

Notice of Special Meeting of Council Assessment Panel

Tuesday 29 January 2019

MEMBERSHIP

Mr R McBryde	Independent Member (Presiding Member)
Mr P Dungey	Independent Member
Mr G Salmon	Independent Member
Ms B Merrigan	Independent Member
Ms R Gagetti	Deputy Independent Member
Mr D Wyld	Elected Member

NOTICE is given pursuant to Sections 87 and 88 of the Local Government Act 1999 that a **SPECIAL MEETING OF COUNCIL ASSESSMENT PANEL** will be held in the Council Chambers, 571 Monatgue Road, Modbury on **TUESDAY 29 JANUARY 2019** commencing at **10.00AM**

A copy of the Agenda for the above meeting is supplied



JOHN MOYLE
CHIEF EXECUTIVE OFFICER

Dated: 22 January 2019



Naturally Better

Mr N Grainger
Assessment Manager
City of Tea Tree Gully
PO Box 571
MODBURY SA 5092

22 January 2019
Our ref: D19/4701

Special Meeting of Council Assessment Panel – 29 January 2019

Dear Nathan,

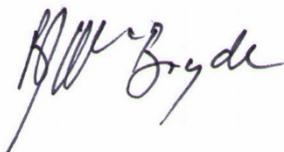
In accordance with the Clause 1.9 of the Council Assessment Panel Operating and Meeting Procedures I hereby request that a Special Meeting of the Council Assessment Panel be called on 29 January 2019 at 10.00am.

The purpose of the meeting is to consider the following matters:

- **CAP.070/116248/2018** – Application to demolish the existing building, erect a 3.0m high fence and to change the use of the land to be used as a service trade premises by displaying and storing vehicles in conjunction with an existing integrated retail motor vehicle outlet (Non-Complying) at 750 North East Road MODBURY SA 5092
- **CAP.070/115394/2018** – Application to construct three single storey row dwellings and remove a regulated street tree (Silky Oak) from the adjacent road reserve at 20 Berryman Drive MODBURY SA 5092

Should you have any questions concerning my request, please do not hesitate to contact me.

Yours sincerely



Rob McBryde
Presiding Member
Council Assessment Panel
City of Tea Tree Gully

CITY OF TEA TREE GULLY
SPECIAL MEETING OF COUNCIL ASSESSMENT PANEL
29 JANUARY 2019

AGENDA

1. Attendance Record:

- 1.1 Present
- 1.2 Apologies

2. Minutes of Previous Meeting

That the Minutes of the Council Assessment Panel Meeting held on 18 December 2018 be confirmed as a true and accurate record of proceedings.

3. Business Arising from Previous Minutes - Nil

4. Reports and Recommendations

- 4.1 **CAP.070/116248/2018** - Change of Land Use (Non-complying) at 750 North East Road, Modbury7

Recommended for Development Plan Consent subject to concurrence from the State Commission Assessment Panel (SCAP)

- 4.2 **CAP.070/115394/2018** - Three Single Storey Row Dwellings at 20 Berryman Drive, Modbury51

Recommended to Support the application and subdelegate to the Assessment Manager for Development Plan Consent subject to the approval of a supporting land division application

5. Other Business

5.1 E.R.D. Court Matters Pending

- 5.1.1 CAP.070/113465/2017** - Appeal against Refusal for 16 Mantua Court, Greenwith

Outcome: An application has been lodged with the Court, and a conciliation conference was held on 05 December 2018. A second conference has been set for 25 February 2019 to provide time for the Applicant to prepare amended documentation. The courts are amenable for an adjournment to allow consideration of the amended documentation at the March 2019 CAP Meeting.

5.2 Policy Considerations

Planning policy considerations will be recorded in the minutes following discussion by members.

6. Information Reports - Nil

7. Date of Next Meeting

19 February 2019

REPORT NO: CAP.070/116248/2018

RECORD NO: D19/1715

TO: SPECIAL COUNCIL ASSESSMENT PANEL MEETING - 29
JANUARY 2019

FROM: Nathan Grantham
Team Leader Development Services

SUBJECT: CHANGE OF LAND USE (NON-COMPLYING) AT 750 NORTH EAST
ROAD, MODBURY

SUMMARY

Applicant: Formula Motor Group

Nature of Development: To demolish the existing building, erect a 3.0m high fence and to change the use of the land to be used as a service trade premises by displaying and storing vehicles in conjunction with an existing integrated retail motor vehicle outlet (Non-Complying)

Address: 750 North East Road MODBURY SA 5092

Application No: 070/116248/2018

Lodgement Date: 21 November 2018

Development Plan: Consolidated 29 September 2016

Zone and Policy Area: Neighbourhood Centre

Relevant Development Plan Provisions:

Objectives
Neighbourhood Centre 1, 2, 4 and 5
Centres and Retail Development 5
Interface between Land Uses 1, 2 and 3
Landscaping, Fences and Walls 1 and 2
Transportation and Access 2

Principles of Development Control
Neighbourhood Centre 1
Centres and Retail Development 1, 2 and 4
Interface between Land Uses 1, 2, 3, 7 and 8
Landscaping, Fences and Walls 1(b), 1(k) and 2(b)
Transportation and Access 8, 22, 23, 25, 27 and 38

Public Notification: Category 3

Number of Properties Notified: 15 directly notified, plus a notice in The Advertiser

Number of Representations Received: Nil

Schedule 8 Referral:	N/A
Was a request for additional information made?	Yes
Issues:	Non-complying land use within the Neighbourhood Centre Zone
Recommendation:	Grant Development Plan Consent, subject to conditions and the concurrence of the State Commission Assessment Panel

1. PROPOSAL

A service trade premises, in the form of an integrated retail motor vehicle outlet occupied by Formula Honda (the 'Formula Honda outlet'), currently operates on the properties at 748-756 North East Road, and partially from 750 North East Road (the subject land).

