

DIS210: SINGLE HOUSE – OVERSIZE OUTBUILDING – LOT 109, 248 GREATREX ROAD, KING RIVER

Land Description	: Lot 109, 248 Greatrex Road, King River WA 6330
Proponent	: DR & ME Palmer
Business Entity Name	: NIL
Attachments	: 1. Copy of Application 2. Aerial image.
Supplementary Information & Councillor Workstation	: NIL
Report Prepared By	: Senior Planning Officer - (T Gunn)
Responsible Officers:	: Executive Director Infrastructure, Development and Environment (P Camins)

STRATEGIC IMPLICATIONS

1. Council is required to exercise its quasi-judicial function in this matter.
2. In making a decision on the proposed development application, Council is obliged to draw conclusion from its adopted *Community Strategic Plan – Albany 2030*.
 - a) The *Albany Community Strategic Plan – Albany 2030* recommends a proactive planning service that supports sustainable growth while reflecting our local character and heritage (Community Priority: 5.1.2).
3. The item relates to the following Strategic Objectives of the Albany Local Planning Strategy (ALPS):
 - a) *Plan for the sustainable supply of land for rural living purposes and maximise land use efficiency within existing rural living areas.*

Maps and Diagrams: Lot 109, 248 Greatrex Road, King River



In Brief:

- The City of Albany has received a development application for an oversize outbuilding at lot 109, 248 Greatrex Road, King River.
- The application seeks variations to the City of Albany's Local Planning Policy - *Non-Habitable Structures*. The most significant of the proposed variations is for a 176.8m² floor area variation to the maximum that is allowed for in the policy.
- When assessed objectively against the principles of orderly and proper planning, staff can find no cogent reason or justification of why, in the particular circumstances of the proposal, a variation to the maximum floor space area for outbuildings on the site should be allowed.
- Staff recommend that Council refuse the application.

COVID-19 IMPACT

- No identified implications.

RECOMMENDATION

DIS210: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council resolves to ISSUE a notice of determination refusing development approval, for Single House – Oversize Outbuilding at Lot 109, 248 Greatrex Road, King River, for the following reasons:

- 1. The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, namely;**
 - (a) the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area;**
 - (b) the requirements of orderly and proper planning;**
 - (g) any local planning policy for the Scheme area;**
 - (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;**
 - (n) the amenity of the locality including the following –**
 - (ii) the character of the locality;**
- 2. The proposal does not comply with the objectives of the Rural Residential Zone, of Local Planning Scheme No.1.**

BACKGROUND

4. The City of Albany has received a development application for an oversize outbuilding at Lot 109, 248 Greatrex Road, King River.
5. The subject site is 1.97 hectares in area and zoned Rural Residential Area 17 under Local Planning Scheme No.1 (LPS 1).
6. The subject site is located approximately 7km north of the Albany CBD. The subject site is predominantly cleared and flat. The property currently contains an existing dwelling and outbuilding.
7. The subject site is surrounded by developed Rural Residential properties to the east and west, City of Albany and Crown reserves to the south, and General Agriculture land to the north.
8. The application proposes an outbuilding 216m² (18mx12m) in size, with a wall and ridge height of 4.2m and 4.8m (from finished floor level) respectively. The outbuilding is proposed to be located at the front of the lot, between the existing dwelling and Greatrex Road.
9. The outbuilding is proposed to be finished in 'Paperbark' colorbond cladding for both the wall and roof sheets. A charcoal finish is proposed for the doors and gutters.
10. The application seeks a number of variations to the City of Albany's Local Planning Policy - *Non-Habitable Structures* (the Policy). The most pertinent variation is the request to vary the maximum outbuilding floor area permitted on site by 176.8m², resulting in a total outbuilding area of area of 376.8m² on the lot. Noting that the policy provision is for 200m².
11. The application was advertised for public comment for a period of 16 days, with nearby landowners directly notified by letter. Although no submissions were received as part of the advertising process, letters of support from the both the adjoining eastern and western landowners were garnered by the applicant and submitted with the proposal.
12. At the April 2020 Ordinary Council Meeting it was resolved to review the current Non Habitable Structures Policy, with a view to relaxing the current Maximum Floor Area requirements in certain circumstances.
13. Noting that the review has not yet occurred, the applicant was contacted and advised of the resolution. It was recommended that the proposal be deferred until after the review has taken place, as otherwise, the proposal will be required to be determined in accordance with the current policy. Due to the potential delays, the applicant seeks to have the application determined against the current Policy.
14. Council is now requested to consider the merits of the application and determine whether to approve or refuse the development application.

