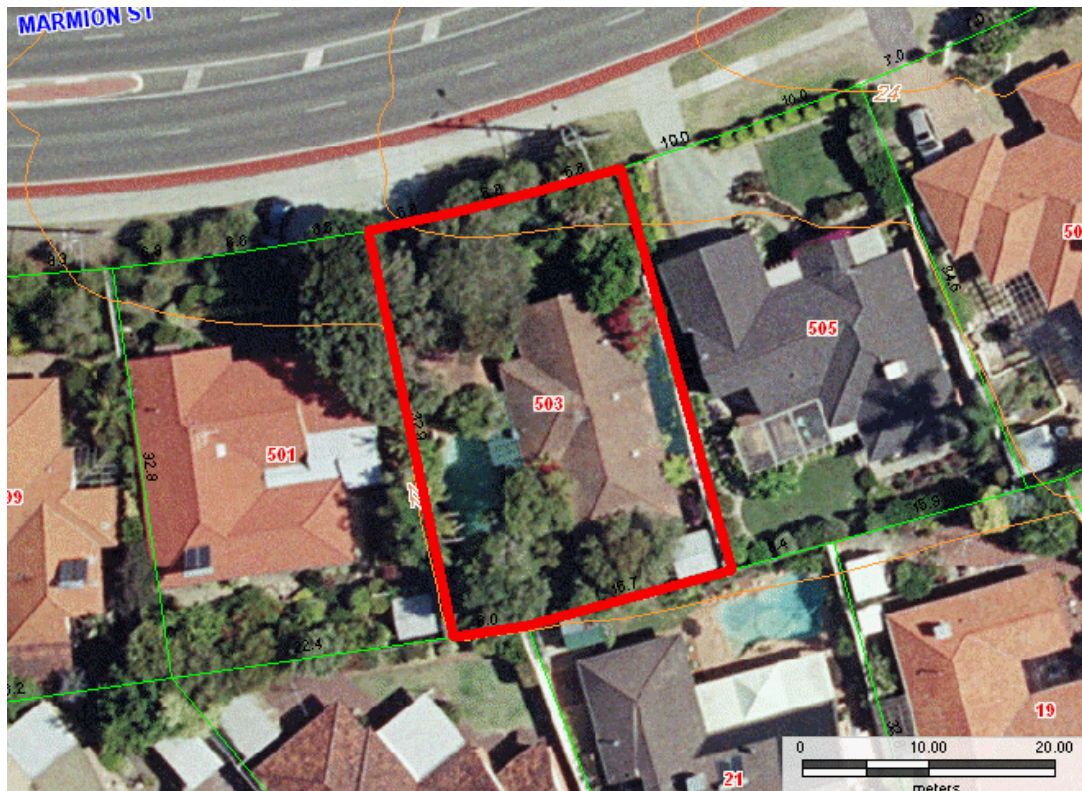
The application details are also required to be considered in the context of Clause 7.8 of CPS No 5 with regard to such matters as scheme objectives, orderly and proper planning, existing and future amenity of the area, any relevant submission and any other relevant planning consideration.

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

It is considered that in this case, the retention of the private car parking facility would be contrary to the provisions of the CPS No 5. The retention of a non-residential development such as this will have a direct impact on residential amenity levels expected by occupiers of the dwelling houses that adjoin the application site. That conclusion is reached based on the likely comings and goings of vehicles on an almost daily basis. Such activity, including the starting and revving of engines, and the opening and closing of car doors could give rise to residential disamenity, contrary to the spirit and intent of the “Living Area Precinct” within which the application site is located.

In visual terms the creation of this car parking facility has resulted in the loss of a significant area of landscaping. Prior to the purchase of the site by the current owners, the subject residence benefitted from a large and well planted garden. This complemented the dwelling and provided a setting for it commensurate with its location within a “Living Area Precinct”. The loss of this area of landscaping has resulted in the creation of a sea of hardstanding which detracts from the visual appearance of the subject dwelling, and the locality generally – see following aerial photographs.

