

REPORTS AND RECOMMENDATIONS

FOR THE

DEVELOPMENT ADVISORY UNIT

MEETING

HELD ON

26 OCTOBER 2010

- 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 Friday following the date of publishing these minutes.**
 - 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.**

**REPORTS AND RECOMMENDATIONS FROM THE DEVELOPMENT ADVISORY UNIT
MEETING HELD IN, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD,
BOORAGOON, COMMENCING AT 9:00 AM ON TUESDAY, .26 OCTOBER 2010.**

PRESENT

| | |
|----------------------------------|--|
| T. Capobianco (Presiding Member) | A/Manager Planning & Development Services |
| H. Shigeyoshi | A/Planning Services Coordinator |
| G. Russell | A/Principal Building Surveyor |
| L. Anderson | Senior Planning Officer |
| P. Stuart | A/Senior Planning Officer |
| R. Bailey | Special Projects Officer (Engineering Design) |
| C. Tarborda | Engineering Technical Officer (Engineering Design) |
| M. Snell | Senior Team Leader Landscape Construction |
| G. Godfrey | Compliance Officer |
| C. O'Neill | Consultant |

APOLOGIES

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.

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U10/0285 - (PS) HOME OCCUPATION RENEWAL – CHIROPRACTOR ON LOT 300 (244-246E) PRESTON POINT ROAD, BICTON WA (REC) (ATTACHMENT)

Ward : Bicton/Attadale
 Category : Operational
 Application Number : HO-227
 Property : Lot 300 (244-246E) Preston Point Road, Bicton
 Proposal : 'Chiropractor' Home Occupation renewal and associated signage
 Applicant : Case Sinclair
 Owner : Mrs Beverley Sinclair and Mr Case Sinclair
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Responsible Officer : Tony Capobianco
 A/Manager Planning and Development Services
 Previous Items : [P08/3033 – Ordinary Meeting of Council 15 April 2008](#)

AUTHORITY / DISCRETION

| | | |
|-------------------------------------|-----------------------|--|
| <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 & policies.</i> |
| <input type="checkbox"/> | Review | <i>when Council review decisions made by Officers.</i> |
| <input checked="" type="checkbox"/> | Quasi-Judicial | <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> |

U10/0285 - (PS) HOME OCCUPATION RENEWAL – CHIROPRACTOR ON LOT 300 (244-246E) PRESTON POINT ROAD, BICTON WA (REC) (ATTACHMENT)

KEY ISSUES / SUMMARY

- Application has been submitted for the renewal of a previously approved and operating home occupation (Chiropractor).
- Application was initially approved by Council on 15 April 2008 subject to conditions.
- Council considered the application to be acceptable despite concerns raised at the time by surrounding neighbours relating to detrimental traffic impact.
- In addressing the concerns raised at the time, the approval was conditional upon the business providing for a buffer of 15 minutes between each patron.
- Since approval, the City has been notified a number of times in relation to an alleged breach of this condition.
- Upon investigating the matter, ad-hoc surveillance was unable to confirm that the condition was being breached.
- The applicant has justified compliance with the approval, demonstrating no two appointments have been booked within one hour of each other with specific attention to patients arriving and leaving within 45 minutes of booking.
- The application is recommended for renewal with Condition 1 relating to visitation being modified to provide greater clarity in relation to the scheduling of appointments.



(Note: Subject site is the north-eastern strata residence. Vacant lot depicted on the aerial has since been developed with a single-storey residence)

U10/0285 - (PS) HOME OCCUPATION RENEWAL – CHIROPRACTOR ON LOT 300 (244-246E) PRESTON POINT ROAD, BICTON WA (REC) (ATTACHMENT)**BACKGROUND**

At Council's Ordinary Meeting of 15 April 2008, an application for a home occupation licence was considered and determined as acceptable. This determination was reached despite a multi-signatory letter being submitted objecting to the application. At the time, Council considered that the proposed Home Occupation was unlikely to generate significant increases in traffic to uphold the objectors' claims. Notwithstanding, the following conditions (among others) were placed on the approval to ensure traffic impact remained minimal:

- 1. The applicant providing a 15 minute gap between any two appointments for clients who both require vehicle parking to prevent more than one vehicle visiting the site in relation to the home occupation at any one time.*
- 2. Hours of operation for the home occupation being Monday to Friday from 7.00 am to 7.00 pm and Saturday from 8.00 am to 2.00 pm.*
- 3. Only one client vehicle may be parked on the premises at any one time.*

Since approval was granted, no complaints were received up until renewal in 2009. From 2009 until now, further complaints have been received, asserting that Special Condition 1 has been breached consistently. In light of the complaints received, compliance inspections have been undertaken but have not shown the home occupation to be in breach of any conditions of its approval. Further, in consulting the applicant/owner in relation to the purported breaches, a booking schedule was provided indicating a sufficient gap between client appointments, as well as an information page with clear advice for patient parking and session times.

The following sections of this report address the application for renewal received by the applicant and the concerns received by Council.

Scheme Provisions

| | |
|--------------|---|
| MRS Zoning | : Urban |
| CPS 5 Zoning | : Living Area |
| R-Code | : R17.5 |
| Use Type | : Residential (with incidental Home Occupation) |
| Use Class | : 'P' use – use is permitted |

Site Details

| | |
|--------------------------------------|------------------------|
| Lot Area | : 490sqm (strata lot) |
| Retention of Existing Vegetation | : No change |
| Street Tree(s) | : No change |
| Street Furniture (drainage pits etc) | : No change |
| Site Details | : Refer to photo above |

U10_0285_October_2010.pdf A copy of the plans forms part of the Attachments to the Agenda, which were distributed to Members of the Council on Friday 1 November 2010.

U10/0285 - (PS) HOME OCCUPATION RENEWAL – CHIROPRACTOR ON LOT 300 (244-246E) PRESTON POINT ROAD, BICTON WA (REC) (ATTACHMENT)

DETAIL

Development Requirements

There are no changes to the use from that previously approved which was determined to be compliant with the home occupation requirements of CPS5 (refer to front cover web-link to original determination for details).

There are signage issues, however this will be detailed under the comments section of this report.

PUBLIC CONSULTATION/COMMUNICATION

Advertising Required: No
 Neighbour's Comment Supplied: Yes
 Reason: Being a renewal application, assessment is undertaken in accordance with any concern raised over the past 12 months.
 Support/Object: Object.

| Submission Number | Summary of Submission | Support/ Object | Officer's Comment | Action (Uphold / Not Uphold) |
|--------------------------|---|------------------------|--|-------------------------------------|
| 1. | Breach of Special Condition 1 - complainant has submitted a list of occasions where it is asserted the condition has been breached (attached as part of this report). | Object | In reviewing the correspondence submitted by the objector, the list contains details of more than one car attending the property within the 15-minutes buffer period required as per the Condition of approval. In light of the concerns raised, a number of inspections have been undertaken however no breach has been identified. Further, the applicant has submitted evidence of booking schedules which do not indicate overlap to patron visitations. | Not Uphold |

U10/0285 - (PS) HOME OCCUPATION RENEWAL – CHIROPRACTOR ON LOT 300 (244-246E) PRESTON POINT ROAD, BICTON WA (REC) (ATTACHMENT)

REFERRALS TO GOVERNMENT AGENCIES

There are no referral requirements to external agencies.

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

There are no anticipated financial implications resulting from this application.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

There are no anticipated strategic or risk management implications.

POLICY IMPLICATIONS

There are no policies affected by this application.

ALTERNATE OPTIONS & THEIR IMPLICATIONS

This application is proposed to be approved under delegation through the Development Advisory Unit (DAU) process.