There is a car park and building that exists on the subject site, which is currently used by Formula Honda for car parking ancillary to their outlet and vehicle parts storage respectively.

Part of the building on the subject site also comprises a separate and distinct office land use occupied by a law firm.

This application therefore proposes to change the use of the land at 750 North East Road entirely to a service trade premises in conjunction with the existing Formula Honda outlet, and to extinguish the existing office use.

For the land to function as intended, the proposal also includes the demolition of the existing building and the erection of a 3.0m high fence. The fence will sever the site to separate the vehicle storage and vehicle display areas.

2. PROCEDURAL MATTERS

Schedule 1 of the *Development Regulations 2008* (the 'Regulations') defines a 'service trade premises' as:

"...premises used primarily for the sale, rental and display of—
(g) motor vehicles."

The application has been assessed as a non-complying form of development as the proposal includes a change in the land use of 750 North East Road to a 'service trade premises' which is listed as non-complying in the Neighbourhood Centre Zone.

The applicant submitted a Statement of Effect at the time of lodgement (see **Attachment 6**). The Statement of Effect couples as the Statement of Support.

Under delegation, Council staff then determined to proceed with the assessment of the application. The proposal is not considered to be seriously at variance with the Development Plan as the non-complying land use seeks to operate in conjunction with an existing non-complying land use.

3. BACKGROUND

The history of development authorisations for the properties comprising the Formula Honda outlet are as follows:

- The original Formula Honda outlet (showroom and vehicle service facility) at 754 and 756 North East was approved by the Council Development Assessment Panel (CDAP) on 20 September 2005 (070/87141/2005). This consent was consequently varied on 2 October 2007. This variation application (070/92239/2007) comprised largely minor internal and external alterations to the built form, and was also approved by the CDAP.
- An extension to the showroom component of the Formula Honda outlet was granted consent (070/93531/2008) under the delegation of Council staff on 23 April 2008.
- The CDAP granted consent for alterations and additions to the Formula Honda outlet and its associated car park on 03 July 2009 (070/95331/2008).
- Consent was granted on 14 July 2009 by the CDAP for a change in land use at 750 North East Road (the subject land) to a store and office to be used in association with the Formula Honda outlet and retain an existing office, dissociated to the outlet.
- The CDAP granted consent on 20 September 2016 to undertake alterations and additions to the Formula Honda outlet to demolish existing structures, erect new signage and change the use of 748 North East Road to a service trade premises by displaying, selling and storing motor vehicles to operate ancillary to the Formula Honda outlet.

By way of the above consents, Formula Honda are currently authorised to operate their outlet across all of 748 and 752-756 North East Road and a majority portion of 750 North East Road. Should the Council Assessment Panel (CAP) support this proposal, Formula Honda will be authorised to operate their outlet across all of these properties, exclusively.

4. PUBLIC NOTIFICATION

Section 38(2)(a) of the *Development Act 1993* (the 'Act') states that a Development Plan or the Regulations may assign different forms of development to a category for the purposes of public notification.

The Neighbourhood Centre Zone does not assign any forms of development to a particular category. The development is also not listed as Category 1 or 2 in Schedule 9 of the Regulations. As a result, the application was deemed to be a Category 3 development pursuant to Section 38(2)(c) of the Act.

Category 3 public notification was undertaken where adjacent land owners and occupiers, and properties potentially affected by the development, were notified in writing. A public notice was also placed in *The Advertiser*. The properties directly notified of the development are highlighted with blue stars within Figure 1 below.

No representations were received as a result of this process.

5. SITE AND LOCALITY



Figure 1: Site and Locality Plan

The site of the development is 750 North East Road, Modbury and is located within the Neighbourhood Centre Zone. The site is a single allotment comprising a site area of 875.7m² with an 18.1m wide frontage to North East Road, being an arterial road under the care and control of the Department of Planning, Transport and Infrastructure (DPTI). The subject land is outlined by the blue boundary within Figure 1 above.

The site contains a two storey detached building surrounded by car parking areas. The majority of this building is currently occupied by Formula Honda and used for the storage of vehicle parts. The modest single storey component to the southern side of the building however is currently being used as a lawyer's office, dissociated to the Formula Honda outlet.

The approximate site area of the Formula Honda outlet is 4,420m² with a 112m frontage to North East Road. The Formula Honda outlet is outlined by the red boundary within Figure 1 above.

The northern portion of the Formula Honda outlet comprises a large pre-cast concrete building with generous glazing along its front façade.

This building is modestly set back from North East Road and currently consists of the Formula Honda showroom and their vehicle service facility. While there is a car park area to the north of this building, the main car park is located south of the building, at 752 North East Road. Various forms of signage and modest landscaping areas make up the remainder of these allotments, particularly along their North East Road frontages.

The remainder of the site of the Formula Honda outlet consists of 748 North East Road which adjoins the south of the subject land. This allotment is currently used for vehicle storage and display.

Surrounding the Formula Honda outlet is the Commercial Zone to the north and across North East Road to the west, with the Residential Zone abutting the east and the remainder of the Neighbourhood Centre Zone to the south.

By virtue of these varying zones, the locality accommodates a number of different land uses, notably a large retail outlet (currently Clark's Rubber) and offices to the north, two service trades premises adjacent the west, low density residential dwellings to the east and the Holden Hill Shopping Centre to the south.

The other dominant features of the locality are the North East Road and Grand Junction Road arterial road networks, particularly the large signalised intersection of these two roads located south-west of the subject land.