2006



**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

2008



In respect of road safety, whilst there is sufficient space within the subject site to facilitate access and egress to/from it without prejudice to road safety, it is considered that there are more appropriate solutions to the car parking issues relative to the aged care facility at 495 Marmion Street which would have less adverse impacts and be more appropriate than the unauthorised development which has been undertaken on the subject site. For example several additional bays could be created at 495 Marmion Street via the removal of some of the larger areas of landscaping and replacing them with car parking bays. Alternatively, as the car parking on the subject lot has been stated as being required Monday to Friday between the hours of 7am and 3pm, a car parking agreement could be entered into between the applicant and the adjoining Mount Pleasant Baptist Church at 497 Marmion Street (where parking demands peak on weekends rather than during the week). The church has approximately 225 car parking bays, some of which could (subject to agreement) be available for use by others. Both of these alternatives involve the use of sites that are sited within a Mixed Business Precinct under the provisions of CPS No 5, where it would generally be expected that vehicle movements to and from properties would be greater than in residential precincts.

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

In the mean time however, it is considered that the current application to retain the use of the subject site as a car parking area should be refused.

Retention of Front Fence.

Under the provisions of Clause 6.2.5 A5 of the Residential Design Codes front walls and fences within the street setback area should be visually permeable 1.2m above natural ground level, except where the property is located on a main road. In this case whilst the front fence for which retrospective approval is now sought is solid in terms of its construction, the property is located on Marmion Street, a District Distributer route. As such it may be acceptably retained as a solid structure.

Clause 6.2.6 A6 of the R-Codes also requires that walls and fences be truncated or reduced to no higher than 0.75m within 1.5m of the point where they adjoin vehicles access points. The solid front fence does not comply with this Acceptable Development standard.

In accordance with Clause 6.2.6 P6 of the R-Codes, a variation to this requirement can be considered provided that adequate sight lines are provided at vehicle access points.

It is considered that adequate sight lines are provided as there is a distance of 4.0m from the front boundary to the southern edge of the adjacent footpath, and a distance of 6.0m from the front boundary to the street (total width of verge). This 6.0m verge width allows vehicles to wholly exit past the front fence in reverse or forward gear and to view oncoming traffic and pedestrians before the vehicle enters the road or footpath area. As such, it is considered that the retrospective front fence complies with the performance criteria and its retention can be supported.

Proposed Carport

The single bay carport required for the residential dwelling is proposed to be located within the front setback area of the dwelling. It is designed with a flat roof and using materials that do not complement the host dwelling. Under the provisions of Council Policy ref 06-PL-008 "Residential Development", carports located within the front setback should be designed with a pitched roof and built of materials to match and complement the host dwelling. The carport proposed does not meet with the Council's requirements in this regard as it is designed with a flat roof and using non matching materials. It also involves a minor side setback variation, 0.8m in lieu of 1.0m. Whilst the latter may be acceptably accommodated under the performance criteria of the R Codes, it is considered that the design and siting of the carport will remain contrary to the provisions of Council Policy and should be refused accordingly.

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

Other matters

The retained dwelling requires the provision of an outdoor living area of 30 sqm and an area of open space equal to 50% of the site area. The way in which the site has been developed to provide a private car parking facility means that it would not be possible to provide outdoor living space and open space in the manner envisaged by the R-Codes. As such the retained dwelling would be deficient in this regard, contrary to the residential amenity of its occupants.

For non residential development,, CPS No 5 requires that in relation to landscaping, a minimum area of 33.3% of the total site area of development sites should be set aside for planting. . In this case, the way in which the site has been developed would effectively preclude this from happening as the bulk of it is now hardstanding for the parking and circulation of vehicles.

**ALTERNATIVE RECOMMENDATION**

Should Elected Members wish to support this proposal, the matter may be “called up” to Council for consideration. It is noted that the present non-compliances with regard to the layout of bays relative to Australian Standards for parking could be resolved with a revised parking layout.

