

2.2: DEVELOPMENT APPLICATION – OUTBUILDINGS POLICY RELAXATION (LOT 105) NO. 59 LANCASTER ROAD, MCKAIL

Land Description : (Lot 105) No. 59 Lancaster Road, McKail
 Proponent : J Brade
 Owner : G & L Remaj
 Business Entity Name : N/A
 Attachments : Letter of Justification
 Site Plan / Revised Elevations
 Photos of existing outbuilding and site
 Registration details of recently sold caravan
 Responsible Officer(s) : Acting E/Director Planning and Development Services (S Lenton)

Maps and Diagrams:



IN BRIEF

- A development application has been received for an oversize Outbuilding at Lot 105 (59) Lancaster Road, McKail.
- As the application fails to comply with the requirements of Council’s Outbuilding Policy, the proposal is tabled at the Council meeting for determination on request of the Applicant.

CEO:	RESPONSIBLE OFFICER:
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RECOMMENDATION

**ITEM 2.2: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council resolves to ISSUE a Notice of Planning Scheme Refusal for an Oversized Outbuilding at Lot 105 (59) Lancaster Road, McKail 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.**

BACKGROUND

1. This application is for an extension to an existing domestic outbuilding, located at Lot 105 (59) Lancaster Road, McKail. The extension does not comply with Council’s Outbuilding Policy. The subject site is 3500m² in area and is zoned ‘Residential’ under Town Planning Scheme No. 3 (TPS 3).
2. Council’s Outbuilding Policy sets the permitted development criteria for outbuildings according to the zone and site area. For the subject land the following provisions apply:

Zoning	Max. Wall Height	Max. Ridge Height	Max. Floor Area (combined all outbuildings)	Special Requirements
Residential / Future Urban / Residential Development Zone (Lots 1000m ² -3999m ²)	3 metres	4.2 metres	120m ²	If the floor area of an outbuilding is to exceed 60m ² the use of non-reflective materials is required.

3. The Outbuilding Policy allows for variations to the wall heights of outbuildings, and this is normally dealt with under staff delegation subject to an application for Planning Scheme Consent, the Policy states;

“where in order to accommodate larger boats and caravans requiring clearance up to 3.2 metres, the applicant to demonstrate proof of ownership of such vehicle/vessel and a relaxation of the height of the wall (up to 15%) may be supported on Residential / Future Urban / Residential Development Zone less than 4000m².

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 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 120m². The existing outbuilding is 99.25m² in area and the proposed extension is 44.775m² in area (dimensions 9.95m x 4.50m) bringing the combined floor area to 143.77m², therefore requesting a variation of 23.77m² to the policy.
5. The proponent initially requested a relaxation of the wall height allowance to 4.4m, for the purpose of storing a caravan that they wish to purchase in the near future, to replace one which was recently sold. Following discussion at the Planning & Development Committee, the suggestion of the Committee to consider revising the roof form and height relaxation requested was relayed to the proponent.
6. This suggestion was acceptable to the proponent and has resulted in the proposal being revised. The annex for the caravan is now proposed with a ridged roof to a maximum height of 4m and wall height of up to 3.45m. These revised heights comply with the acceptable variations as stated in the policy, under Clause A2.1 (Acceptable Variations) of the Outbuilding Policy;

“Subject to the lodgement of an application for Planning Scheme Consent the following variations may be approved at the Planning Officers discretion without being presented to Council:

- 2) *Where in order to accommodate larger boats and caravans requiring clearance up to 3.2m, the applicant to demonstrate proof of ownership of such a vehicle/vessel and a relaxation of the height of the wall (up to 15%) may be supported on Residential/Future Urban / Residential Development Zone less than 4000m².”*
7. The outbuilding is proposed to be finished in Colorbond with the colour chosen being ‘Deep Ocean’ (dark blue) to match the existing outbuilding. This is consistent with the provisions of the Outbuilding Policy, which requires the use of non-reflective materials if the floor area of an outbuilding exceeds 60m².
8. The adjoining neighbours were consulted and no submissions were received.
9. In all other respects, the proposed outbuilding complies with the Residential Design Codes and Town Planning Scheme 3.
10. Staff recommend that this application be refused, as the outbuilding does not comply with the restrictions of the Policy and no exceptional circumstances exist or could be justified.
11. This is consistent with the staff recommendation presented to Council at its ordinary meeting on 20 September 2011, in relation to an application for an oversized outbuilding at Lot 421 Kelty View, Willyung. The proponent had sought an increase to the permitted floor area under the Outbuilding Policy for the following reasons:
 - The proponent is an ex-furniture maker and still occasionally makes furniture as a hobby, which requires a large area for the safe use of various machinery and tools;

- The proponent requires additional storage space for items belonging to members of the family;
- The proponent requires extra floor space to store and park vehicles, such as the family cars, a camper trailer, a motorbike and classic cars; and
- The proponent restores classic cars and requires the workshop space.

However, it was considered that these were not ‘exceptional circumstances’ and Council subsequently reached the following resolution:

“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.”*

GOVERNMENT CONSULTATION

12. No government consultation was required.

PUBLIC CONSULTATION / ENGAGEMENT

13. The application was referred to adjoining landowners for comment as a relaxation to the Outbuilding’s Policy. No submissions were received on the matter.

STATUTORY IMPLICATIONS

14. As the land is zoned ‘Residential’ under TPS No. 3, the proposed outbuilding is permissible under the Scheme.
15. The Outbuilding’s Policy is a Town Planning Scheme Policy adopted under the Scheme. Clause 6.9.4 of TPS 3 states that;
 - 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.”*

STRATEGIC IMPLICATIONS

16. 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.*
17. The last major review of the Outbuildings Policy was undertaken in July 2010 in liaison with shed builders throughout the Great Southern Region. Since this review was undertaken, Staff have consistently applied the Policy provisions, with only one application in addition to this one being presented to Council. All other proposals have complied with this Policy.

POLICY IMPLICATIONS

18. 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.
19. 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.
20. 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 a caravan that the applicants wish to purchase to replace one that was recently sold does not classify as 'exceptional circumstances', as the policy is already generous in terms of the floor area that it permits and it contains a clause specifically designed to allow an increase in height to accommodate larger boats and caravans.

RISK IDENTIFICATION & MITIGATION

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

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

FINANCIAL IMPLICATIONS

22. The proponent has paid the appropriate fee as per the Planning Fees Schedule adopted by Council. This fee is non-refundable.

LEGAL IMPLICATIONS

23. 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

24. Council has the option to grant Planning Scheme Consent for the oversize outbuilding outside of its policy parameters. Council may wish to advertise its intention to relax the provision of the Policy in accordance with provision 6.9.4 of Town Planning Scheme No. 3.

SUMMARY CONCLUSION

25. The proponent proposes to construct an extension to an existing outbuilding at the rear (south-eastern corner) of the site, requesting an area relaxation under Council’s Outbuildings Policy.
26. A 23.77m² relaxation is sought for the maximum floor area requirement of 120m² under Councils Outbuilding Policy, therefore proposing an outbuilding 143.77m² in area (almost a one fifth increase in the allowable floor area).
27. The City of Albany has some of the most generous outbuilding sizes compared to other Local Governments within the State. The floor area (size) requirement of the policy is requested to be varied, and therefore supporting this application could encourage further applications for oversize outbuildings on surrounding properties and could be used to set a practical precedent within Residential areas.

28. Approval for applications of this nature could have the effect of undermining the policy.

Consulted References	:	Council's Outbuildings Policy Town Planning Scheme No. 3
File Number (Name of Ward)	:	A186397 (West Ward)
Previous Reference	:	Nil