6. PLANNING ASSESSMENT

6.1 Land Use

The proposal to use the land at 750 North East Road entirely as a service trade premises is a non-complying form of development within the Neighbourhood Centre Zone. Non-complying developments are generally inappropriate within their particular zones, as reiterated in **Neighbourhood Centre Zone Principle of Development Control (PDC) 2**.

Notwithstanding, the majority of the land and its existing building are currently associated with the existing service trade premises operated by Formula Honda. This proposal simply seeks to rescind the existing office component that is currently separate to Formula Honda so the entirety of the land can be exclusively used as part of the integrated service trade premises.

The suitability of the intensification of this use, and how it will impact the desired character for the Holden Hill Neighbourhood Centre Zone are therefore considered to be the fundamental issues in determining the application.

The **Neighbourhood Centre Zone Desired Character** for the zone seeks to provide a focus for a broad range of retail, business and community services within neighbourhoods.

The total site area for the centre is in the vicinity of 9,200m², and the majority of current retail space for the Centre is located within the core retail component at the Holden Hill Shopping Centre at 746 North East Road.

Given the location, siting and orientation of the buildings at the shopping centre and 2 Kincaig Crescent (being the remaining allotment within the zone), in comparison to the site of the Formula Honda outlet, it is considered that there is distinctly two separate sites within the zone.

The subject land at 748 to 756 North East Road equates to approximately 4,420m² in area. The Holden Hill Shopping Centre sites collectively equates to approximately 4,600m² in area.

Neighbourhood Centre Zone Objective 4 states that each centre should have a total retail floor area in the order of 5000m². The existing retail floor space of the shopping centre is approximately 1,500m².

If the desired character is applied appropriately to any future development of the shopping centre, future built form should address, and be located much closer to the North East Road / Grand Junction Road intersection.

Furthermore, by incorporating basement car parking, which is becoming more common in centre redevelopments, the desired retail floor area for the zone could be achieved by redeveloping 746 North East Road and 2 Kincaig Crescent only. A total redevelopment of the zone would see retail floor space well in excess of the desired 5000m².

As such, it is considered that the proposal will not jeopardise the ability of the Neighbourhood Centre to be comprehensively redeveloped, particularly if the properties at 746 North East Road and 2 Kincaig Crescent were amalgamated and redeveloped.

These properties are considered to be more appropriate for a comprehensive redevelopment of the Centre for the following reasons:

1. The buildings and parcels of land at 746 North East Road and 2 Kincaig Crescent do not effectively utilise the full development potential of the land on which they are situated; and
2. That it is more logical for 750 North East Road to be used exclusively by Formula Honda due to its existing use, location, orientation and vehicle access.

Furthermore, in granting consent to the existing integrated retail motor vehicle outlet, it has been satisfied previously that a service trade premises is a land use that is suitable and complementary to the land uses within the locality and the intent of the Neighbourhood Centre Zone.

In light of the above, the proposal to change the land use of 750 North East Road to be used exclusively as a service trade premises accessory to the existing Formula Honda outlet does not jeopardise the ability of the Neighbourhood Centre to achieve its desired character, particularly with respect to retail floor area.

Additionally, the proposed land use will be compatible with the existing land uses within the zone and promotes an integrated centre, therefore achieving **Centres and Retail Development Objective 5 and PDCs 1 and 2**.

6.2 Vehicle Access/Movements

Vehicle access to the site is currently via an existing crossing place adjacent 752 North East Road. A right-of-way easement extends from this access point into the subject land. The proposal will not require any alterations to vehicle access to the site, meaning compliance with **Transportation and Access Objective 2**, and **PDCs 8, 22, 23, 25 and 27** is maintained.

Vehicle access to the rear storage yard from 752 North East Road will be via a gate that will be installed within the new 2.1m high pre-coloured steel fence that is to be erected between the two properties.

The vehicle display area at the front of the site will remain open to the adjoining land, providing ease of access for display vehicles to move through the Formula Honda outlet.

With the proposed change of use to the land and the way it will be arranged, there is no obvious need for the existing North East Road crossing place to be used to access/egress the subject site. Instead, it is more convenient for display and storage vehicles to move to and from these areas within the boundaries of the Formula Honda outlet as operations will now be more coordinated across the entire site.

As the proposed development will not require a new crossing place, will not alter an existing crossing place, or increase movements through the existing crossing place at North East Road, there is no statutory requirement for the application to be referred to DPTI.

6.3 Car Parking

While the proposal will see the loss of the nine line-marked parking spaces currently located to the front and rear of the existing building, the installation of the vehicle storage area will facilitate greater parking availability for vehicles being serviced at the Formula Honda outlet. While parking spaces within the storage area will be stacked, the number of vehicles that will be able to be stored and parked within this area far exceeds the nine spaces currently provided.

As illustrated on the site plan (see **Attachment 5**), primary customer parking for the Formula Honda outlet will remain to the south of the main showroom building at 752 North East Road. Overflow vehicles from visiting customers can also access the vehicle storage area via the rear of this existing car park.

For the reasons discussed above, the proposal complies with **Transportation and Access PDCs 32 and 33**.

Compliance with **Table TTG/2A** for the Formula Honda outlet was established through the assessment of development consent 070/111159/2016. As the development results in additional on-site parking areas than what is currently available, compliance with **Table TTG/2A** is maintained.

6.4 Proposed Fencing and Landscaping

The proposed 3.0m high fencing will traverse the site and separate the vehicle storage area from the vehicle display area. As illustrated on the site plan (see **Attachment 5**), the arrangement will virtually mirror the adjoining allotment to the south, which also forms part of Formula Honda outlet.

While vehicles will be displayed at the front of the site, these will be new vehicles and uniformly arranged, with the area at the rear used to store vehicles associated with the service facility in a stacked parking arrangement. As the vehicle storage area will be located at the rear of the site and screened by the proposed fence, compliance with **Design and Appearance PDC 21** will be achieved.

