

DEVELOPMENT APPLICATION

Application Number:	<i>180\0470\18</i>
Applicant:	<i>C Maiolo</i>
Location:	<i>1 Matilda Street, Eastwood</i>
Proposal:	<i>Alterations to existing outbuilding including conversion to habitable building ancillary to the existing dwelling</i>
Zone/Policy Area:	<i>Historic Conservation Zone Historic Conservation Policy Area 2 - Eastwood Development Plan consolidated 19 December 2017</i>
Delegations Policy:	<i>Environment, Resources and Development Court compromise proposal</i>
Recommendation:	<i>The Chief Executive Officer be advised that the Council Assessment Panel supports the compromise proposal, subject to conditions</i>
Recommending Officer:	<i>Renae Grida</i>

REPORT CONTENTS

- Assessment report:
 - Appendix 1 – Aerial Locality Map

Please note that due to Federal Copyright Law restrictions, attachments associated with the proposed development are not made available to the public.

Documentation provided as attachments to the report to members of the Council Assessment Panel to facilitate decision making:

- Plans and supporting documents
- Internal agency referral reports
- Environment, Resources and Development Court Book of Documents

1. DESCRIPTION OF PROPOSAL

The applicant seeks Development Plan Consent for alterations to an existing 7.6 metres x 3.3 metres outbuilding, including external refurbishments comprising render to existing masonry walls and reroofing of the existing building. Internally, refurbishments comprise the addition of a bathroom and kitchen to convert the outbuilding to a habitable building for use in association with the existing dwelling on the site.

2. BACKGROUND

Development Application 180\0470\18 was lodged by Mr Cosimo Maiolo, the registered owner of the land on 23 May 2018.

The application was first presented to the Council Assessment Panel (the Panel) on 06 November 2018, where the design proposed fire-rated doors to the southern elevation opening directly to the public road, shown on the Certificate of Title (Volume 5890 Folio 189) as being accessible via Main Street. Due to historic encroachments, the public road has been annexed into the rear yards of properties on the western side of Matilda Street, south of the subject land. Council is presently pursuing an intended closure of the public road, which in turn may result in issues regarding access between public and private land.

Due to this ongoing (separate) legal process, the application was referred to the Minister for Planning with a request for the State Commission Assessment Panel (SCAP) to be the relevant authority. After considering this request, the Minister deferred the application back to Council for assessment and the Manager City Development and Safety utilised his discretionary powers to nominate the Panel as the final authority.

The application was presented to the Panel with a recommendation of refusal based not on the presence of the doors to the public road, but based on an apparent shortfall of off-street car parking generated by the creation of a fifth room capable of being used as a bedroom (sparkling the need for a third off-street car park).

The Panel deferred the matter at the 06 November 2018 meeting, to afford the applicant the opportunity to address matters relating to the use of the building and association with the main dwelling, reconsideration of openings and clarification of car parking. The application was then refused consent at the 04 December 2018 meeting, for the following reasons:

1. Council Wide Objective 30 as it relates to adequate parking of vehicles.
2. Council Wide Principle of Development Control 106 as it relates to the provision of parking and prescribed rates.
3. Council Wide Principle of Development Control 107 as it relates to the provision of parking having regard to the nature and scale of development activities and the availability of on street car parking.
4. Council Wide Principle of Development Control 180 as it relates to off-street car parking.
5. Council Wide Principle of Development Control 3 as it relates to development being undertaken in a manner that is consistent with the intended use and character of the relevant zone and policy area, and that would not interfere with the use of any other land.
6. Council Wide Principle of Development Control 22(a) as it relates to visual privacy being minimised through appropriate site layout and building orientation.
7. Council Wide Principle of Development Control 52 as it relates to development not resulting in an unreasonable loss of residential privacy.
8. Council Wide Principle of Development Control 164(a) as it relates to site coverage.

The applicant has since lodged an appeal in the Environment Resources and Development Court (ERD Court) against Council's refusal of the application. An amended set of plans, together with a supporting letter from the applicant has been provided and this compromise proposal is now presented to the Panel for consideration as part of the appeals process.

3. DISCUSSION

The applicant seeks to address the reasons for refusal by amending the design and further substantiating the issue of car parking, noting the following:

- The doors to the southern elevation of the outbuilding are amended to be set in from the boundary of the private road, thereby creating a small covered courtyard enclosed with a new 1.8 metre high corrugated iron fence on the boundary to provide security and privacy.
- The setback of the doors from the southern boundary should alleviate the concern that the development will interfere with the use of any other land, which in the applicant's view is not a valid reason for refusal.
- It is maintained that the existing garage is capable of containing three vehicles, despite Council's Traffic Engineer asserting that the dimensions of the garage is to accommodate up to two vehicles only, however the applicant has since obtained a second street permit, thereby providing for up to three off-street spaces and two on-street spaces.