Council may however refuse such an application if it considers that the proposal does not satisfy the requirements of Clause 5.6 of the Scheme. It is noted that these requirements are prescriptive and if they are satisfied, then Council may have difficulty in justifying a refusal. It should also be noted that the Scheme provides for Council to revoke its approval if a home occupation causes a nuisance or annoyance to owners or occupiers of land in the neighbourhood. This matter would have to be considered in the context of the presentation of justifiable concerns. Further, it is noted that the Scheme provides for approvals to be issued for a maximum period of 12 months only and the applicant is required to seek renewals after that period to allow the continuance of the activity.

Should Elected Members have an alternative view, the DAU 'call-up' procedures provide opportunity to call this matter up for formal Council consideration.

U10/0285 - (PS) HOME OCCUPATION RENEWAL – CHIROPRACTOR ON LOT 300 (244-246E) PRESTON POINT ROAD, BICTON WA (REC) (ATTACHMENT)**COMMENTS**

As detailed in the preceding sections above, this report relates to a home occupation renewal application for a chiropractic practice. Approved in 2008, this is the second renewal of the licence.

In submitting the renewal application, no changes have been proposed to the operation. In summary the proposal will involve the use of approximately 27 square metres of area, hours of operation between 7.00am to 7.00pm Monday to Friday and 8.00am to 2.00pm Saturday and one customer / client at a time. The home occupation as presented is entirely compliant with the 'home occupation' provisions contained under Clause 5.6 of CPS5.

It is noted that CPS5 considers Home Occupations to be an incidental part of a Residential use and as such, does not classify it as a separate use under the use-class table. The predominant purpose of a Home Occupation is to allow small-scale and low-intensity non-residential activity within a residential context so long as it does not disrupt the residential character or amenity levels enjoyed by adjoining residents.

Notwithstanding the emphasis on protecting residential amenity, CPS5 does permit limited customer visits for Home Occupations. In this regard, the subject proposal was permitted one patron at a time on the proviso that a 15-minute gap is factored in between any two appointments. This limit was considered to be a reasonable outcome in light of the objections received and the intent to maintain an acceptable balance between residential amenity and a sustainable Home Occupation. The condition placed on the approval read as follows:

Special Condition 1 - The applicant providing a 15 minute gap between any two appointments for clients who both require vehicle parking to prevent more than one vehicle visiting the site in relation to the home occupation at any one time.

Since the first renewal of the Home Occupation in 2009, the Planning Department has received a number of submissions from adjoining landowners stating that the abovementioned condition has been continually breached. In addressing the concerns raised, the City has undertaken a number of inspections of the site. Up until this report, ad-hoc surveillance has not been able to identify any breaches. Furthermore, in raising the concerns with the applicant, the applicant has supplied detailed information including calendars, information sheets and a detailed letter of justification explaining that as far as practicable, the business operation has been complying with Special Condition 1.

It is acknowledged that whilst necessary precautions have been applied to ensure compliance with Special Condition 1, breaches may occur from time-to-time on occasions where patrons (notwithstanding prior booking advice from the applicant) may arrive early and/or leave late resulting in two vehicles attending the property. Such breaches however are deemed to be accepted in light of the precautionary measures taken by the applicant and otherwise being circumstances outside of the applicant's control.

U10/0285 - (PS) HOME OCCUPATION RENEWAL – CHIROPRACTOR ON LOT 300 (244-246E) PRESTON POINT ROAD, BICTON WA (REC) (ATTACHMENT)

In any event, the intensity of the non residential element of the Home Occupation is considered minor as no more than 20 clients visit the property per week (as evident in the booking schedule provided by the applicant). This is equivalent of approximately three patrons per day or 1 patron every 4-business hours. Accordingly, it would appear the concerns raised by the objector relate more to the expected residential amenity and a preference to remove all non residential activity within the area than the amenity loss from the specific breach of a condition.

Whilst the concerns raised are acknowledged, based on the above it is considered that the applicant has been able to successfully demonstrate compliance with the Home Occupation provisions contained under CPS5. Notwithstanding the above, the issues raised have brought to light some difficulties in the application of Special Condition 1, particularly from a compliance perspective. It is therefore recommended the Special Condition 1 be modified to read as follows:

Special Condition 1 - There being no overlap in customers attending the property to avoid more than one customer vehicle user attending the site at any one time.