It is important to note that while the 3.0m high fence is described as “hoarding” on the proposed site plan, the applicant’s Town Planning Consultant has confirmed that the fence will be a typical construction of pre-coloured steel with no signage attached (see **Attachment 7**).

A 2.1m high pre-coloured steel fence will also be erected along the common boundary of 750 and 752 North East Road to separate the storage yard from the existing car park. While this fence does not require development approval, it is important for the delineation and layout of the site and the Formula Honda outlet, satisfying **Landscaping, Fences and Wall Objective 2**.

The amenity of the site will also be enhanced by new landscape plantings within the existing landscape bed located inside the front boundary. The type and species of plantings are scheduled on the site plan (see **Attachment 5**) and will match the

plantings on the adjoining property at 748 North East Road. The inclusion of appropriate landscaping ensure the development is consistent with **Landscaping, Fences and Walls Objective 1** and **PDCs 1(b) and (k) and 2(b)**.

7. CONCLUSION

The proposal to use the land at 750 North East Road exclusively as a service trade premises is discouraged in the Neighbourhood Centre Zone, with a service trade premises specifically listed as a non-complying form of development.

Notwithstanding, the majority of the land and its existing building is currently being used as a service trade premises and will continue to operate in conjunction with an existing service trade premises located within the zone.

The change in land use will also not jeopardise the ability for the zone to continue to function as intended, nor will the development conflict with desirable redevelopment of the nearby shopping centre in the future.

The development will not cause any issues with respect to on-site vehicle parking and the movement of traffic into, out of and within the site will be both safe and convenient.

The development will not require the construction of any substantial built form, but will instead see the built form on the land significantly reduced by way of the demolition of an existing two storey building.

For the above reasons, it is considered that this proposed non-complying development displays sufficient merit to warrant Development Plan consent, subject to the concurrence of the State Commission Assessment Panel and conditions of approval.

8. RECOMMENDATION

That pursuant to the authority delegated to the Council Assessment Panel by Council, the Council Assessment Panel:

- A. RESOLVES that the proposed development is not seriously at variance with the policies in the Tea Tree Gully (City) Development Plan.
- B. RESOLVES to GRANT Development Plan Consent subject to the concurrence of the State Commission Assessment Panel to the application by Formula Motor Group to demolish the existing building, erect a 3.0m high fence and to change the use of the land to be used as a service trade premises by displaying and storing vehicles in conjunction with an existing integrated retail motor vehicle outlet (Non-Complying) at 750 North East Road, Modbury, as detailed in Development Application No. 070/116248/2018 subject to the following conditions and advisory notes:
 - (1) The development must be undertaken, completed and maintained in accordance with the stamped plan(s) and information detailed in Application No. 070/116248/2018, except where varied by any condition(s) listed below.

- (2) The hours of operation for the development herein approved must be consistent with the existing integrated motor vehicle retail outlet as follows:

Monday to Wednesday and Friday: 7.30am to 6:00pm
 Thursday: 7:30am to 9:30pm
 Saturday: 8:00am to 5:00pm

- (3) All driveways, parking and manoeuvring areas must be formed, sealed with concrete, bitumen or paving, and be properly drained. They must be maintained in good condition thereafter.

Reason: To ensure useable and safe carparking.

- (4) The material used on the external surfaces of the fence and the pre-coloured steel finishes or paintwork must be maintained in good condition at all times.

Reason: To preserve and enhance the amenity of the site and locality.

- (5) The planting and landscaping identified on the site plan prepared by 'Progetto Design' submitted with the application must be completed in the first planting season concurrent with or following commencement of the use of the site. Such planting and landscaping must not be removed and any plants which become diseased or die must be replaced by suitable species.

Reason: To maintain and enhance the amenity of the site and locality.

Note(s):

- (1) The cost of rectifying any damage or conflict with existing services or infrastructure arising out of this development will be borne by the applicant.
- (2) This consent does not obviate the need to obtain any other necessary approvals from any/all parties with an interest in the land.
- (3) You are advised that under the Fences Act you are legally required to give notice for the removal of a fence on the common boundary. Please refer to the Fences Act for the correct procedural requirements.

Attachments

1.	Aerial Photo	17
2.	Development Application Form	18
3.	Certificate of Title	19
4.	Demolition Plan.....	21
5.	Site Plan	22
6.	Statement of Support/Effect	23
7.	Applicant's Emails.....	44

Item 4.1

Report Authorisers

Nathan Grantham Team Leader Development Services	8397 7331
Nathan Grainger Manager City Development	8397 7200
Carol Neil Director Community & Cultural Development	8397 7341

REPORT NO: CAP.070/115394/2018

RECORD NO: D18/76824

TO: SPECIAL COUNCIL ASSESSMENT PANEL MEETING - 29
JANUARY 2019

FROM: Daniel Oest
Senior Planning Officer

SUBJECT: THREE SINGLE STOREY ROW DWELLINGS AT 20 BERRYMAN
DRIVE, MODBURY

SUMMARY

Applicant: TRV Homes Pty Ltd

Nature of Development: To construct three single storey row dwellings and remove a regulated street tree (Silky Oak) from the adjacent road reserve

Address: 20 Berryman Drive MODBURY SA 5092

Application No: 070/115394/2018

Lodgement Date: 28 June 2018

Development Plan: Consolidated 29 September 2016

Zone and Policy Area: Residential Zone. No Policy Area

Relevant Development Plan Provisions:

Objectives
 Crime Prevention 1
 Design and Appearance 1
 Energy Efficiency 1
 Landscaping, Fences and Walls 1
 Natural Resources 1, 5, 6, 7
 Orderly and sustainable Development 1, 2, 4
 Residential Development 1, 2, 3, 5
 Transportation and Access 2, 4
 Waste 2
 Residential Zone 1, 2, 3

Principles of Development Control
 Crime Prevention 1, 2
 Design and Appearance 1, 2, 3, 14, 15, 17, 22, 23
 Energy Efficiency 1, 2, 3, 4
 Land Division 17
 Landscaping, Fences and Walls 1, 2, 3, 4
 Natural Resources 1, 4, 5, 7, 8, 10, 14, 28
 Orderly and Sustainable Development 1, 4, 6, 7, 8
 Residential Development 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 19, 24

Transportation and Access 5, 8, 10, 11, 22, 23, 29, 31, 32, 33,
41, 45, 47, 48
Waste 5
Residential Zone 1, 2, 3, 6, 8, 9, 11, 15

Public Notification:	Category 2
Number of Properties Notified:	12
Number of Representations Received:	2
Names and Addresses of Representors:	Michael Burrow 18 Berryman Drive, Modbury John and Diana Spencer 1 Calwield Road, Modbury
Number of Representors wishing to be heard:	0
Schedule 8 Referral:	N/A
Was a request for additional information made?	Yes
Issues:	Density, streetscape appearance, private open space
Recommendation:	Support the application and to delegate the decision to grant Development Plan Consent to the Assessment Manager

1. PROPOSAL

The proposal involves the development of three single storey row dwellings to replace an existing single storey detached dwelling at 20 Berryman Drive, Modbury.

The row dwellings each contain three bedrooms, ensuite to Bedroom 1, meals and family areas, kitchen, and separate bathroom and laundry.

Each row dwelling is to be sited on an allotment between 230m² and 240m² in area, subject to a separate land division application. This land division is being held pending the outcome of this application.

Dwellings 1 and 2 share a similar appearance when viewed from the street with a portico that extends from the main face with hipped roofs to the front. Dwelling 3 includes a gable to the road frontage with portico in line with the main face.

The development sites are to be benched at the same level with walls retaining cut up to 990mm to the north-western corner of the site, reducing to 250mm to the south-western corner of the site.

Retaining walls are also required to the front of the dwellings to control the proposed fill of 800mm to the south-eastern corner and 250mm to the north-eastern corner of the site.

Fencing does not form part of this application.

A Silky Oak regulated street tree is proposed for removal to facilitate driveway access to the Dwelling 1 garage. The applicant proposes to pay for two replacement plantings into the City of Tea Tree Gully Urban Tree Fund.

The plans for the development can be found within **Attachment 4**.

2. PROCEDURAL MATTERS

A Torrens title land division has been received displaying proposed boundaries that align with the subject land use application (Development Application 070/115524/2018). The Plan of Division includes reciprocal party wall rights, and relies on a built form to demonstrate its suitability for its intended purpose.

Ideally row dwellings should be in the form of one application combining both land use, built form and land division all in one, however in this instance (and many others) the applications have been received separately by Council.

It is clear that the intention of the application is for row dwellings given the receipt of corresponding land division application.

The Council Assessment Panel (CAP) is asked to consider this application as row dwellings and, should the application be supported, delegate the granting of Development Plan Consent to the Assessment Manager upon the resolution of the land division application.

Row dwellings and tree removal are neither complying nor non-complying forms of development in the Residential Zone. Where a development is neither complying nor non-complying the application is to be assessed as on merit, pursuant section 35(5) of the *Development Act 1993* (the Act).

Having regard to the zone of the site and the proposed use of the land, it is considered that the development is not seriously at variance with the Development Plan pursuant to section 35(2) of the Act.

3. PUBLIC NOTIFICATION

Section 38(2)(a) of the Act states that a Development Plan or the *Development Regulations 2008* (the Regulations) may assign different forms of development to a category for the purposes of public notification.

Schedule 9 clause 2(a)(iv) of the Regulations lists “3 or more row dwellings, or one more additional row dwellings, provided that no such dwelling is more than 2 storeys high” as a Category 1 form of development.

Schedule 9 clause 25 of the Regulations states “Except where the activity is undertaken under section 54A of the Act, any development which comprises a tree-damaging activity in relation to a regulated tree on land owned or occupied by a council where the council is the relevant authority” as Category 2.

With the regulated tree being on Council land and Council being the relevant authority, pursuant to section 34(1)(a) of the Act, the application is Category 2.

Category 2 public notification was undertaken where 12 adjacent land owners and occupiers were directly notified in writing.

Two representations were received as a result of this process (**Attachment 6**). One representation was in support of the application and the other opposed. Both representors indicated they did not wish to be heard in support of their representation.

The following summarises the concerns expressed:

- Density of development
- Impact on established character and streetscape
- Car parking
- Increase in stormwater directed to Council's drainage system
- Capacity of Council's Community Wastewater Management System (CWMS).

The applicant has provided the following summarised response to the representation:

- The development will result in compliant minimum allotment sizes and is of an appropriate density for the locality
- The development is to have a satisfactory impact to the streetscape
- Onsite parking satisfies the rate for the nature of development and there is ample kerbside parking
- Sufficient detention (2000L) has been proposed as part of the application
- No concerns have been raised by SA water regarding overcapacity of sewer system and the site is not connected to Council's CWMS.

The applicant's full response is contained within **Attachment 7**.

4. SITE AND LOCALITY

The subject site is an existing parcel of land known as 20 Berryman Drive in the suburb of Modbury.

A single storey detached dwelling and associated outbuilding currently occupy the allotment, which will be demolished to make way for the proposed development.

The road reserve immediately adjacent to the allotment front boundary accommodates an existing single width crossover at the northern end of the site and a regulated street tree to the south.

