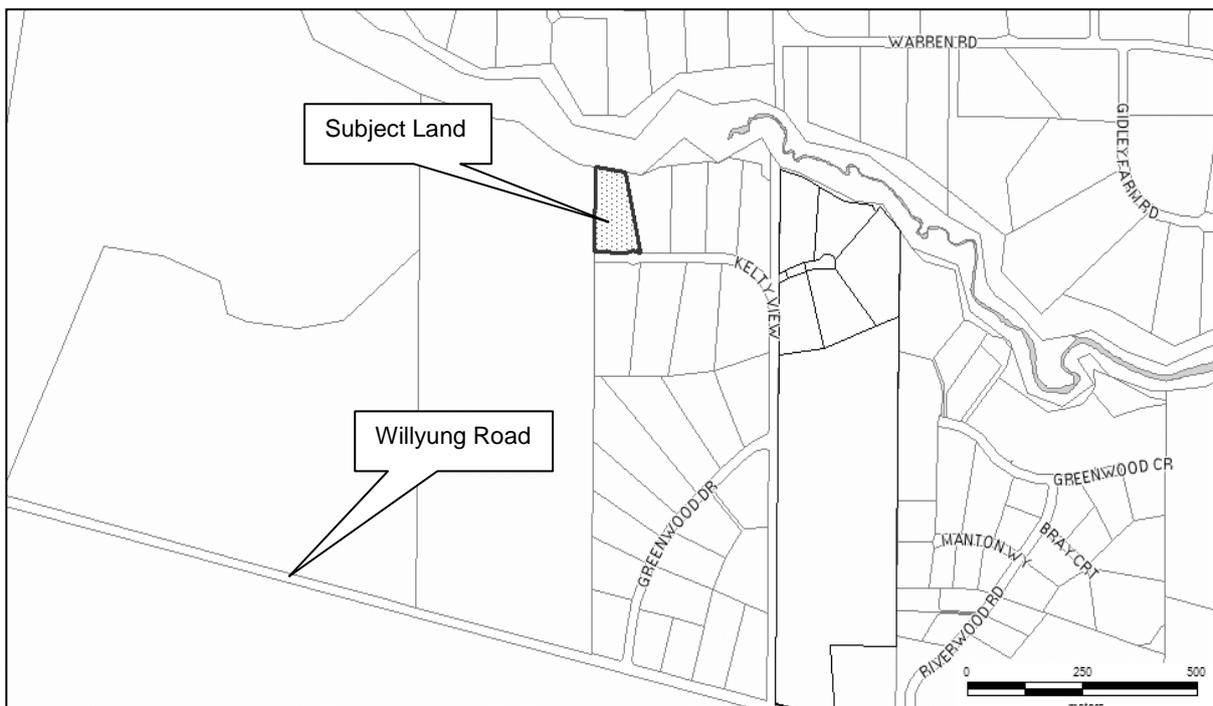


**2.3: DEVELOPMENT APPLICATION – OVERSIZE OUTBUILDING,  
KELTY VIEW, WILLYUNG**

**Land Description** : (Lot 421) No. 60 Kelty View, Willyung  
**Proponent** : S & J Carman  
**Owner/s** : S & J Carman  
**Business Entity Name** : N/A  
**Attachment(s)** : Letter of justification  
: Site Plan / Elevations / Floor Plan  
: Neighbour Submissions  
**Responsible Officer(s)** : E/Director Planning and Development Services (G Bride)

**Maps and Diagrams:**



**IN BRIEF**

- A development application has been received for an Oversize Outbuilding at Lot 421 Kelty View, Willyung.
- As the application fails to comply with the acceptable requirements of Council's Outbuildings Policy the proposal has been sent to Council for a determination.

<b>CEO:</b>	<b>RESPONSIBLE OFFICER:</b>
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**RECOMMENDATION**

**ITEM 2.3: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council resolves to ISSUE a Notice of Planning Scheme Refusal for an oversized Outbuilding at Lot 421 Kelty View, Willyung due to the following reasons:**

- 1) The outbuilding does not comply with the floor area restrictions contained within the City of Albany’s Outbuildings Policy.**
- 2) The proponent has not demonstrated that ‘exceptional circumstances’ exist to justify a relaxation of Council’s policy.**
- 3) The outbuilding fails to comply with the acceptable boundary setbacks, as per clause 6.2 of the provisions for Special Residential Area No.11.**