DISCUSSION

15. The applicant is seeking approval to build the 216m² outbuilding approximately 35m from the front boundary and, 20m from the eastern boundary and 38m from the western boundary. The proposed setbacks are compliant with the setbacks listed under LPS 1.
16. The applicant has provided the following justification for the development:

“The two main reasons for this request is that I currently have a caravan and car trailer that I leave outside, as I have no space left in my existing shed, and they are deteriorating due to this, I also have a real passion for old vintage machinery.

As I move towards my retirement, I would like to start preparing for it. The restoring of these old pieces of equipment and showing them at the vintage/tractor shows throughout the year is something I really want to do. I’m a member of the Great Southern Trachmac association and have already acquired a couple of vintage piece with the vision to expand on this, unfortunately I have to leave these outside as well in the weather, I try to cover them with tarps which isn’t easy with the weather Albany receives throughout the winter period.

The property has a bush reserve on the Southern side, we have two great neighbours that have written an approved letter for the 2nd outbuilding support, and finally we have farmland adjoining the bottom of our 5 acres to the North. This development will not spoil the current aesthetic of the area I believe it will be enhanced by it, as you only have to go two doors down to see if you don’t have adequate shed space you end up with a complete eye sore that I drive by every day, I certainly don’t want this happening on our block. Having said this if council feels some extra screening is required to assist with the approval decision, I am more than happy to work with council to reach a practical outcome for all.”

17. The applicant was also given the opportunity to provide further justification of why they require the outbuilding size. They advised that they have a caravan, 2 x small dozers, 1 x ute, 2 x Trailers currently outside.
18. The inclusion of the dozers raises concerns from staff that the outbuilding may be used for purposes not consistent with a rural residential outbuilding. On this basis the use may be more correctly classified as ‘storage’, which is a land use not suitable for the zone.
19. The City of Albany *Non-Habitable Structures* Local Planning Policy is the primary policy document used to assess the proposal. By way of background, the policy was adopted unanimously by Council at the March 2013 Ordinary Council Meeting.
20. The objective of the Policy is:

“To achieve a balance between providing for various legitimate storage needs of residents while minimising any adverse impacts non-habitable structures may have on the locality.”
21. The primary methods that the policy utilises to achieve the aforementioned policy objective is by controlling maximum heights, floor areas and providing guidance on the appropriate siting of outbuildings.
22. Table 1 of the Policy outlines the maximum allowable height and floor area specifications for non-habitable structures throughout the municipality, based on the zoning and lot size. The table below outlines the provisions applicable to the subject site.

For Rural Residential Zone lots less than 2 hectares

Standard	Maximum	Proposed
Wall Height from natural ground level	4.2m	4.5m
Ridge Height from natural level	4.8m	4.9m
Floor Area (combined floor area of all non-habitable structures on lot)	200m ²	Total floor area - 376.8m ²