In modifying the condition as presented above, it ensures that the intensity of the use remains consistent with current levels whilst providing a specific factor to ascertain whether breaches occur in the future. This will ensure that any confusion and/or presumptions by the objector and others do not occur (i.e. that more than one vehicle user on the subject site is assumed to be a visitor when in fact it could be friends or family member visits).

Based on the above, the renewal is supported subject to a revised Special Condition 1 and otherwise identical conditions forming part of the original application.

Signage

In November 2009, a separate application was submitted for the approval of a 1sqm sign at the corner of the driveway facing Harris Street. The request for the 1sqm sign was to achieve greater exposure compared to an original 0.2sqm signage (which is the limitation contained under Clause 5.6f)(iii) of CPS5). As provided for under the Precinct requirements set out under CPS5, the signage was deemed to comply and was approved subject to an existing business sign located on the front fence wall truncation being removed.

However, when two signs were erected the matter was quickly brought to the City's attention. Accordingly the applicant was asked to remove the offending second sign, which was placed on the front fence wall truncation. However instead of removing the sign on the street corner, the initial approval sign was removed, leaving only one, 1sqm sign.

As the remaining sign at this point remains unauthorised, it is proposed that business signage measuring a maximum of 1sqm (in accordance with the Precinct provisions) be approved provided it relates to the home occupation. As the sign is achieving this standard and is located upon an intersection, the amenity impacts associated with the home occupation sign are considered minor.

Accordingly approval for the sign to remain is recommended.

U10/0285 - (PS) HOME OCCUPATION RENEWAL – CHIROPRACTOR ON LOT 300 (244-246E) PRESTON POINT ROAD, BICTON WA (REC) (ATTACHMENT)

CONCLUSION

The application has been referred through the DAU process on the basis that concerns citing breach of conditions as part of this renewal required consideration. Whilst the issue of residential amenity and traffic conditions are still relevant issues relating to the Home Occupation, the applicant has been able to demonstrate compliance by providing evidence which confirms the conditions have been complied with. Accordingly, the application is found to remain in compliance with Council's Community Planning Scheme No. 5 and is therefore recommended for renewal.

OFFICER RECOMMENDATION

RENEWAL

- A) That the application for renewal of an Home Occupation (Chiropractic Practice) on Lot 300 (244-246E) Preston Point Road, Bicton be approved subject to the same Special Conditions and Standard Conditions of approval dated 15 April 2008, with the exception of Special Condition 1 which is replaced as follows:**

Special Conditions:

- 1. There being no overlap in customers attending the property to avoid more than one customer vehicle user attending the site at any one time.**
- 2. Hours of operation for the home occupation being Monday to Friday from 7.00am to 7.00pm and Saturday from 8.00am to 2.00pm.**
- 3. Only one client vehicle may be parked on the premises at any one time.**

Standard Conditions:

- 4. The applicant must permanently live on the premises.**
- 5. The home occupation does not entail more than one customer or client at any one time other than those members of the immediate family to travel to and from the premises in relation to the business.**
- 6. No employees other than the members of the occupying family of the dwelling being employed in the operation of the business.**
- 7. All parking associated with the home occupation to be accommodated within the subject property only. On-street parking is not permitted.**
- 8. This approval may not be transferred to any other person or property.**
- 9. This approval is valid for a period of twelve (12) months from the date of approval only and the applicant is to seek renewals thereafter to enable continuance of the home occupation.**

U10/0285 - (PS) HOME OCCUPATION RENEWAL – CHIROPRACTOR ON LOT 300 (244-246E) PRESTON POINT ROAD, BICTON WA (REC) (ATTACHMENT)

Advice Notes:

- 10. The applicant be advised that failure to comply with the above conditions of this approval or if the activity causes a nuisance or annoyance to owners or occupiers of land in the neighbourhood, council may revoke its approval of the home occupation in accordance with the provisions of Community Planning Scheme No. 5.**
 - 11. City of Melville to monitor parking relative to the home occupation on a regular basis and report to planning services any verge or street parking activity which appears related to the home occupation and impacts on traffic and pedestrian movement in Harris Street.**
- B) The submitters who commented on the proposed home occupation renewal be advised in writing of A) above.**

U10/0286 (AG) PROPOSED TWO-STOREY SINGLE HOUSE ON LOT 409 (40) SIDDONS WAY, BOORAGOON (REC) (ATTACHMENT)

Ward : City
 Category : Operational
 Application Number : DA-2010-853
 Property : Lot 409 (40) Siddons Way, Booragoon
 Proposal : Two-storey Single House
 Applicant : Beaumonde Homes
 Owner : Ms S K Kuneman
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Responsible Officer : Tony Capobianco
 A/Manager Planning and Development Services
 Previous Items : Not Applicable

AUTHORITY / DISCRETION

Definition

| | | |
|-------------------------------------|-----------------------|--|
| <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 & policies.</i> |
| <input type="checkbox"/> | Review | <i>when Council review decisions made by Officers.</i> |
| <input checked="" type="checkbox"/> | Quasi-Judicial | <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> |

U10/0286 (AG) PROPOSED TWO-STOREY SINGLE HOUSE ON LOT 409 (40) SIDDONS WAY, BOORAGOON (REC) (ATTACHMENT)

KEY ISSUES / SUMMARY

- Application seeks approval for a two-storey Single House
- The application generally complies with the Acceptable Development provisions of the Residential Design Codes (R-Codes) with the exception of a boundary wall and privacy setback.
- Boundary walls are not permitted 'as-of-right' within the R17.5 density coding therefore the boundary wall needs to be assessed in accordance with the Performance Criteria of the R-Codes and be the subject of neighbour consultation.
- Neighbour consultation was undertaken with one (1) objection being received relative to the detrimental visual impact of the proposed boundary wall and the streetscape impact resulting from a front setback variation.
- In acknowledging the concerns raised, the applicant has lowered the height of the proposed boundary wall and set the building back further from the street in order to bring the front setback into compliance. The resultant reduction in height and greater setback from the street is considered to lessen the bulk of the wall and satisfy the relevant Performance Criteria of the R-Codes.
- The application is recommended for conditional approval.



U10/0286 (AG) PROPOSED TWO-STOREY SINGLE HOUSE ON LOT 409 (40) SIDDONS WAY, BOORAGOON (REC) (ATTACHMENT)

BACKGROUND

Scheme Provisions

MRS Zoning : Urban
 CPS 5 Zoning : 'Living Area – CL' Precinct
 R-Code : R17.5
 Use Type : Residential
 Use Class : 'P' - Permitted

Site Details

Lot Area : 728sqm
 Retention of Existing Vegetation : Not Applicable
 Street Tree(s) : Not Applicable
 Street Furniture (drainage pits etc) : Not Applicable
 Site Details : Refer to photo above

U10_0286_October_2010.pdf A copy of the plans forms part of the Attachments to the Agenda, which were distributed to Members of the Council on Friday 1 November 2010.

DETAIL

Development Requirements

| Development Requirement | Required/ Allowed | Proposed | Comments | Delegation to approve variation | Plan Notation |
|--------------------------|-----------------------------|-------------------------------------|------------------------|---------------------------------|---------------|
| Open Space | 50% | 58.67% | Complies | | |
| Building Height (Garage) | 8.0m (eaves) 10.5m (max) | 5.3m 8.0m | Complies Complies | | |
| Carparking | 2-bays | 2-bays | Complies | | |
| Overshadowing | 25% | 0% (north-south lot orientation) | Complies | | |
| Privacy | Balcony – 7.5m | 5.7m | Does not comply | MPDS | |

(Note: Non-compliance in bold)

U10/0286 (AG) PROPOSED TWO-STOREY SINGLE HOUSE ON LOT 409 (40) SIDDONS WAY, BOORAGOON (REC) (ATTACHMENT)

