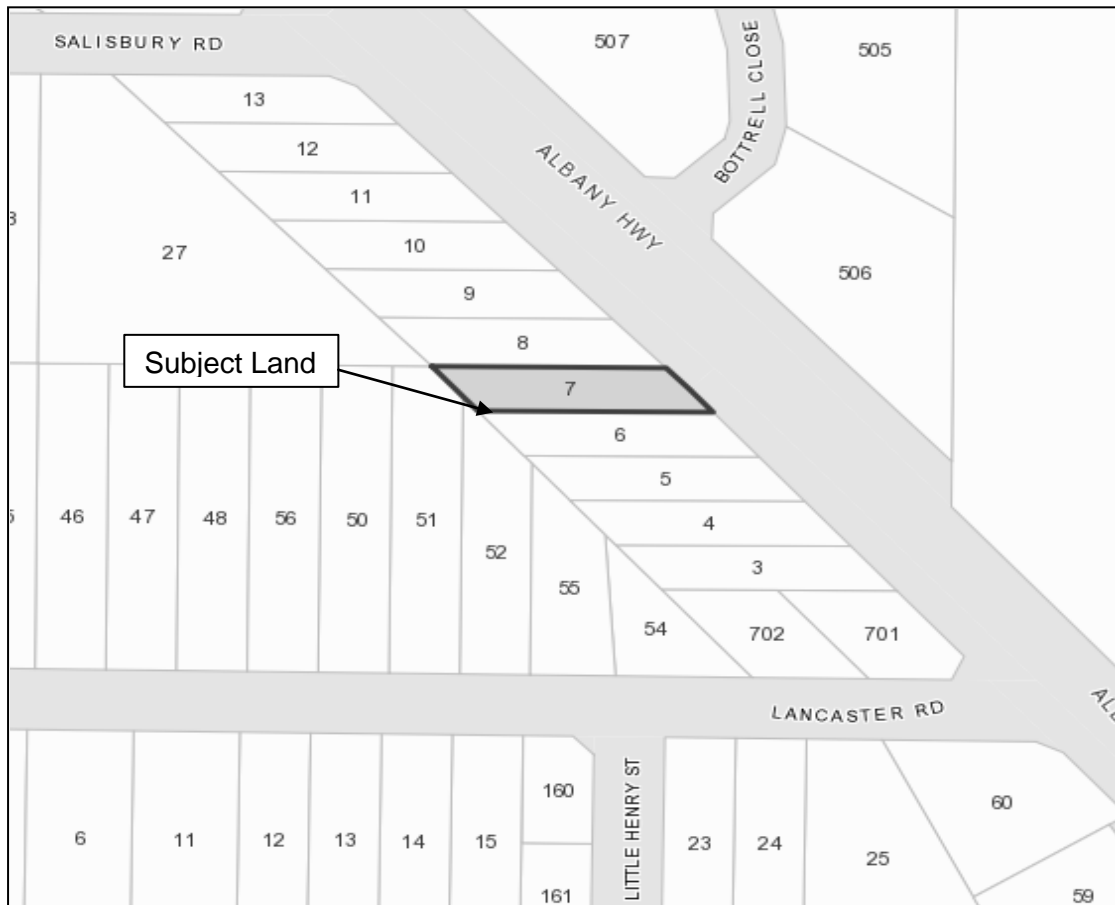


2.5:DEVELOPMENT APPLICATION – SINGLE HOUSE - (SIDE SETBACK RELAXATION) - LOT 7 (577) ALBANY HIGHWAY, MCKAIL

Land Description	: Lot 7 (577) Albany Highway, McKail
Proponent	: G Sivwright – WA Country Builders
Owner/s	: M Merrifield
Business Entity Name	: Nil
Director of Owner Company	: Nil
Attachment(s)	: Covering letter/justification : Site plan, floor plan & elevations
Councillor Workstation	: Nil
Responsible Officer(s)	: Executive Director Planning and Development Services (D Putland)

Maps and Diagrams:



IN BRIEF

- A building licence was issued for a single house at lot 7 (577) Albany Highway, McKail.
- The house was not constructed in accordance with the approved plans (setback from southern boundary).
- This application is for retrospective planning approval for the side setback relaxation.

