

CM13.2. Development Application - 10.2021.38305.1 - 61 Birchgrove Crescent, Thurgoona - Dual Occupancy Development - Two Residences & Garages

DATE	22 October 2021	FIL REFERENCE	AF21/01466
CONFIDENTIAL	No		
FURTHER ENQUIRIES	David Christy City Development	PHONE	6023 8111
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Council is currently in a caretaker period (which commences on 5 November 2021, and concludes at 6.00pm on 4 December 2021). However, Council is able to consider the matter contained in this report as consideration of the matter does not contravene Local Government (General) Regulation 2005 – Reg 393B, or because consent of the Minister for Local Government has been obtained under subsection (2) of Regulation 393B.

Summary

This report is presented for Council’s determination of Development Application 10.2021.38305.1, a dual occupancy development proposed at 61 Birchgrove Crescent, Thurgoona, described as Lot 225 DP1262604 and comprising two residences on the site. The matter is reported to Council at the request of Councillors owing to concerns regarding density and over development of the site.

The Development Application was lodged on 26 March 2021 and publicly notified between 1 April 2021 and 16 April 2021. Three submissions were received during the public notification period.

The proposed development has been assessed against the requirements of Section 4.15 of the Environmental Planning and Assessment Act 1979. This has involved consideration of the requirements of relevant State Environmental Planning Policies, Albury Local Environmental Plan (LEP) 2010 and Albury Development Control Plan (DCP) 2010. It is considered that the proposed development can be supported for the reasons outlined throughout the Assessment Report (included as attachment 4).

Accordingly, it is recommended that Development Application 10.2021.38305.1 for a dual occupancy development comprising two new residences on the site be approved subject to the conditions contained in the Draft Determination, included in this report at attachment 5.

People: John Warnaar Designs, as applicant; S Smitran & O Glusica, owner.

Cost: \$420,000.00

Development Description

The proposal seeks approval for the construction of two new detached dwellings on the northern and southern portions of the existing land, thereby creating a dual occupancy development. Both dwellings will contain three bedrooms and include double garages.

The proposal, as amended, is shown in the updated development plans (included as attachment 1), and as described in the Statement of Environmental Effects (included as attachment 2). The development was amended following advice to the applicant that the development as originally submitted was non-compliant with Council’s controls concerning a structure built over the sewage and drainage easement and a driveway impacting Council assets.