The allotment itself is regular in shape measuring approximately 22.25m in frontage and 32m in depth, with an approximate area of 711m² and a fall from rear to kerb of 2.6m.

The locality itself is determined to be the area delineated by the red dashed line in Figure 1 below.



Figure 1 – Locality Plan

This locality comprises the western side of Whittaker Drive, the southern streetscape to the eastern end of Altola Road, the eastern streetscape of Berryman drive (including some of Meg Court), the entirety of Winston Court and western end of Calwield Road.

Land use in the locality is entirely residential, with the exception of a portion of public open space to the north, known as Sir Frank Berryman Reserve. The entire locality is located within the Residential Zone.

Development within the locality comprises primarily detached dwellings considered to be circa 1960-70 in construction. Some redevelopment has occurred within the locality in the form of '1 into 2' land divisions. This has resulted in detached dwellings on smaller allotments than the prevailing allotment size of 700m². The locality is considered to be in the early stages of renewal given the general age and condition of the existing dwellings.

The wider locality includes the entire Sir Frank Berryman Reserve, Clovercrest District Centre and the arterial road of Montague Road to the north. Modbury West Primary is located to the east beyond the defined locality.

5. PLANNING ASSESSMENT

The table below details the composition of each dwelling and its performance against the numeric provisions of the Development Plan.

Table 1 – Development statistics and compliance

	Dwg 1	Dwg 2	Dwg 3	Dev Plan min.	Compliance?
Site area (m ²)	240.7	230.9	240.7	225	Yes
Frontage (m)	7.52	7.22	7.5	5	Yes
Front setback (m)	5.0	5.0	5.0	5	Yes
Rear setback (m)	3.8	3.8	3.8	3	Yes
External boundary side setback (m)	0.6	N/A	0.6	0.9	No – see discussion below
Garage setback (m)	6.43	6.43	6.43	5.5	Yes
Garage spaces	1	1	1	1	Yes
Visitor parking space	1	1	1	1	Yes
Private open space (m ²)	34.62	32.85	34.63	35	No – see discussion below

5.1 Land Use

The proposal for row dwellings is an acceptable land use for the Residential Zone in accordance with **Residential Zone Principle of Development Control (PDC) 1**.

5.2 Density

The **Residential Zone Desired Character Statement** outlines the following:

The majority of the zone will retain its low density residential character. It is expected that higher densities will be focused in strategic locations predominantly within walking distance of high frequency public transport routes and interchanges, activity centres, and public open space. These forms of development will be undertaken in an orderly manner and site amalgamation may be required to achieve the high quality development outcomes that are envisaged for the zone. Increasing densities in these locations will allow future development to take advantage of views and recreational opportunities, will improve accessibility to transport and services, and will allow the balance of the zone to retain a predominantly low density suburban character.

Residential Zone Principle of Development Control (PDC) 6 states:

Development should not be undertaken unless it is consistent with the desired character for the zone.

The above **Desired Character Statement** seeks the majority of the Residential Zone to maintain a low density residential character whilst focusing higher densities in strategic locations.

Strategic locations are considered to be within walking distance to:

- High frequency public transport routes and interchanges,
- Activity centres, and
- Public open space.

A 'walkable' distance is subjective, however is generally 400m to 600m depending on terrain or general difficulty.

The subject site is located 60m from a large area of public open space, 270m from an activity centre (Clovercrest Shopping Centre and District Centre Zone), and 400m from an arterial road supporting high frequency public transport.

The site is considered to be appropriate for higher density development, and therefore supports **Residential Zone Objective 2**, which seeks increased dwelling densities in close proximity to centres, public transport routes and public open spaces.

Notwithstanding the above, **Residential Zone PDC 15** provides for minimum site areas for residential dwelling types.

PDC 15 envisages single storey row dwellings with minimum site areas of 225m² per dwelling and 5.0m frontages. The development proposes site areas of 230m² to 240m² with frontages between 7.2m and 7.5m. This satisfies the minimum requirements for the respective dwelling type minimum site areas.

The development therefore meets the combined tests of satisfying minimum allotment sizes for this dwelling type, in an area that is determined by the Development Plan to be suitable for higher density development.

5.3 Design and Appearance

The streetscape of Berryman Drive is highly varied. Both sides of the street exhibit a range of traits, from setback variation, to dwelling style, to garage dominance.

There are limited elements that form a notable character within the locality, other than perhaps that the predominant form of dwelling is detached. The detached dwellings however vary in style from conventional style dwellings to skillion roof "fibro" dwellings.

Design and Appearance PDC 1 states that buildings should reflect the desired character of the locality while incorporating contemporary designs that have regard to the following:

- (a) building height, mass and proportion
- (b) external materials, patterns, colours and decorative elements
- (c) roof form and pitch
- (d) façade articulation and detailing
- (e) verandas, eaves, parapets and window screens.

Despite the varied nature of the locality, the development reflects the existing built form with a conventional hipped roof and rendered wall design. The dwellings also offer slight variations in form and material to reduce monotony and respond to the varied nature of the streetscape, with brickwork to the porticos of Dwellings 1 and 2, and a tiled blade wall between Dwellings 2 and 3.

Residential Zone PDC 8 nominates a minimum side boundary setback of 900mm (for wall heights up to 3.0m).

The proposal demonstrates 600mm setbacks to the external side boundaries; a 300mm departure from the above provision. The proposed setbacks however are considered to provide adequate separation to adjoining properties, whilst enabling the dwellings to

better present to the street. The additional 300mm of façade width allows for a discernible entry to the dwellings and a useable habitable room facing the street. These elements balance the garage to reduce its dominance.

