



Council Policy

Coastal Development Lot Privacy

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Objectives and Principles

The policy seeks to establish lot privacy for developments in close proximity to Middleton Beach. The Town Planning Scheme 1A provisions provide some guidance on development standards to protect individual amenity and prevent overlooking of neighbouring properties, however, they do not adequately define lot privacy in coastal environments such as at Middleton Beach.

This policy seeks to provide greater clarity on standards relating to overlooking on private property; in coastal localities, there is greater emphasis on orienting dwellings to the coast rather than the street, and overlooking of adjoining properties occurs as individuals seek to maximise coastal views.

Background

Middleton Beach is located in the north western portion of King George Sound at Albany. The white sands and clear waters of Middleton Beach are part of the attraction of the area for both residents and visitors to Albany.

Middleton Beach is a strip of unique coastline stretching from Ellen Cove to Emu Point. Its relatively undeveloped state is highly valued by the community. Its proximity to the township, the rugged shoreline beyond the beach, the impressive views from surrounding vantage points over the beach and the high levels of vegetation cover are equally important qualities to the community and they promote investor confidence in the locality.

A University of Western Australian study found that high property prices near Middleton Beach reflect the popularity of the locality and the lifestyle opportunities that are present for landowners.

The attributes which make Middleton Beach an important Albany and Great Southern regional asset could be compromised if urban developments were to impinge upon the lifestyles of individual landowners. The WA Planning Commission introduced the Residential Planning Codes to provide a minimum level of privacy at lot boundaries. They do not take into consideration the actual development that exists on an adjoining lot. This statewide code is inappropriate for development adjacent to Middleton Beach.

This policy is treated as a development policy under clause 7.21 of the Town of Albany Planning Scheme 1A and it will have the legislative support of the Town Planning and Development Act, 1928 (as amended).

Interpretation

For the purposes of this policy the following words shall have the specified meanings:

'Development' shall have the meaning assigned by Section 2 of the Town Planning and Development Act, 1928 (as amended).

'Effective screening' means some form of physical barrier which is solid (without openings), permanent, aesthetically pleasing and sufficient to interrupt the line of sight between a potential point of overlooking and a sensitive area. The term includes existing landscaping demonstrating the required characteristics but does not include lattice or other similar perforated material.

'Living Room' means a habitable room, other than a kitchen or a bedroom, and includes a room used principally for dining or for relaxation or recreation.

'Overlooking' means the ability to view a sensitive area of an adjoining residential property from a window of a habitable room, stairwell window, balcony or other elevated outdoor living or pedestrian area. In determining whether or not a sensitive area is overlooked, Council will assume a 45° angle of view measured horizontally and vertically from the extremities of the window. Windows with a minimum sill height of 1650mm above the floor level do not permit overlooking. In the case of a balcony or other elevated outdoor area, a 60° angle of view will be assumed.

'Policy Area' means that portion of the Town of Albany bounded by Cunningham Street, Boongarrie Street, Mermaid Avenue, Emu Point Drive, Golf Links Road, Middleton Road and its projection eastward to the shores of King George Sound and then north west to the starting point.

'Reasonable privacy' means the degree of visual privacy achieved by compliance with this policy.

'Sensitive area' means any enclosed private courtyard, swimming pool area, barbecue outdoor eating or entertaining area, or a window of a kitchen or other habitable room. The term does not include extensive back gardens other than the portions used in the manner described above, nor does it include front gardens, windows, balconies or the like, which are visible from a street.

General

1. Within the Policy Area, no development shall be approved which results in overlooking of a sensitive area of an adjoining residential property by a landowner.
2. Subject to the provisions of Clause 3 each development shall be designed so that visually sensitive areas of adjoining residential properties are not overlooked from kitchen windows or other habitable room windows, stairwell windows, balconies, or from elevated outdoor living or pedestrian areas.
3. The following setbacks from a sensitive area of the lot boundary are deemed to provide reasonable privacy.
 - 3.1 Where effective screening is not provided, compliance with the lesser of the prescribed setbacks is required and in both cases the setback from the lot boundary shall be not less than the setback prescribed in the Residential Planning Codes;

- a) Setbacks from sensitive area on adjoining lot and;
- Elevated outdoor living or pedestrian areas or balconies on development site- 15 metres
 - Kitchen or living room on development site - 12.0 metres
 - Bedroom or stairwell on development site - 9 metres

or

- b) Setback from lot boundary on development site and;
- Elevated outdoor or pedestrian areas or balconies - 7.5 metres
 - Kitchen or living room - 6.0 metres
 - Bedroom or stairwell - 4.5 metres.

3.2 Where effective screening is proposed to be provided, setbacks from the lot boundary shall be calculated in accordance with the Residential Planning Codes.

4. Where sensitive areas of proposed dwellings would be overlooked from existing dwellings on adjoining sites, Council officers will encourage compliance with the provisions of this policy as an element of good design. However, in relation to the achievement of reasonable visual privacy for the future occupiers of **proposed** dwellings, compliance with the policy is not mandatory, as a potential purchaser buys the property 'as seen', based upon the "buyer beware" principle in terms of the degree of visual privacy offered.
5. Ground floor levels of outdoor living or pedestrian areas should not normally be raised to the extent that fences exceeding 1.8 metres in height are necessary to secure privacy. However, in certain circumstances, the Council may approve a dividing fence exceeding 1.8 metres in height, subject to compliance with the provisions of appropriate Codes, Local Laws and Acts of Parliament.

Application Requirements

In relation to overlooking, to enable Council to properly assess the effect that a proposed development would have on an adjoining property, the following information is required to be submitted in addition to the usual information submitted with an application for Planning Consent or a Building Licence as detailed in Clause 7.4 of the Scheme:

- Plans, elevations and cross sections of the proposed development, showing all windows or balconies from which an adjoining property could be subjected to overlooking;
- Site plan with full details of existing and proposed floor and ground levels, and identification of elevated outdoor living or pedestrian areas from which an adjoining property could be subjected to overlooking;

- The position of any sensitive areas of an adjoining residential property which could be subjected to overlooking; and
- Details of all screening and other measures proposed to protect visual privacy.

Where any application for Planning Consent or a Building Licence fails to meet the Policy Objectives or does not comply with all the specific provisions of this policy, **the proposal should also be supported in writing by the affected adjoining property owner.**