Setbacks

| Wall | Required | Proposed | Comments | Delegation to approve variation | Plan Notation |
|--------------------------------|-----------|----------|----------|---------------------------------|---------------|
| Primary Street Setback (north) | | | | | |
| GF | Avg. 6.0m | Avg 6.0m | Complies | | |
| UF | Avg 6.0m | Avg 6.0m | Complies | | |
| Rear (South) | | | | | |
| GF – Shed | 1.5m | 1.5m | Complies | | |
| GF – Alfresco / Dining | 1.5m | 13.1m | Complies | | |
| UF – Bed 2 / Bed 3 | 2.6m | 22.4m | Complies | | |
| Side (East) | | | | | |

| | | | | | |
|----------------------------------|-------------|-------------|------------------------|-------------|--|
| GF - Garage | 1.0m | 0m | Does not comply | MPDS | |
| GF – Laundry / Family / Alfresco | 1.5m (min) | 4.29m (min) | Complies | | |
| UF – Bed 2 / Sitting | 1.5m | 5.7m | Complies | | |
| Side (West) | | | | | |
| GF – ENS | 1.0m | 1.08m | Complies | | |
| GF – Bed 1 / Theatre / Kitchen | 1.5m | 1.58m | Complies | | |
| GF – Dining | 1.5m | 2.2m | Complies | | |
| UF – Bed 3 / Bed 4 / Bath | 1.5m | 1.6m | Complies | | |

(Note: Non-compliance in bold. GF – Ground Floor, UF – Upper Floor)

PUBLIC CONSULTATION/COMMUNICATION

Advertising Required: Yes
 Neighbour's Comment Supplied: Yes
 Reason: Variation to R-Codes
 Support/Object: One (1) Objection

| Affected Property | Summary of Submission | Support/ Object | Officer's Comment | Action (Uphold / Not Uphold) |
|-------------------|--|-----------------|---|--|
| 1. | <p>Neighbour has expressed objection to the location of the building 5.6m in-lieu of 6.0m from the primary street as well as the location of the garage's eastern wall on the property boundary.</p> <p>The effective wall height facing onto the objecting property, which includes a retaining wall is considered to be visually imposing and bulky.</p> | Object | <p>With regard to the concerns relating to the front setback, the applicant has submitted amended plans which now show a front setback which complies with the Acceptable Development provisions of the R-codes.</p> <p>With regard to the boundary wall height, amended plans reflect a reduction in ceiling height to the garage and a reduction in the finished floor level, representing a total wall height reduction of 0.258m.</p> | Partially Uphold (revised plans received to meet this requirement) |

REFERRALS TO GOVERNMENT AGENCIES

There are no referrals required to external agencies.

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

There are no financial implications for the Council in this application

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

There are no strategic and risk management implications for Council.

U10/0286 (AG) PROPOSED TWO-STOREY SINGLE HOUSE ON LOT 409 (40) SIDDONS WAY, BOORAGOON (REC) (ATTACHMENT)

POLICY IMPLICATIONS

There are no policy implications for the Council to consider as part of this application.

ALTERNATE OPTIONS & THEIR IMPLICATIONS

This application is proposed to be supported under delegation through the DAU process. Should Elected Members have an alternative view, the DAU 'call-up' procedures provide opportunity to call this matter up for formal Council consideration.

COMMENTS

The subject application seeks planning approval for a two-storey single house. The lot is located within 'Living Area-CL' Precinct under the provisions of the CPS5 with an applicable density coding of 'R17.5'. The proposal generally satisfies the Acceptable Development provisions of the R-Codes with the exception of a garage wall proposed on the boundary resulting in a setback variation. Consideration of this variation is detailed in the section below.

Buildings on the Boundary

The building on the boundary relates to the proposed garage wall measuring 8.99m in length and 2.9m in height (or 3.5m above the adjoining properties natural ground level in light of existing retaining along the boundary).

