



ITEMS FOR DEBATE

COUNCIL MEETING 20 SEPTEMBER 2023

ADOPTION BY EXCEPTION RESOLUTION

RECOMMENDATION

That the Committee Recommendations for items 10.1 and 10.2 and the Officer Recommendations for items 11.2, 11.3, 11.4, 13.1, 13.2 and 15.1 be adopted en bloc:

| | |
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| 10.1 | Finance Committee – 06/09/2023 – List of Payments Made – July 2023 |
| 10.2 | Finance Committee – 06/09/2023 – Financial Activity Statements – Year to Date 30 July 2023 |
| 11.2 | Application for Development Approval (DA23/0270) - Single House (Outbuilding) - Lot 43 (9) Campion Way Quindalup |
| 11.3 | Application for Development Approval (DA23/0194) - Single House (Drive Way Addition) - Lot 61 (40) Campion Way, Quindalup |
| 11.4 | Application for Development Approval (DA23/0133) - Grouped Dwelling (Alterations and Additions) - Lot 1 (17A) Gibney Street Dunsborough |
| 13.1 | Youth Plan |
| 13.2 | 2023/2024 Community Assistance Program Round 1 Outcomes |
| 15.1 | Councillors Information Bulletin |

ITEMS TO BE DEALT WITH BY SEPARATE RESOLUTION

| Item No. | Item Title | Reason |
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| 16.1 | Notice of Motion - Recognition of Nina Kennedy | Notice of Motion |
| 16.2 | Notice of Motion - Introduction of Recreation Facilities Reserve | Notice of Motion |

ITEMS FOR DEBATE

| Item No. 11.1 | DA22/0817 - Bed and Breakfast (Change of Use of Existing Single House and New Development) | Pulled by Cr Ryan | Page 26 |
|--|--|------------------------------------|----------------|
| <p><u>ALTERNATIVE RECOMMENDATION</u></p> <p>That this item be deferred to the October meeting of Council pending further legal clarification.</p> | | | |
| <p><u>REASONS FOR ALTERNATIVE</u></p> <p>We currently have three legal opinions which are conflicting. Noting the comments in the report and advice from the Director of Planning recently that “it is not entirely clear or simple”.</p> <p>I am mindful that the applicants have been requiring an outcome for some time, however it is noted that a Supreme Court action could be brought about by any inadvertent decision by the Council and better to err on the side of caution and be settled on all advice than to subject ratepayers to a possible legal challenge.</p> | | | |
| <p><u>OFFICER COMMENT</u></p> <p>Unfortunately, it is considered quite clear that absolute clarity with respect to this matter cannot be achieved through the seeking and considering of further legal advice. It is, however, considered to be highly likely that, regardless of the decision that the Council makes with respect to the application, the matter will be subject of action in the State Administrative Tribunal and/or Supreme Court.</p> <p>Given the above, there is not seen to be any value in deferring consideration of the application to seek further advice. Instead, it is considered that the Council should make a decision on its assessment of the planning merit of the proposal.</p> | | | |
| <p><u>LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT</u></p> <p>Pursuant to regulation 11(da) of the <i>Local Government (Administration) Regulations</i> 1996, if the amended recommendation is adopted by Council, the above Reasons will be recorded in the Minutes.</p> | | | |

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| Item No. 11.1 | DA22/0817 - Bed and Breakfast (Change of Use of Existing Single House and New Development) | Pulled by Cr Riccelli | Page 26 |
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ALTERNATIVE RECOMMENDATION

That the Council determines:

- A. That application DA22/0817 submitted for development of Bed and Breakfast (Change of Use of Existing Single House and New Development) on Lot 301 (No. 29) Carnarvon Castle Drive, Eagle Bay, is considered by the Council to not be consistent with Local Planning Scheme No. 21 and the objectives of the zone within which it is located.**
- B. To refuse to grant development approval, for the following reasons:**
- 1. Uncertainty exists around whether lawful discretion exists.**
 - 2. The proposal is considered to have excessive landscape and visual elements particularly in relation to:**
 - a) Dwelling is proposed to reach a height of 8.45m, inclusive of a chimney height, in lieu of the development standard permitted height of 7.5m.**
 - b) Upper store floor area covers 89% of the ground floor footprint in lieu of 50% permitted by the Development Standard.**
 - c) Outbuilding wall height (shed) of 3.34m in lieu of permitted Residential Design Codes - 2.4m, LPS 21 - 2.7m and LPP 4.10 - 3.1m.**
 - d) ~~Change of use for existing Single House to Ancillary Dwelling has plot ratio area at 82.7m² in lieu of permitted 70m².~~**