Car parking

As per the report contained within the 04 December 2018 agenda, the Administration was of the view that despite the applicant's affirmation that it would be unlawful to use the study for any other purpose, the Burnside (City) Development Plan refers to "*rooms that can reasonably be used as bedrooms*" for the purposes of determining off-street car parking rates. Furthermore, whilst the applicant provided photos of three vehicles within the existing garage, Council's Technical Officer concluded that these photos lacked context and that the dimensions of the garage are of a size suitable for two standard vehicles only.

Based on these factors, the Administration maintained its position that off-street car parking was not sufficiently addressed for a residence that has five rooms that can reasonably be used as bedrooms. The Panel proceeded to refuse the application and Reasons of Refusal 1 – 4 relate to the issue of car parking accordingly.

The applicant has now provided Council with evidence of two street parking permits. Whilst relative to an extent, the Development Plan refers to *off-street* car parking spaces, and as such the number of permits for street parking is irrelevant in the assessment of the application against the Development Plan off-street car parking rates. In order to address this, the applicant has offered the inclusion of a condition that the 'study' within the dwelling be used only as a study at all times, to effectively reduce the number of rooms that can reasonably be used as bedrooms from five to four, thereby reducing the number of off-street car parks required in accordance with the Development Plan.

Land use interference and privacy

The Administration is satisfied that the amended positioning of the southern external doors now 900mm inside the subject land suitably addresses the question of orderly development and privacy. This is reinforced by the inclusion of a 1.8 metre high corrugated iron fence on the property boundary.

The amended set back of the doors to the southern elevation is proposed to address concerns raised and subsequent Reasons of Refusal 5 – 7. The setting back of the doors is now open to a small 900mm x 2480mm courtyard, shown with 1.8 metre high corrugated fencing, and noted by the applicant in their submission, to include a gate to maintain access to the public road.

By setting back the doors, the outbuilding itself no longer opens directly onto the public road (and therefore into the annexed rear yard of any adjoining land).

With regard to the fence, there remains an inconsistency between the details on the compromise plans and supporting statement provided in favour of the proposal by the applicant's legal counsel, Karina Huddleston, which suggests a gate is to be established to maintain direct access to the public road.

It should be noted, however, that at this point in time such a gate would open on to a public road and not private property. The annexation of the road by the neighbour to the south does not translate to any official transfer of ownership.

While ultimately it is the compromise plans that form the basis of the Court's decision, the Panel may determine to advise the CEO their support for the compromise is dependent on the removal of any reference to a gate leading to the public road (in essence reaffirming the details of the plans themselves).

It should also be noted the Administration's previous refusal position was based on a car parking shortfall and not on the accessibility of the public road.

Site coverage

Whilst the Panel included site coverage as a reason for refusal (Reason of Refusal 8), it must be noted that the outbuilding is an existing structure already established on the land and that this existing site coverage arrangement is not changing as a result of the proposal. Accordingly, site coverage is not considered to be a relevant consideration in this context.

Conclusion

Based on the amendments made, it is concluded that the condition restricting the use of the study circumvents the need for three off-street car parking spaces, whereby the double-width garage located on the private land is adequate in addressing off-street car parking.

The set back of the doors to the southern elevation of the outbuilding results in the doors opening within the private land and into a small courtyard shown to be fenced at the boundary, addressing the issues relating to interference with the use of other land and privacy.

4. RECOMMENDATIONS

The Chief Executive Officer be advised that the Council Assessment Panel **supports** Development Application 180\0470\18, by C Maiolo, subject to the following conditions:

Conditions

- 1 The development granted Development Plan Consent shall be undertaken in accordance with the stamped approved plans, drawings, specifications and other documents submitted to the Council that are relevant to the consent to the reasonable satisfaction of the Council, except where varied by conditions below.

Reason:

To ensure the development is undertaken in accordance with the plans and details submitted.

- 2 The 'study' located within the main dwelling shall be used only as a 'study' at all times.

Reason:

To ensure that the development does not adversely impact on car parking.

- 3 The approved use of the outbuilding shall be associated with, and subordinate to, the main dwelling on the allotment, and shall not be used for commercial activity of any type.

Reason:

To ensure the approved development does not negatively impact on the residential amenity of the locality.

RECOMMENDING OFFICER

Renae Grida
Development Officer – Planning

AERIAL LOCALITY MAP



Legend

 **Subject Land**