RECOMMENDATION

ITEM 2.5: RESOLUTION

VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR SUTTON

SECONDED: COUNCILLOR BOWLES

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for Single House - (Side Setback Relaxation) at Lot 7 (577) Albany Highway, McKail subject to the following conditions:

- a. Development shall be carried out in accordance with the approved plans, including any details and/or amendments marked in red.**
- b. Stormwater disposal shall be managed to the satisfaction of the City of Albany.**
- c. The new crossover shall be constructed to the satisfaction of the City of Albany and Main Roads WA. A 'Permit' from the City of Albany is required prior to any work being carried out within the road reserve.**

CARRIED 11-1

Record of Vote

Against the Motion: Councillor Bostock

BACKGROUND

1. According to the City's records the subject site is 976m² in area and is zoned 'Residential' with a Residential Design Code Density of R5 under the City of Albany's Town Planning Scheme No. 3 (TPS 3).
2. On 23 February 2012, a building licence application was lodged by WA Country Builders for a single house at lot 7 (577) Albany Highway, McKail.
3. The house complied with the relevant requirements of the Building Code of Australia and the acceptable development criteria contained within the Residential Design Codes of Western Australia (R-codes) and the building licence was subsequently issued on 28 February 2012.
4. The house was approved with a setback of 1.5m from the southern boundary, which is the required setback under the R-codes.
5. The house was constructed and is currently at 'lockup' stage however was built contrary to the approved plans. The setback from the southern boundary varies from 1.037m at the south-eastern corner of the house up to 1.370m for the south-western corner of the wall.
6. The proponent has advised that the house was set out in the wrong location, as the boundary marker was placed in the incorrect location. The boundary line was taken off an existing peg which was believed to have been a peg installed by the surveyor.
7. The affected southern neighbour was consulted regarding the proposed side setback relaxation and has objected to the proximity of the house. As no compromise can be reached between both parties, the application has been referred to Council for consideration.

DISCUSSION

8. The subject site is relatively flat and is located on the western side of Albany Highway directly to the south of the Albany Italian Club. The adjacent lot to the south remains undeveloped.
9. The subject lot has a frontage of 19.71m, however due to the angle of the front and rear boundaries the actual distance between the northern and southern boundary is 14.65m. The lot to the south is also identical to the subject site, in terms of both shape and area.
10. The house complies with all of the acceptable development provisions of the R-codes with the exception of the setback to the southern boundary.
11. Under the R-codes the boundary setbacks are calculated on the height of the wall, length of the wall and depending on any openings (windows and doors etc). The southern wall is 17.43m long and is under 3.5m in height, the required setback is therefore 1.5m.
12. The acceptable development provisions under the R-codes illustrate one way of meeting the associated performance criteria. When an application doesn't meet the acceptable development provisions it is assessed against the relevant performance criteria. The performance criteria for clause 6.3.1 – *Buildings setback from the boundary* of the R-codes states;

“Buildings setback from boundaries other than street boundaries so as to:

- *Provide adequate direct sun and ventilation to the building;*
 - *Ensure adequate direct sun and ventilation being available to adjoining properties;*
 - *Provide adequate direct sun to the building and appurtenant open spaces;*
 - *Assist with protection of access to direct sun for adjoining properties;*
 - *Assist in ameliorating the impacts of building bulk on adjoining properties;*
and
 - *Assist in protecting privacy between adjoining properties”.*
13. The proponents justification for the relaxation and the relevant performance criteria is as follows;

Subject Site

- The House retains a reasonable setback of 1.0m to 1.3m to the side boundary allowing for breezes and ventilation through this area;
- The boundary setback in question is to the southern boundary. Winter light is from the north, the living areas are orientated to the north, the rooms adjacent to the southern boundary require less direct sunlight (i.e. laundry, study & walk in robes); and
- The house is modest in size, only 172m², even with the additional 54m² outbuilding proposed only 24% of the site is built upon. This leaves more than adequate area for ventilation around the building.