More specifically, the following can be achieved with the 300mm variance:

- The pattern of space between dwellings in the streetscape is maintained, which positively contributes to the character of the locality in accordance with **Residential Zone Objective 3** and **PDC 6**,
- Garage dominance is minimised to accord with **Residential Development PDC 8** and **Transportation and Access PDC 33(i)**,
- Opportunities for casual surveillance from a meaningful room to the street to satisfy **Crime Prevention PDC 2**, and
- Clear entry points that promote legibility for pedestrians in accordance with **Design and Appearance PDC 17**.

In terms of the front setback, **Residential Zone PDC 8** provides a minimum of 4.0m, or 2.0m closer than the minimum setback of the adjoining development, whichever is the greater. **Design and Appearance PDC 23** repeats these requirements.

The adjacent dwellings of 18 and 22 Berryman Drive are setback 10m and 7.0m respectively. This results in a theoretical minimum setback of 5.0m to the proposed row dwelling building.

The proposed front setback is 5.0m to the main face of the dwellings and 6.43m to the garage doors. The setbacks to the main face of the dwellings comply with the above provisions, with only a narrow portico to each dwelling protruding this setback line.

The row dwelling building will, however, be sited 5.0m forward of the dwelling at 18 Berryman Drive.

Regard is given to **Design and Appearance PDC 22**, which reads:

Except in areas where a new character is desired, the setback of buildings from public roads should:

- be similar to, or compatible with, setbacks of buildings on adjoining land and other buildings in the locality*
- contribute positively to the function, appearance and/or desired character of the locality.*

There is an inference that where higher density developments are envisaged at such strategic locations, that the **Desired Character Statement** anticipates a change in character, as opposed to seeking to retain the detached dwelling low-density character that exists.

In any case, it is considered that the current streetscape displays sufficient variation in form and pattern to support the proposed setbacks and built form. In addition to this, the setback to the garage for Dwelling 1 at 6.43m assists with the transition between the proposal and the established dwelling at 18 Berryman Drive.

5.4 Private Open Space

The quantitative requirements for private open space (POS) are listed in **Residential Development PDC 11**. For sites areas less than 250m² in area, a minimum 35m² of private open space should be provided. One part of the space should be directly accessible from a living room with an area of 16m², a minimum dimension of 3.0m and a maximum gradient of 1-in-10.

The areas of POS for Dwellings 1, 2, and 3 are 34.62m², 32.85m² and 34.63m² respectively.

The POS for Dwellings 1 and 3 are marginally undersized by 0.38m², with Dwelling 2 demonstrating a departure of 2.15m².

All allotments have flat and levelled POS, directly accessible from living areas of 16m² with minimum dimension of 3.0m.

The private open space in this instance is considered to be of a reasonable quality, having access to year round sunlight and being of a useable and functional area and dimension.

Despite the marginal shortfall in private open space, the site is approximately 60m from a large area of maintained public open space, meaning the future dwelling occupants will have reasonable and readily available access to recreational space.

The shortfall in private open space is therefore not considered to be fatal to the application.

5.5 Vehicle Access and Carparking.

The development proposes three single-width access points on Berryman Road. The crossover for Dwelling 1 will conflict with the regulated street tree proposed for removal. The assessment of this tree can be found below.

Each dwelling will comprise a garage contained under the main roof, setback 6.3m to the respective road boundary. The driveways are to be used as a visitor parking space.

The proposal therefore satisfies the relevant parking provisions as per **Table TTG/2** of one undercover parking space and one visitor space (in tandem).

The Siteworks and Drainage Plan in **Attachment 5** details cross sections of the driveway. These cross sections demonstrate that the grade of the driveway complies with *Australian Standard 2890*, and therein satisfies **Transport and Access PDC 23**.

The dwellings have been arranged to ensure there is a minimum width between the crossovers for Dwellings 2 and 3 for at least one on-street parking space immediately in front of the development. This is considered to comply with **Land Division PDC 17** and **Transport and Access PDC 11** which seek to optimise the provision of on-street parking.

The proposal is therefore considered to have sufficient parking opportunities given the proposed land use.

5.6 Landscaping, Retaining Walls and Fencing

The subject allotment falls approximately 2.0m from the north-west corner of the site to the south-east. All three dwellings comprise equal benched and floor levels, resulting in a cut of 990mm in the rear north-west corner and maximum fill of 800mm at the front of Dwelling 1. Retaining walls are proposed at varying heights along the side and rear boundaries to control the cut and fill, whilst the front yard levels will be battered down in the direction of the front property boundary.

New boundary fencing is not specifically included within this application, but the likelihood of standard height fencing (1.8m) positioned on top of the retaining walls in the future is a consideration when determining the appropriateness of the proposed levels and retaining wall heights.

The highest fence and wall combined height would be 2.79m in the back yard of Dwelling 3. This height tapers to 2.05m in the back yard of Dwelling 1. Given this wall is retaining cut, it will not have a detrimental effect on the amenity of the locality as it cannot be seen from the street or neighbouring properties. The view of retaining walls on the southern boundary (where retaining fill) will be blocked by the side of the adjoining carport and established vegetation.

The **Desired Character Statement** and **Landscaping, Fences and Walls Objective 1** seek the enhancement of the amenity by way of appropriate plantings and other landscaping works.

Due to the wide frontages proposed (for row dwellings), each dwelling provides for approximately 16m² of front yard landscaping, with most of these areas available for deep soil planting.

5.7 Stormwater Drainage

The proposal has been designed to dispose of all roof and surface water to the Berryman Drive water table.

As the site is located within Area 2 of the **Concept Plan Map TTG/7 – Stormwater Areas (Tea Tree Gully)**, each dwelling is required to have on-site stormwater detention of at least 2000L with 140m² of roof area connected. Detention has been provided on the Site and Drainage Plan in accordance with these requirements (**Attachment 5**).