U10/0286 (AG) PROPOSED TWO-STOREY SINGLE HOUSE ON LOT 409 (40) SIDDONS WAY, BOORAGOON (REC) (ATTACHMENT)

Boundary walls within the 'R17.5' density coding are not permitted 'as-of-right' under the provisions of the R-Codes, therefore a variation to the Acceptable Development provisions is required in this instance. Where a variation is sought, the wall is to be assessed against the Performance Criteria of Clause 6.3.1 and 6.3.2 of the R-Codes. ,

The Performance Criteria of Clause 6.3.1 requires buildings to be setback from boundaries so as to provide adequate sun and ventilation to the building and open spaces on the subject lot and adjoining property, and ameliorate the impacts of bulk and protect privacy. Furthermore, the Performance Criteria of Clause 6.3.2 of the R-Codes 'Buildings on Boundary' allows buildings to be built up to boundaries other than the street boundary where it is desirable to do so in order to:

- *Make effective use of space; or*
- *Enhance privacy; or*
- *Otherwise enhance the amenity of the development; and*
- *Not have any significant adverse effect on the amenity of the adjoining property; and*
- *Ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.*

It is considered that the proposed boundary wall complies with the abovementioned Performance Criteria for the following reasons:

- The boundary wall makes effective use of space by placing the bulk of the proposed building (i.e. balance of the ground and first floors) away from the objector's property (i.e. towards the west of the subject lot) whilst maximising the primary outdoor living area, particularly in light of the intention to retain an existing swimming pool on the subject site.
- There are no visual privacy implications as the wall does not contain any major openings.
- The reduction in the boundary wall height by 0.258m and setting the wall back an additional 0.5m to 6.1m from the front boundary alignment by the applicant in response to the concerns raised is considered to lessen building bulk and ameliorate the impact of the development.
- The boundary wall abuts the objector's carport and driveway area therefore having no detrimental impact on habitable room windows, active habitable spaces and/or outdoor living areas.
- Given the north-south lot orientation, no overshadowing will occur onto the neighbouring property as calculated in accordance with Clause 6.9 of the R-Codes.

Based on the above, whilst the concerns raised by the adjoining neighbour are acknowledged, in light of the justification detailed above the setback variation is supported.

U10/0286 (AG) PROPOSED TWO-STOREY SINGLE HOUSE ON LOT 409 (40) SIDDONS WAY, BOORAGOON (REC) (ATTACHMENT)Visual Privacy

A visual privacy setback variation applies with regard to the upper floor balcony which presents a setback of 5.6m in lieu of the required 7.5m to the western boundary. Where the Acceptable Development provisions of the R-Codes are not met, consideration in terms of the Performance Criteria is required. The Performance Criteria requires (among other things) that “...direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness”.

With regard to the variation sought, it is noted that the encroachment is over the front garden area of the adjoining property which is also visible /open to the street. As a result of the balcony design, there is no overlooking into any active habitable space or outdoor living areas on the adjoining property to the west.

Accordingly, the privacy setback variation is supported in this instance as it is considered to satisfy the abovementioned Performance Criteria.

Cl. 7.8 of CPS5 Considerations

Clause 7.8 provides matters to be considered by Council in determining an application for planning approval. Notwithstanding the justification provided against the relevant Performance Criteria of the R-Codes (as detailed above), specific consideration is necessary against Clause 7.8(b), (c), (h), (i), (j) and (k) which provides for the following considerations:

- (b) The orderly and proper planning of land within the area;*
- (c) The existing and likely future amenity of the area.*
- (h) The nature of the proposed development in relation to development either existing or proposed on adjoining land and the need to upgrade existing roads;*
- (i) The size, shape and character of the lot upon which the development is to be carried out, and the influence which this may have on the sitting and nature of any new building;*
- (j) The design and external appearance, including the exterior cladding, of any new building and its effect upon the amenity of existing buildings and the area generally; and,*
- (k) Any relevant submissions received on the application.*

The above considerations are essentially amenity issues and draw support from the justification of the variations against the Performance Criteria under the R-Codes. As detailed in the preceding sections above, the development will maintain adequate direct sunlight and ventilation to the proposed dwelling, the neighbouring property as well as appurtenant open spaces and does not affect privacy between the two properties.