**CONCLUSION**

The use of the application site for the parking of private vehicles associated with an adjacent non-residential land use is considered to be contrary to the provisions of CPS No 5, and out of character with the type of land uses generally considered appropriate within a Living Area Precinct. The application to retain the change of use is therefore recommended for refusal.

The retrospective front fence is considered compliant with the Performance Criteria of the Residential Design Codes, and is recommended for approval.

The proposed carport does not comply with several elements of the City’s Residential Development Policy 06-PL-008 and is also recommended for refusal. Notwithstanding, the proposed carport non-compliance could possibly be overcome by amending the proposal so that the carport matches the roof pitch and materials of the existing dwelling, or is located behind the building line with a minimum front setback of 6.0m in accordance with Council Policy. Accordingly, it is recommended that the applicant submit a revised proposal for a carport that is compliant with Council Policy.

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

**OFFICER RECOMMENDATION**

**REFUSAL/APPROVAL/ADVICE**

**(A) That the Retrospective Application for Change of Use from Residential to Residential Dwelling and Commercial Car Park on Lot 58 (503) Marmion Street, Booragoon be refused for the following reasons:**

- 1. The carpark represents an unacceptable encroachment of commercial landuse into the residential area and is inconsistent with the orderly and proper planning of the Living Area Precinct.**
- 2. The carpark represents an unreasonable impact on the existing and future residential amenity of the Living Area Precinct.**
- 3. The carpark is considered to be contrary to the Scheme objectives for the Living Area Precinct.**
- 4. It is the responsibility of all commercial land uses to provide appropriate parking within the confines of the lot or on suitably zoned or classified land within close proximity of the commercial landuse and Lot 58 is not considered suitable in this regard.**
- 5. Ample opportunity exists for the remodelling of the carpark on the parent commercial use at Lot 104 (495) Marmion Street or entering into a legal agreement for shared parking during week days on the adjoining property at Lot 105 (497) Marmion Street in order to address the current parking shortfalls.**

**(B) That the application for the proposed carport on Lot 58 (503) Marmion Street, Booragoon be refused for the following reason:**

- 1. Non-compliance with Council Policy 06-PL-008 in regard to the materials of construction and pitch of roof relative to the existing dwelling construction and the proposed location of the carport which result in consequential impacts on the streetscape.**

**(C) That the Retrospective Application for Solid Front Fence on Lot 58 (503) Marmion Street, Booragoon be approved subject to the following conditions:**

**SPECIAL CONDITIONS**

**U09/0065 - (NW) CHANGE OF USE FROM RESIDENTIAL DWELLING TO RESIDENTIAL DWELLING AND COMMERCIAL CAR PARK, RETROSPECTIVE FRONT FENCE AND PROPOSED CARPORT ON LOT 58 (503) MARMION STREET, BOORAGOON (REC) (ATTACHMENT)**

1. A portion of the original crossover located on the Council verge near the western boundary of the subject lot shall be removed within 21 days of the date of this approval to the satisfaction of the Manager Planning and Development Services.

**CONDITIONS**

2. Ground levels may not be changed other than approved as part of this approval.
- (D) Applicant for (A) above be required to submit plans detailing the extent of substantial removal of the paved area and covered parking in accordance with Council Policy 06-PL-008 requirements on Lot 58 (503) Marmion Street, Booragoon to the approval of the Manager Planning and Development Services within a period of two (2) weeks.
- (E) Following approval for the plans showing the removal of extensive paved areas and a covered parking area on Lot 58 (503) Marmion Street, Booragoon in accordance with (D) above, that applicant/owner remove the unapproved paving area and construct the covered parking area to the satisfaction of the Manager Planning and Development Services within a period of two (2) months.
- (F) The applicant be requested to cease operation of commercial car parking activities from the subject property, submit plans for the removal of extensive paving and remove all unapproved paving to the satisfaction of the Manager Planning and Development Services within the time periods specified at (D) and (E) above.
- (G) The applicant be advised that failure to adhere to the requirements and time frames specified in (D)-(F) may result in the City initiating appropriate legal action to ensure compliance.
- (H) Applicant and those who raised objection to the use be advised of (A)-(G) above.