**BACKGROUND**

1. This application is for an extension to an existing domestic outbuilding, located at Lot 421 Kelty View, Willyung. The extension does not comply with Councils Outbuilding’s Policy. The subject site is 1.4003 hectares in area and is zoned “Special Residential (Area No.11)” under Town Planning Scheme No. 3 (TPS 3).
2. Council’s Outbuilding’s Policy sets the permitted development criteria for outbuildings according to the zone and site area. For the subject land the following provisions apply:

<b>Zoning</b>	<b>Max. Wall Height</b>	<b>Max. Ridge Height</b>	<b>Max. Floor Area (combined all outbuildings)</b>	<b>Special Requirements</b>
Special Residential Zone (Lots greater than 4000m <sup>2</sup> )	4.2 metres	4.8 metres	150m <sup>2</sup>	Refer relevant planning scheme requirements for siting and materials.

3. Although the Outbuilding’s Policy allows acceptable variations to the wall heights of outbuildings, which can be dealt with under staff delegation subject to an application for Planning Scheme Consent, the Policy states;

*“For all other variations of the Outbuilding Policy the applicant shall demonstrate exceptional circumstances as to why the policy should be relaxed, with the proposal being presented to an ordinary meeting of Council”.*

**DISCUSSION**

4. The proponent seeks Planning Scheme Consent for a variation of the Outbuilding’s Policy in respect of the maximum floor area allowed for outbuildings on the site. The maximum floor area for all combined domestic outbuildings on the site is restricted to 150m<sup>2</sup>. The existing outbuilding is 130.0032m<sup>2</sup> in area and the proposed extension is 65.1168m<sup>2</sup> in area (dimensions 12.24m x 5.32m) bringing the combined floor area to 195.12m<sup>2</sup>, therefore requesting a variation of 45.12m<sup>2</sup> to the policy.

5. The outbuilding is proposed to be finished in colorbond with the colour chosen being “wilderness” (green).
6. The proponent has advised that they require the additional floor area for the following reasons:
  - He is an ex-furniture maker, and still makes furniture as a hobby occasionally, and to safely use the machinery/tools (panel saw, buzzer, thickness etc) requires a large area.
  - He requires additional storage space for members of the family.
  - He requires extra floor space to store and park vehicles such as standard cars, camper trailer motorbike and classic cars.
  - He restores classic vehicles (copy of justification is attached to this report).
7. The proponent has stated that due to the size of the lot (1.4003 hectares) they believe the floor area requirements should be based on the Special Rural zone requirements. The subject lot size is above the average Special Residential lot size and is typical of the Special Rural zone. It should be noted that if the zoning of the site was Special Rural the floor area restriction is 200m<sup>2</sup> (proposed floor area is 195.12m<sup>2</sup>).
8. The proponent is also requesting a side setback relaxation, the provisions of “Special Residential (Area No.11) require a setback of 15m from boundaries. The existing outbuilding is 15m from the boundary however with the extension the outbuilding is proposed to be 9.68m from the eastern boundary (relaxation of 5.32m). Clause 6.3 of the provisions for the area states;

*“Council may approve a lesser boundary setback if Council is of the opinion that (i) the topography or shape of the lot, or natural vegetation on it, makes it desirable to alter this provision and (ii) that the location of the building or structure will not detract from the environmental quality of the area or from the amenity of existing or future residence on adjoining lots. Council may require hydrological testing for footings and alternative wastewater effluent disposal systems.”*

The affecting neighbour was consulted and raised no objection to the relaxation. The outbuilding is sufficiently setback from all other boundaries.

9. In all other respects, the proposed outbuilding complies with the Outbuilding’s Policy and the provisions of “Special Residential (Area No.11) under TPS 3.

#### **GOVERNMENT CONSULTATION**

10. No government consultation was required.

#### **PUBLIC CONSULTATION/ENGAGEMENT**

11. The application was referred to nearby landowners for comment as a relaxation to the Outbuilding’s policy. In closing of the advertising period one submission was received advising no objections to the application.