Adjoining Property

- The adjoining property will not be overshadowed, especially when considered against Element 6.9 of the R-Codes. The house is single storey and has moved closer to the boundary by 20 to 50cm. There will be little to no difference between the shadow cast by a 1.5m setback and a 1.0m setback.
 - There are no privacy issues as there will be a dividing fence and the house is single storey.
 - The house is single storey, only 18.2m long and the common boundary is 66m. This occupies only a small proportion of the boundary and will not cause building bulk issues when viewed from the adjoining property. 'Building bulk' is more commonly an issue where large houses are proposed on small lots or multi storey dwellings are proposed. Virtually only the roof of the house and a small section of wall will be seen from the adjoining property once the dividing fence is constructed.
 - Many of the openings to this boundary are not major openings or the rooms are infrequently occupied (i.e. the study & laundry). The house is orientated away from the adjoining property meaning less noise and amenity concerns for the future house on the adjoining property.
 - Lot 6 is undeveloped and is a large property. The owners of this property can easily accommodate and design for the development on the adjacent property.
14. In contrast to this, the adjoining landowner has stated their objection on the basis that their lot is only 14.7m wide. They do not want development on the adjoining property to come any closer than 1.5m from the boundary.
15. The purpose of a boundary setback is to achieve clear separation between neighbouring properties so that conflicts and impacts are minimised. The setback attempts to avoid neighbours building houses too close to one another. A setback not only reduces the visual impact of a development onto a neighbouring property, it also serves to reduce privacy concerns both visual and acoustic.
16. The Assessing Officers Recommendation is to ISSUE a Notice of Planning Scheme Refusal for sing House – (Side Setback Relaxation) at Lot 7 (577) Albany Highway, McKail as:
- The proposed development does not comply with the acceptable development provisions for 'Buildings setback from the boundary' under section 6.3.1 of the Residential Design Codes of Western Australia.
 - The development does not satisfy town Planning Scheme No. 3, section 5.4 (matters to be Considered by Council) part (y) with regard to "any relevant submission received on the application" given the objections received by the affecting neighbour.
17. If Council refused the application, this would require the house to be demolished and rebuilt in the correct location, which would be at a substantial cost to the proponent.
18. The Assessing Officer notes that as monetary value is not valid planning consideration staff must base their recommendation on consistent planning grounds. If an identical application was received and the house wasn't already constructed, based on the neighbour's objections there would be no reason for why the house couldn't be setback the acceptable 1.5m. This

would allow a setback of 3.653m from the edge of the external wall to the northern boundary (which is what was proposed under the original application).

19. The underlying issue with this application is that the neighbours oppose the location of the house. If the neighbours had no objections, staff would be more inclined to support the relaxation.
20. However, in the opinion of the responsible officer, the proponent has offered sufficient justification for Council to consider granting approval for the dwelling.

GOVERNMENT CONSULTATION

21. No Government consultation was required.

PUBLIC CONSULTATION / ENGAGEMENT

22. The application was referred to the adjoining neighbour for comment. The neighbour's reasons for objecting is;

"I object my block is only 14700mm wide. I do not want the proposed development on the adjoining property to come any closer than 1500mm of the boundary".

23. As the relaxation is only likely to affect the neighbour to the south, no other public consultation was undertaken or required.