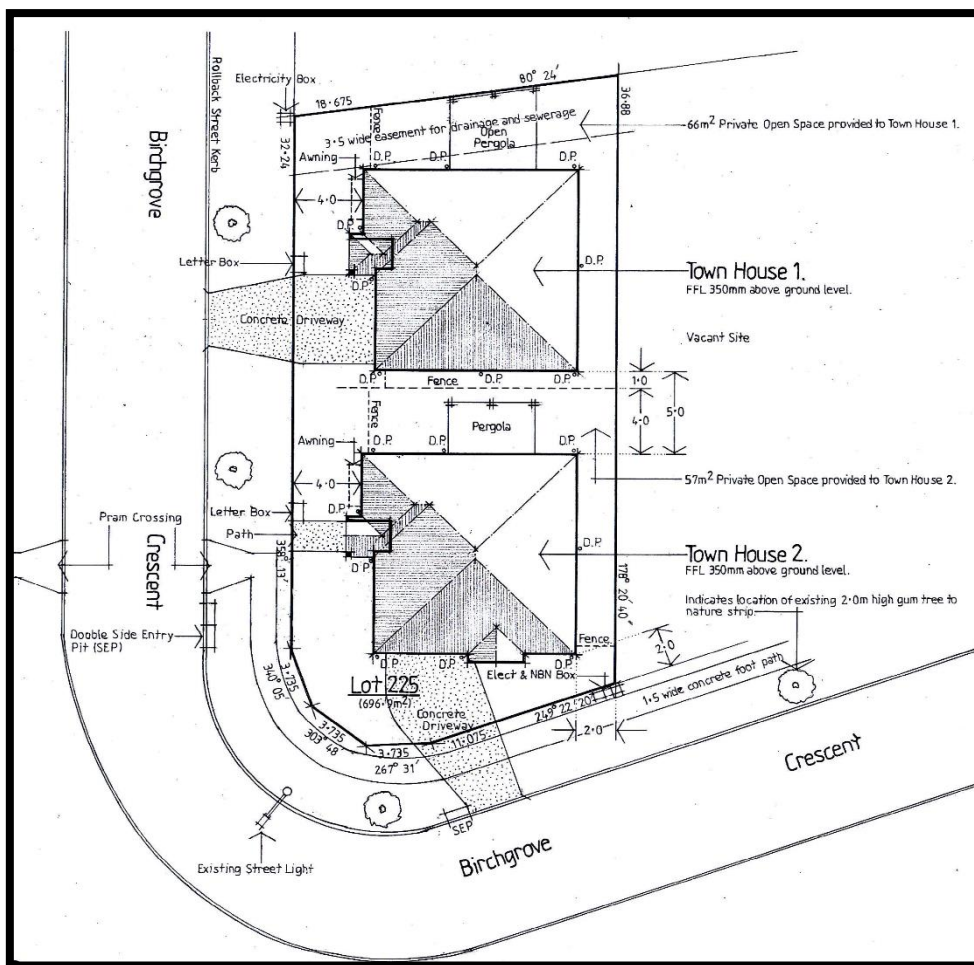


Figure 1: Site Plan

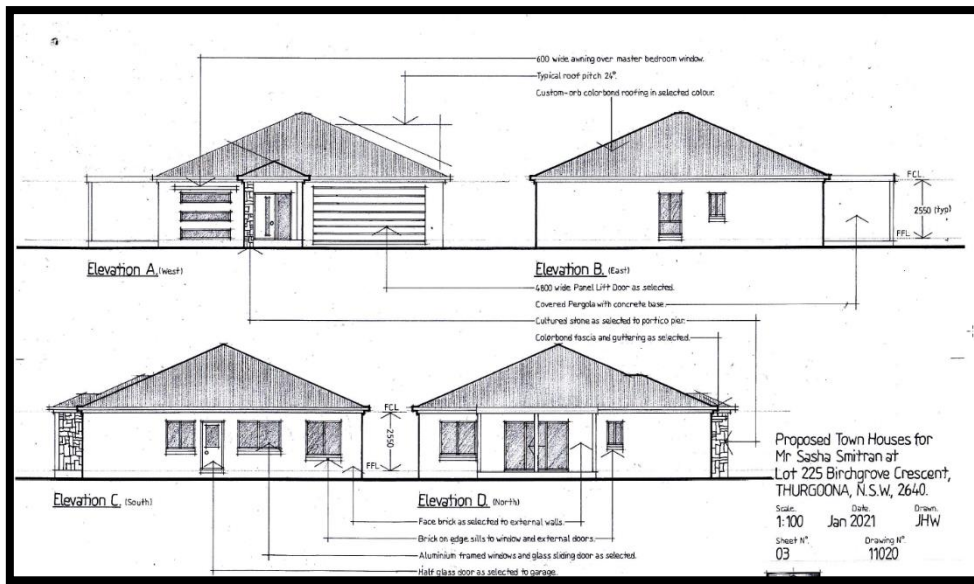


Figure 2: Dwelling 1 Elevation

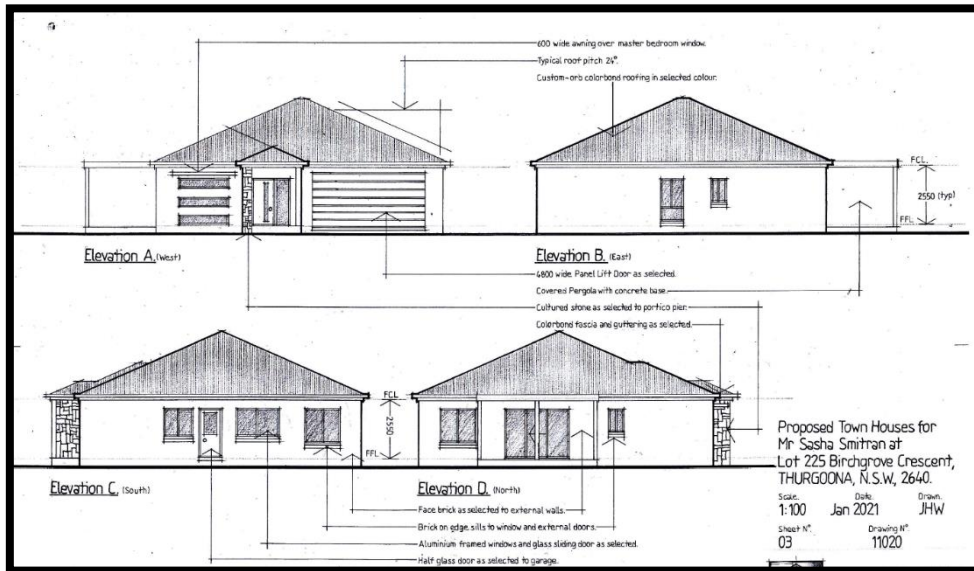


Figure 3: Dwelling 2 Elevation

Site and Locality Description

The subject site is described as Lot 225 DP1262604, number 61 Birchgrove Crescent and has an area of 696.9sqm. The site is currently vacant and located in the Brooklyn Fields Estate with a mixed residential character, comprising single detached residences and some dual occupancies. Site locality is shown in Figure 1 below.



Figure 4: Location Map

The site is zoned R1 General Residential under Albury LEP 2010, and the proposed development is permissible with consent in this zone.

Key Issues

Public Interest

Matters which impact the public interest include the context of the site and the type of housing proposed.