23. The policy provisions and dimensions in the above table were created to avoid unwanted built form, by providing a policy framework to balance the ability to build appropriate outbuildings against preventing inappropriately located and excessively large outbuildings being constructed
24. Setting aside the significant floor area variation which would be required to obtain approval, if Council were of the view of supporting the proposal, it would be recommend that condition be imposed requiring the outbuilding itself to be reduced in height, or marginally cut into the existing topography to comply with the Policy.
25. From a siting perspective, the policy outlines that non-habitable structures should be located towards the rear of the lot. The intent of this provision is to avoid large blank walls facing the street and to have the primary dwelling, which generally of a higher design standard and design, as the main focal point. Officers are of the view that this policy provision is not met, as the proposed outbuilding is located towards the front boundary, directly in between the dwelling and road. Further to this, the proposed outbuilding is a bland, metal-clad structure, devoid of any architectural features that may mitigate this significant departure from the policy position in respect to siting.
26. The first objective of the Rural Residential zone is to *'create small rural land holdings for residents who wish to enjoy a residential lifestyle within a rural landscape and environment'*. The site like the majority of others in the area is long and narrow. Built form is typically congested and clustered towards the street. While some boundary vegetation exists, fencing is typical rural post and wire railing. Notwithstanding the correspondence received from neighbours, built structures still have the potential to adversely affect adjoining properties in significant ways, at times undermining amenity and streetscape. Large and numerous outbuildings being constructed throughout the landscape are not acceptable nor appropriate within the area.
27. Whilst there is some vegetation along the road and front boundary, and the applicant is amicable to further screen planting, staff consider the proposal would still be unacceptably visible from public vantage points and neighbouring properties.
28. In terms of size, noting the existing 160.8m² outbuilding on site, staff consider the construction of an additional new standalone 216m² structure represents a significant departure from the overall policy allowance of 200m².
29. It is important to note that that the floor space controls are contained within a Local Planning Policy. As such, it needs to be made clear that there is the ability to apply discretion to the proposal against the policy. While discretion to approve the proposal may exist, as a decision maker, it is incumbent on the City of Albany to ensure that decisions are made consistently and in accordance with proper and orderly planning principles.
30. If the exercise of discretion is to be considered orderly, the planning principles identified as relevant to an application (*Non habitable Structures Policy*) should not be lightly departed from without the demonstration of a sound basis for doing so. As such, the notion that the applicant has an abundance of possessions and requests a significantly larger shed than the policy allows, is not considered a cogent reason to depart from the policy. The lack of compliance with the siting measures outlined above further reinforce this finding.
31. As a decision maker it is critical to ensure that decisions are made consistently. There is a distinct risk that if variations to the policy are granted against limited planning grounds, such as this proposal, that the City of Albany will prejudice its position in being able to apply the policy consistently in the future.

32. Further to the above, the construction industry in general is well aware of the sizes contained within the policy and rarely requests variations to the size of non-habitable structures. This indicates that the vast majority are accepting of the generous sizes contained within the Policy.
33. Further to this, it would likely negatively impede on neighbouring properties, including visual amenity and potentially the enjoyment of their land. The proposal therefore directly conflicts with the objectives of the Rural Residential zone under clause 3.2.17 of LPS 1. It is noted that the primary objective of the zone is *'Provide for residential and limited incidental land uses'*.
34. Officers are of the view that giving consideration to this residential alignment of the zone, that 376m² of outbuildings is beyond what might be considered reasonable for the purpose of storing personal assets in the Rural Residential zone.
35. It is considered that there are limited orderly and proper reasons for such a significant departure from the policy and zone objectives. Staff are of the view that the sizes contained within the policy are considerably generous and that the City of Albany has some of the most liberal outbuilding sizes compared to other local governments within the State. If the applicant's storage needs are so significant, it may be appropriate for them to investigate off site storage measures.
36. Given the reasoning applied in the above paragraphs, after considering the matter against the statutory framework, including the discretion afforded when applying Local Planning Policies, officers are of the view that the proposal does not represent proper and orderly planning and should be refused.

GOVERNMENT & PUBLIC CONSULTATION

37. The application was advertised for public comment for a period of 16 days, with nearby landowners directly notified by letter. No submissions were received as part of the advertising process, however letters of support from the both the adjoining eastern and western landowners were sought by the owner and submitted with the application detail.

Type of Engagement	Method of Engagement	Engagement Dates	Participation (Number)	Statutory Consultation
Consult	Mail Out	11/03/2020 to 27/03/2020	Nil Submissions received	No

STATUTORY IMPLICATIONS

38. The subject land is zoned Rural Residential Area 17 under LPS 1.
39. The objectives listed under clause 3.2.17 of LPS for the Rural Residential Zone, are:
 - a) *Create small rural land holdings for residents who wish to enjoy a residential lifestyle within a rural landscape and environment; and*
 - b) *Provide for residential and limited incidental land uses which:*
 - (i) *Are compatible with the preservation and protection of environmentally sensitive areas such as remnant vegetation and groundwater protection areas;*

- (ii) *Do not visually detract from the landscape and the visual amenity of the locality;*
- (iii) *Allow for uses and developments that are fit for purpose and minimise any on-site or off-site impacts such as soil erosion, nutrient loss, drainage and potential land use conflicts; and*
- (iv) *Are located in close proximity to existing urban areas and can enjoy appropriate urban servicing to the lots including rubbish disposal,*
- (v) *reticulated water, community facilities and fire infrastructure.*

40. As the review of the Non Habitable Structures Policy has not yet occurred, Council is required to consider the item against the current statutory framework.
41. From a governance perspective, approval of the current proposal, which is well in excess of the current of the Policy, could potentially prejudice an objective review of the Policy.
42. Voting requirements for this item is **SIMPLE MAJORITY**.