STATUTORY IMPLICATIONS

24. The land is zoned 'Residential' under TPS 3. The proposed house is a 'P' (permitted) use under the Scheme.
25. Clause 5.1.2 (Permitted Development) section (b) (i) of TPS 3 requires an application for Planning Scheme Consent where a single house requires the exercise of discretion by the Council under the Scheme to vary the provisions of the R-codes.

STRATEGIC IMPLICATIONS

26. This item relates directly 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.*

POLICY IMPLICATIONS

27. The R-codes is a State Planning Policy (No. 3.1), prepared under section 26 of the *Planning and Development Act 2005* by the Western Australian Planning Commission. The purpose of the R-codes is to provide a comprehensive basis for the control, through local government, of residential development throughout Western Australia.

RISK IDENTIFICATION & MITIGATION

28. The risk identification and categorisation relies on the City's Risk Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>The proponent may lodge an application for review to the State Administrative Tribunal of the City's decision to refuse the proposal.</i>	<i>Likely</i>	<i>Moderate</i>	<i>Medium</i>	<i>The decision is based on sound planning grounds.</i>
<i>The affected party may lodge an application for review to the State Administrative Tribunal of the City's decision to approve the proposal.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Refusal or approval with appropriate conditions to address concerns raised.</i>
<i>Refusing the application would give rise to a considerable cost impost on the proponent (Builder).</i>	<i>Almost Certain</i>	<i>Severe</i>	<i>Extreme</i>	<i>Not a City liability, however, this has the potential to generate significant adverse publicity.</i>
<i>Approving the application may result in the adjoining owner seeking compensation from the City.</i>	<i>Possible</i>	<i>Minor</i>	<i>Medium</i>	<i>Refuse the application.</i>
<i>Approving the application may set an undesirable precedent and encourage others to proceed with development without or contrary to approval and apologise later.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Refuse the application.</i>

FINANCIAL IMPLICATIONS

29. The proponent has paid the appropriate fee as per the advice given by staff. This fee is non-refundable. The application has been processed within identified timelines and budget constraints.

LEGAL IMPLICATIONS

30. Council's determination could allow the proponent or a third party to seek a Review of that decision with the State Administrative Tribunal. This would have associated cost implications for the City of Albany.

ALTERNATE OPTIONS

31. Council has the option to approve the application for Single House - (Side Setback Relaxation) at Lot 7 (577) Albany Highway, McKail.
32. The Assessing Officers Recommendation is to:ISSUE A Notice of Planning Scheme Refusal for Single House – (Side Setback Relaxation) at Lot 7 (577) Albany Highway, McKail as:
- The proposed development does not comply with the acceptable development provisions for 'Buildings setback from the boundary' under section 6.3.1 of the Residential Design Codes of Western Australia.
 - The development does not satisfy town Planning Scheme No. 3, section 5.4 (matters to be Considered by Council) part (y) with regard to "any relevant submission received on the application" given the objections received by the affecting neighbour.

SUMMARY CONCLUSION

33. A retrospective application for single house with a reduced side setback has been received. The house has been constructed in the incorrect location and is now closer to the boundary than what the City had approved. The affecting neighbour has objected to the reduced setback.
34. Although the proponent has provided a response justifying how the application meets the relevant performance criteria of the R-codes, the Assessing Officer have to base their recommendation on consistent planning grounds. If the house wasn't previously constructed staff would ensure that the acceptable 1.5m setback was met, as there is sufficient distance between the external wall of the house and the northern boundary for the dwelling to comply with all acceptable development provisions under the R-codes.
35. Given the house was constructed contrary to the approved plans and is now closer to the boundary than the acceptable 1.5m setback, based on the objections received by the neighbour, the Assessing Officer recommend the proposal not be supported.
36. However, in the opinion of the responsible officer, the proponent has offered sufficient justification for Council to consider granting approval for the dwelling.

Consulted References	Town Planning Scheme No. 3 State Planning Policy 3.1 - Residential Design Codes
File Number (Name of Ward)	A32776 (West Ward)
Previous References	Nil