Brooklyn Fields Restrictive Covenant

This stage of the Brooklyn Fields Estate is subject to Restrictions on the use of land, secondly referred to on the Section 88B. In particular, one of the Restrictions identifies that development must comply with the terms of the Brooklyn Fields Restrictive Covenants & Design Guidelines, which nominates certain sites for medium density development including dual occupancy. This site is not identified in the Guidelines as a medium density development site.

However, as this Restriction is a private covenant, it cannot prohibit development permissible in the zone under the LEP and does not bind Council when considering the merits of a development. It is noted that other landowners who are benefitted by the Section 88B may choose to pursue the Restriction as a civil matter after the issue of consent for a development, as an approval from Council does not remove the Restriction nor the rights of any beneficiaries of that Restriction.

Furthermore, the owner has provided a letter from the Developer of Brooklyn Fields noting that although the lot is not specifically listed in Section A.2 of the Brooklyn Fields Restrictive Covenants & Design Guidelines as a pre-approved dual occupancy lot, they support the development proposal.

Context and Setting

The development is permissible in the zone and is located within an existing urban area. The new dwellings will provide additional housing options in close proximity to infrastructure, services, and

community facilities. The development is generally in character with the surrounding area, and setbacks and siting of the development are compliant with the DCP requirements.

Streetscape

The relationship between the development and the streetscape is satisfactory. It has been designed to be compatible with the scale and massing of development within the street, which is predominantly single storey, detached dwellings.

Site Design and Internal Design

The design of the dwellings provides a functional layout, and the dwellings are oriented to maximise solar efficiency for living areas and private open space during winter. The density of the development is in keeping with the Brooklyn Fields Estate given the existing variety of housing stock including other dual occupancy developments.

Submissions

The Development Application was publicly exhibited from 1 April 2021 to 16 April 2021. Council is satisfied that the application has been suitably notified to adjoining landowners to provide the opportunity for any concerns to be raised and considered prior to the determination of the application. The amended plans were not re-notified as they did not result in any impacts to adjacent lots or public assets.

Three submissions were received in relation to this development. Copies of the submissions received are provided at attachment 3. The submissions raised concerns that the dual occupancy development is not consistent with the particulars of the Brooklyn Fields Restrictive Covenant, parking, reduction of visual appeal and that the development is out of character with existing development in Brooklyn Fields Estate. The proposed dual occupancy development is considered to be appropriate in this instance noting the following comments in response to concerns raised in the submissions:

Brooklyn Fields Restrictive Covenant

As this Restriction is a private covenant, it is not a Planning consideration and does not form part of the assessment of this Development Application. Therefore, the Restriction does not impact any assessment or approval by Council under Albury Local Environmental Plan 2010 as Part 1.9A of the LEP suspends any agreement, covenant or other similar instrument that restricts the carrying out of that development.

Impact to the character of Brooklyn Fields Estate

The dual occupancy development has been designed to address the street, with the built form of the development considered to be consistent with surrounding development in the broader R1 General Residential zone. Other dual occupancy developments have been built within the Brooklyn Fields Estate.

Parking

The development proposes two car parking spaces for each dwelling in a double garage which complies with Part 17.

Number of persons inhabiting the dwellings

The number of persons inhabiting a dwelling is not a Planning consideration and does not form part of the assessment of this Development Application.

Environmental Risk

Matters relating to environmental risk for development are assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 in the detailed Development Application Assessment Report (included as attachment 4). There are no risks to the natural or built environment arising from the proposal and the site is not identified as contaminated, bushfire prone or subject to flooding.

Options

The Council has the following options in relation to this report.

- a. Approve the application; or
- b. Approve the application subject to conditions; or
- c. Defer the application for further information or redesign; or
- d. Refuse the application.

For the reasons outlined above and in the attached detailed Assessment Report, it is recommended that the development be approved subject to conditions, as per Option b. above.

Conclusion

Council staff have assessed the proposed development with regard to the submitted information, issues raised during public notification, and planning controls and requirements contained within ALEP 2010, ADCP 2010 and relevant State legislation. It is the role of Council staff to objectively weigh and consider the submitted information as well as any issues raised during public notification. This involves balancing the issues identified by all parties and will not always result in agreement with the noted opinion of any of these parties.

The development is considered appropriate to the context and setting of the site. The proposed development is considered consistent with the objectives of the R1 Zone and the assessment has concluded that the proposed development provides a suitable and satisfactory planning outcome.

Recommendation

That Council:

- a. Receives the contents of this report; and
- b. Grants consent to Development Application 10.2021.38305.1 for a dual occupancy development at 61 Birchgrove Crescent, Thurgoona, described as Lot 225 DP1262604 subject to the conditions contained in the Draft Determination, included in this report at attachment 5.

Attachments

1. Development Plans (DOC21/233827).
2. Statement of Environmental Effects (DOC21/71329).
3. Submissions (DOC21/233840).
4. Development Application Assessment Report (DOC21/97034).
5. Draft Determination (DOC21/233016).