POLICY IMPLICATIONS

43. The proposal is subject to assessment against the City of Albany *Non-Habitable Structures* Local Planning Policy.
44. Local Planning Policies are guidelines used to assist the local government in making decisions under the Local Planning Scheme. Although Local Planning Policies are not part of the Local Planning Scheme, they must be consistent with, and cannot vary, the intent of the Local Planning Scheme provisions. In considering an application for Development Approval, the local government must have due regard to a Local Planning Policy as required under Schedule 2, Part 9, clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
45. For those reasons outlined within the officer comment section above, staff consider the proposal fails to meet the provisions and objectives of the Policy and that using discretion to approve the application would not represent proper and orderly planning.

RISK IDENTIFICATION & MITIGATION

46. The risk identification and categorisation relies on the City's Enterprise Risk & Opportunity Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Operational and Reputation. <i>If the application were to be approved it would create an undesirable precedent for future applications, and prejudice the City in being able to apply the policy consistently. It would also generate unacceptable impacts on the amenity on the area.</i>	Possible	Moderate	Medium	The application has been assessed against the relevant statutory framework. The reasons provided do not adequately demonstrate a variation to the Policy. Not supporting the development would continue to uphold the City's position on the application of the Policy.

FINANCIAL IMPLICATIONS

47. There are no financial implications directly relating to this item.

LEGAL IMPLICATIONS

48. The proponent has the right to seek a review of the Council's decision, including any conditions attached to an approval, conferred by the *Planning and Development Act 2005*. The City of Albany may be required to defend the decision at a State Administrative Tribunal hearing.

ENVIRONMENTAL CONSIDERATIONS

49. There are no environmental implications directly relating to this item.

ALTERNATE OPTIONS

50. Council has the following alternate options in relation to this item, which are:

- To resolve to approve the proposal subject to conditions; and
- To resolve to refuse the proposal subject to additional or modified reasons;

CONCLUSION

51. The applicant has exercised their right to lodge a planning proposal which results in the cumulative floor space of outbuildings on the property significantly exceeding the City of Albany Non Habitable Structures Local Planning Policy.
52. The planning proposal has been subject to significant review through its assessment, in a manner that has been objective, methodical, logical and systematic. The officer recommendation to refuse the planning proposal is not made without of a sound basis for doing so, and is grounded in the principles of orderly and proper planning.
53. If the exercise of discretion on a local planning policy is to be an orderly one, the planning principles identified as relevant to an application should not be lightly departed from without the demonstration of a sound basis for doing so.
54. The justification received from the applicant does not adequately demonstrate such a significant departure from the Policy. In addition to this, it is considered that a development of this scale does not comply with the objectives of the Rural Residential zone.
55. Supporting this application would erode the ability for the City to apply policy fairly and with equity. The policy sets out a very generous size, and the proposal does not provide any solid reasoning or justification to depart from this. If approved, it would be difficult to provide reasoning as to why this proposal was supported and others not. It would also likely encourage larger outbuildings on properties throughout the municipality, and could be used to set an undesirable precedent for future applications.
56. After carefully considering the proposal and for the reasons set out above, staff are not satisfied the objectives and development criteria of the policy are met. As a matter of orderly and proper planning, staff can find no cogent reason why, in the particular circumstances of the subject proposal, such a significant variation to the cumulative maximum outbuilding size should be allowed or approved.
57. It is therefore recommended that Council resolve to refuse the proposed development, in accordance with the reasons provided.

Consulted References	:	1. Local Planning Scheme No. 1 2. Albany Local Planning Strategy 2019 3. Planning and Development (Local Planning Schemes) Regulations 2015 4. City of Albany Local Planning Policy - <i>Non-Habitable Structures</i>
File Number (Name of Ward)	:	A181513 Yakamia Ward
Previous Reference	:	Nil