## **STATUTORY IMPLICATIONS**

12. As the land is zoned “Special Residential (Area No.11) under TPS 3, the proposed outbuilding is permissible under the Scheme.
13. The Outbuilding’s Policy is a town planning scheme policy adopted under the Scheme. Clause 6.9.4 of TPS 3 states;
  - a) *A Town Planning Scheme Policy shall not bind the council in respect of an application for Planning Consent, however, it may require the council to advertise its intention to relax the provisions of the policy once in a newspaper circulating in the district stating that submissions may be made to the Council within 21 days of the publication thereof.*
  - b) *Council shall take into account the provisions of the policy and objectives which the policy was designed to achieve and any submission lodged, before making its decision.”*
14. Clause 5.16 of Town Planning Scheme No. 3 allows Council to grant a relaxation to a scheme standard. In this case the Scheme requires a side setback of 15 metres and the proponent has proposed a reduced side setback of 9.68 metres. The neighbouring landowner affected by the proposed relaxation was consulted and no objection has been received. All processes have been followed, inclusive of neighbor consultation, to allow Council the ability to approve the side setback relaxation as per Clause 5.16 should it wish to do so.

## **STRATEGIC IMPLICATIONS**

15. This item relates to the following elements of the City of Albany Strategic Plan (2011 2021):

### **Key Focus Area**

Organisational Performance

### **Community Priority**

Policy and Procedures

### **Proposed Strategies**

- Develop clear processes and policies and ensure consistent, transparent application across the organisation.
- Regularly review all policies in consultation with community and key stakeholders.

16. The last major review of the Outbuilding’s Policy was undertaken in July last year in liaison with shed builders throughout the Great Southern Region. Since this review was undertaken, no applications for outbuildings have been presented to Council with the exception of this application; all other proposals have complied with this Policy.

**POLICY IMPLICATIONS**

- 17. Council’s Outbuildings Policy states that Planning Scheme Consent is only required where the criteria of the policy cannot be complied with (with the exception of the acceptable variations to the wall heights). Any variations to the policy require the proponent to demonstrate “exceptional circumstances” as to why the policy should be relaxed, with the proposal being presented to an ordinary meeting of Council.
- 18. The aim of the Outbuilding’s Policy is to achieve a balance between providing for various legitimate storage needs of residents whilst minimising any adverse impacts outbuildings may have on neighbouring properties, the street, the neighbourhood or locality, or the City.
- 19. The Policy allows Council to consider applications outside the guidelines where “exceptional circumstances” apply and provided the aim of the policy is not compromised. Staff consider that the storage of tools/machinery, cars (both standard and classic), camper trailer and motorbike does not classify as “exceptional circumstances”.

**RISK IDENTIFICATION & MANAGMENT**

- 20. The risk identification and categorisation relies on the City’s Risk Management Framework.

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Analysis</b>	<b>Mitigation</b>
Council’s support for the proposal could create a precedent for other applications and devalue the policy.	Likely	Minor	High	Should Council support the proposal, it should consider whether the policy should be reviewed to accommodate similar applications.

**FINANCIAL IMPLICATIONS**

- 21. The proponent has paid the appropriate fee as per the Planning Fees Schedule adopted by Council.

**LEGAL IMPLICATIONS**

- 22. If Council refused the application, the proponent would then be entitled to seek a review of that decision with the State Administrative Tribunal. Such an appeal would be a Class 1 appeal which does not involve legal representation, and therefore costs would be mainly staff time.

**ALTERNATE OPTIONS**

- 23. Council has the option to grant planning scheme consent for the oversize outbuilding outside of its policy parameters and in doing so grant its consent to relax the side setback

**SUMMARY CONCLUSION**

- 24. The proponent proposes to construct an extension to an existing outbuilding in the front (south-eastern corner) of the site, requesting a side setback relaxation from the eastern boundary and a floor area relaxation under Council's Outbuilding's Policy.
- 25. A 45.12m<sup>2</sup> relaxation is sought for the maximum floor area requirement of 150m<sup>2</sup> under Council's Outbuilding Policy, therefore proposing an outbuilding 195.12m<sup>2</sup> in area (almost a one third increase in the allowable floor area).
- 26. The City of Albany has some of the most generous outbuilding sizes compared to other Local Governments within the State. Although only one requirement of the policy is requested to be varied, supporting this application could encourage further applications for oversize outbuildings on surrounding properties and could be used to set a precedent within Special Residential areas.
- 27. Staff consider that the proponents reasoning for the additional floor area is not considered "exceptional circumstances" and approval for applications of this nature would have the effect of undermining the policy. For these reasons, staff recommend the proposal not be supported.

<b>Consulted References</b>	Council's Outbuilding's Policy Town Planning Scheme No. 3
<b>File Number (Name of Ward)</b>	A186559 (Kalgan Ward)
<b>Previous References</b>	Nil