REASONS FOR ALTERNATIVE

1. There is a clear lack of certainty as to whether lawful discretion is able to be used for this proposal because the issue of 'which' setback standards apply is critical to the determination of the application. If a position is taken that the setback standards of Schedule 4 Table 'sector 3' apply, then Council may not be capable of lawfully approving the proposal.
2. Supported by a recent site visit, I have concerns around the overdevelopment of the built form on the site for which there are several discretions being sought. While I appreciate that some of the discretions are minor and may be rectified, such as the removal of the chimney lowering the height, the bulk of the second story is significantly more than is permitted i.e. 89% compared to 50%. The outbuilding is also large, close to the road and has a visual impact.

I appreciate there are neighbouring properties that have been allowed many of the discretions being proposed, however this is the 'crux' of the concerns expressed for Special Character Areas. It is important to set a precedent for future proposals received.
3. After discussion with Officers, it appears that regardless of whether the application is approved or refused, a legal process will ensue either at SAT or the Supreme Court. Deferring the proposal will only hold matters up for all parties involved and achieve little.

OFFICER COMMENT

Whilst officers acknowledge that the legal situation is somewhat uncertain, officers are of the view that there is a strongly arguable case that legal discretion exists. Further, it is considered that if legal discretion does exist, the proposed development is consistent with the character of existing development in the locality. It is also agreed that there appears to be a reasonable likelihood that, regardless of the decision that the Council makes regarding the application, some form of court or tribunal process will follow.

More specific comment on each of the proposed reasons for refusal is also set out below -

1. (Point 1 of reasons) Whilst it is agreed that some legal uncertainty does exist with respect to setback controls, there is not considered to be any significant uncertainty with respect to height controls. It is also considered that the adopted DGP establishes a clear intent with respect to setback controls, and the proposal is consistent with the setback controls set out in that document.
2. (Point 2a of reasons) Height controls would ordinarily exclude small intrusions like chimneys. If the chimney is excluded, the maximum height above natural ground level of the building is approximately 7.87m. That is lower than many other buildings in Eagle Bay, and is relatively low for a two storey dwelling on a sloping lot.
3. (Point 2b of reasons) The applicant could increase the ground floor area to become compliant while resulting in greater building bulk, which as discussed in Attachment 3 has been done for other dwellings on Carnarvon Castle Drive. The planning intent of this element of the current controls is also far from clear and, like some of the other elements of the existing planning framework, creates significant potential for unintended consequences that increase the overall visual impact of development.
4. (Point 2c of reasons) The shed is proposed to specifications significantly below the permitted roof height limit of 4.5m and floor area limit of 120m². The portion of the shed facing the street is compliant with the 3.1m wall height development standard.

LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT

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| Item No. 14.1 | Adoption of Corporate Business Plan 2023-2027 | Pulled by Officers Absolute Majority Required | Page 4 <i>Supp Agenda</i> |
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AMENDED RECOMMENDATION

That the Council adopts the Corporate Business Plan 2023-2027 in the form attached to this report, subject to:

- 1. the following action being added to Key Theme 2 Lifestyle:**

| Action | Strategic Priority Link | Supporting Plans and Strategies | Action Owners | Action Type / Budget | Delivery | | | |
|--|-------------------------|---------------------------------|--------------------|----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| | | | | | 2 3 - 2 4 | 2 4 - 2 5 | 2 5 - 2 6 | 2 6 - 2 7 |
| Holiday Homes Regulations Further to outcomes of the State Government's review, consider further changes to the City's Holiday Homes Regulatory Framework. | 2.8 | | Strategic Planning | Program Operational | X | | | |

- 2. the retiring action 'Holiday Homes Regulations' being removed.**

REASONS FOR AMENDMENT

Councillors indicated at the agenda briefing session a desire to retain an action associated with the regulation of holiday homes, with stage 3 of the initiated review pending State Government action.

OFFICER COMMENT

As per above.

LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS REQUIREMENT

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