The proposal (and its variation) where considered in the context of existing development on the adjoining lots, is considered to be consistent with the established residential character and orderly and proper planning for the locality.

Accordingly the proposal is considered to satisfy all relevant provisions of Clause 7.8 of CPS5.

U10/0286 (AG) PROPOSED TWO-STOREY SINGLE HOUSE ON LOT 409 (40) SIDDONS WAY, BOORAGOON (REC) (ATTACHMENT)

CONCLUSION

Given the proposal is considered to meet the relevant Performance Criteria with regard to the variations proposed and is otherwise in compliance with the provisions of the City of Melville Community Planning Scheme No. 5 and R-Codes, it is recommended that application be conditionally approved.

OFFICER RECOMMENDATION

APPROVAL

- A) That the proposed two-storey single-house on Lot 409 (40) Siddons Way, Booragoon be approved subject to the following Special Conditions and Standard Conditions:**

SPECIAL CONDITIONS:

- 1. During excavations all necessary precautions shall be taken to prevent damage or collapse of any adjoining properties (driveways, garden beds, walls, etc), streets or right-of-ways. It is the responsibility of the builder/owner to liaise with adjoining and adjacent property owners prior to carrying out work.**
- 2. The external face of the parapet wall(s) on the boundary is to be finished to an equivalent standard of finish and colour of the dwelling (or fence) on the adjoining property.**

STANDARD CONDITIONS:

- 3. All Stormwater and drainage run off to be contained on site. An onsite stormwater drainage system with a capacity to contain a 1:100 year storm of a twenty-four (24) hour duration is to be provided prior to the development first being occupied and thereafter maintained to the approval of the Manager Planning and Development Services. All downpipes to be connected to soakwells. The proposed stormwater drainage system is required to be shown on the Building Licence submission for approval prior to the commencement of construction.**
- 4. Nothing in this Planning Approval authorises any works outside the surveyed boundaries of the lot the subject of this Planning Approval.**
- 5. Roofing materials being of a non-reflective material (Zinc or white colour metal roofing may only be permitted through special planning consent).**
- 6. The construction of retaining walls not to exceed the heights specified on the approved plans unless otherwise approved by Council. Details, signed by a practicing Structural Engineer must be submitted for approval at the time of submitting a Building Licence Application.**

U10/0286 (AG) PROPOSED TWO-STOREY SINGLE HOUSE ON LOT 409 (40) SIDDONS WAY, BOORAGOON (REC) (ATTACHMENT)

7. Prior to the Commencement of any construction the Council requires the provision of a suitable receptacle for the containment of windblown rubbish. The receptacle (generally a wire mesh cage) should have maximum openings of 100mm; have a base of 4m² and a height of 1m and a hinged lid. The receptacle should not be allowed to overfill.
8. Ground levels may not be changed other than approved as part of this approval.
9. Specific approval must be obtained to remove a street tree to permit the construction of a vehicle crossover otherwise it should be assumed that street trees are to be retained. Any written approval for the removal of street trees is subject to the applicant/owner paying all costs and may entail removal and relocation costs; or removal and replacement costs.

ADVICE NOTES:

10. The use and/or development hereby permitted shall at all times comply with the requirements of the *Environmental Protection (Noise) Regulations 1997*. Please consult with Environmental Health Services prior to the installation of noisy equipment (e.g. air-conditioning units, pool pumps).
 11. Please be advised that although the west facing UPPER FLOOR BATH window setback 1.6m to the WESTERN BOUNDARY complies with the Residential Design Codes (2008), it is recommended that the window be screened to eliminate any overlooking into the northern neighbours property in an attempt to maintain a sociable relationship with this neighbour. Please note that this is only a recommendation and is not a condition of approval.
- C) The adjoining property owner who objected to the proposed development be advised in writing of A) above.