A combined retention/detention tank has been demonstrated on the plans to also satisfy requirement under the National Construction Code as part of a future Building Rules Consent application.

5.8 Tree Assessment

The application proposes to remove a street tree located on the adjacent road reserve. The tree is owned by Council and has a 2.2m circumference, measured at 1.0m from its base. The tree is not an exempt species listed in sub-regulation 6A(5)(b) or (c), and is located more than 10m (12.97m) from any existing dwelling.

The tree is therefore classed as 'regulated' and subject to planning controls.

Council's City Arborist supports the tree's removal under Council's Tree Management Policy, however the tree is still subject to an assessment under the Development Plan.

The first test when assessing the removal of regulated trees is to determine whether the tree possesses attributes worthy of retention.

Regulated Tree Objective 1 seeks the conservation of regulated trees that provide important aesthetic and/or environmental benefit.

Regulated Tree Objective 2 envisages development in balance with preserving regulated trees that demonstrate one or more of the following attributes:

- (a) significantly contributes to the character or visual amenity of the locality
- (b) indigenous to the locality
- (c) a rare or endangered species
- (d) an important habitat for native fauna.

The tree is a Silky Oak or "*Grevillea robusta*", native to east coast Australia. The tree is not recognised as belonging to any street planting programme and although regulated in circumference, has been continually lopped to minimise conflict with overhead power lines.

Reflecting on the desired attributes listed in **Objective 2**, the tree is a non-indigenous specimen, is not rare or endangered and is not considered to be an important habitat for native fauna.

Importantly, the subject tree is not considered to *significantly* contribute to the character or visual amenity of the locality due to the ongoing lopping the tree has experienced, and its retention is not considered to outweigh the benefit of appropriate development on the site.

In accordance with section 42(6) of the Act, removal of the tree will result in a payment of \$179.00 into Council's Urban Tree Fund to cover the cost of two replacement trees.

6. CONCLUSION

The proposed development is considered to be consistent with the Development Plan relating to land use, streetscape impacts, suitability for future occupants, and specific strategic objectives of the Development Plan with regard to density.

The development provides for sufficient separation to the external boundaries and generous opportunities for deep soil front landscaping to soften the view of the development and contribute to the amenity and emerging character of the locality.

Having regard to all the facts and circumstances relevant to the development application and all the relevant Development Plan provisions, the development is considered to warrant consent.

7. RECOMMENDATION

That pursuant to the authority delegated to the Council Assessment Panel by Council, the Council Assessment Panel:

- A. RESOLVES that the proposed development is not seriously at variance with the policies in the Tea Tree Gully (City) Development Plan.
- B. RESOLVES to SUPPORT the application by TRV Homes to construct three single storey row dwellings and to remove a regulated street tree (Silky Oak) from the adjacent road reserve at 20 Berryman Drive, Modbury, as detailed in Development Application No. 070/115394/2018, subject to the following conditions and advisory notes; and to DELEGATE the decision to GRANT Development Plan Consent to the Assessment Manager upon approval of the corresponding land division application.
- (1) The development shall be undertaken, completed and maintained in accordance with the plan(s) and information detailed in Application No. 070/115394/2018, in particular:
- The site plans and elevations prepared by TRV Homes, Revision F Dated 16 October 2018, Sheets 1 -3, and
 - The Site Works and Drainage Plan prepared by Structural Stability Consulting Pty Ltd, Drawing Numbers S03-2 and S03-3
- and information except where varied by any condition(s) listed below.
- (2) The cost of two (2) replacement trees, \$179.00 (\$89.50 per tree) shall be paid into the City of Tea Tree Gully Urban Tree Fund within one month of the regulated street tree being removed. Payment may be made in person at the Civic Centre or by completing the attached form and posting to P.O. Box 571 MODBURY SA 5092. The cost of removal is at the expense of the applicant.
Reason: To ensure compliance with the legislative requirement for the planting of replacement trees, pursuant to Section 42(4) of the Development Act 1993
- (3) The materials used on the external surfaces of the building and the pre-coloured steel finishes or paintwork shall be maintained in good condition at all times. All external paintwork shall be completed within two (2) months of the erection of the row dwellings.
Reason: To preserve and enhance the amenity of the site and locality.
- (4) All driveways, parking and manoeuvring areas shall be formed, sealed with concrete, bitumen or paving, and be properly drained. They shall be maintained in good condition thereafter.
Reason: To ensure useable and safe carparking.

Note(s):

- (1) This consent does not obviate the need to obtain any other necessary approvals from any/all parties with an interest in the land.

- (2) The applicant/developer is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act, to take all reasonable and practical measures to ensure the activities on the site (including during construction) do not pollute the environment in a way which causes or may cause environmental harm. This includes being mindful of and minimising off site noise, dust and vibration impacts associated with development.
- (3) The cost of rectifying any damage or conflict with existing services or infrastructure arising out of this development will be borne by the applicant.
- (4) The Council has not surveyed the subject land and has, for the purpose of its assessment, assumed that all dimensions and other details provided by the Applicant are correct and accurate.
- (5) Please be advised that your application involves work that may impact of the stability of neighbouring land. Pursuant to Section 60 of the Development Act, 1993, you are reminded of your obligations to: -
 - 28 days before the building is commenced, caused to be served on the owner of the affected land a notice of intention to perform the building work and the nature of that work; and
 - Take precautions as may be prescribed to protect the affected land or premises, carry out such other building work in relation to that land or premises as that adjoining owner is authorised by the Development Regulations to require.
- (6) Please be advised that any retaining walls exceeding one metre in height and any fencing attached to a retaining wall where the combined height exceeds 2.1 metres requires Development Approval from Council by way of a separate application.

Attachments

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