

**DEVELOPMENT ASSESSMENT REPORT**  
**Shire of Augusta Margaret River**  
**6 January 2022 to 12 January 2022**

**APPLICATIONS RECEIVED**

Date Rec'd	Reference No.	Address	Proposal
<b>PLANNING</b>			
06/01/2022	P222009	14 (Lot 11) East Willmott Avenue, Margaret River	Holiday House (Large) Renewal
06/01/2022	P222010	96 & 108 (Lot 1001 & 1002) Redgate Road, Witchcliffe	Subdivision
10/01/2022	P222013	62 (Lot 45) Hermitage Drive, Margaret River	Holiday House (Renewal)
12/01/2022	P222014	8 (Lot 1) Shervington Avenue, Witchcliffe	Dwelling
<b>BUILDING</b>			
06/01/2022	222000	20 (Lot 13) Loaring Place, Margaret River	Ancillary Dwelling Additions - Garage and Verandah
06/01/2022	222002	37 Wilderness Road, Margaret River	Unauthorised works - Conversion of a Shed into an Ancillary Dwelling
06/01/2022	222003	161 (Lot 38) Terry Drive, Prevelly	Alterations and Additions to Existing Dwelling - Enclosing Verandah
06/01/2022	222005	22 (Lot 11) Offshore Crest, Margaret River	Shed and Carport
06/01/2022	222006	14 (Lot 8) Karridale Close, Karridale	Rainwater Tank
06/01/2022	222007	11 (Lot 79) Georgette Road, Gracetown	Patio, Deck and Rainwater Tank
12/01/2022	222010	4 (Lot 11) Nebbiolo Place, Margaret River	Rainwater Tank
12/01/2022	222011	330/366 Kudardup Road (Lot 9001 Moondyne Ridge), Kudardup	Alterations to existing dwelling - Internal Plumbing and Maintenance
12/01/2022	222012	31 (Lot 193) McDermott Parade, Witchcliffe	Single Dwelling, Alfresco, Verandah and Rainwater Tank

**APPLICATIONS DETERMINED UNDER DELEGATION**

Date Rec'd	Reference No.	Address	Proposal	Outcome
<b>PLANNING</b>				
22/09/2021	P221668	5624 (Lot 57) Caves Road, Burnside	Dwelling Building Envelope Variation & Vegetation Modification Outside Building Envelope	Approved
09/11/2021	P221838	24 (Lot 30) Poole Road, Kudardup	Dam (Hillside Soak)	Approved
01/12/2021	P221919	57 (Lot 2) Coppin Grove, Margaret River	Dwelling Additions (Water Tank Outside Building Envelope)	Approved
06/12/2021	P221926	10 (Lot 1) Mann Street, Margaret River	Guesthouse (Renewal)	Approved
06/12/2021	P221929	Unit 4 24 (Lot 1) Town View Terrace, Margaret River	Holiday House (Renewal)	Approved
13/12/2021	P221940	1724 (Lot 60) Jindong-Treeton Road, Osmington	Dwelling (Outbuilding Additions)	Approved
15/12/2021	P221951	3 (Lot 139) Tattersall Street East, Augusta	Dwelling (Outbuilding Addition)	Approved
16/12/2021	P221965	4 (Lot 179) Bayview Drive, Gracetown	Office & Serviced Apartments (Alterations to existing Restaurant and Apartment)	Cancelled
<b>SUBDIVISIONS</b>				
Nil				
<b>LOCAL LAW PERMITS</b>				
Nil				

### LEVEL 3 PLANNING APPLICATIONS FOR DETERMINATION

Date Rec'd	Reference No.	Address	Proposal	Recommendation
<b>PLANNING</b>				
01/10/2021	P221704	86 (Lot 104) Woodland Drive, Burnside	Bed and Breakfast	Refusal Recommended

### DEVELOPMENT ASSESSMENT REPORTING PROCEDURE

#### Assessment of Development Applications (DAs)

For the purposes of this procedure there are three types of development applications:

##### Level 1

DA not advertised

##### Level 2

DA is advertised; and

- No submissions; or
- Submission received but meets one of the following:
  - Not related to the reason the DA was advertised.
  - The development is modified to comply or to remove the element of concern to the submitter.
  - Submission is either of support, conditional support or is 'indifferent'; or is from a non-affected person.

##### Level 3

A submission in opposition is received from an 'affected' person or special interest group in relation to the reason the DA is advertised or the development application is recommended for refusal.

**Note:** This procedure applies to development applications only. It does not apply to structure plans, scheme amendments or other types of planning proposals.



**DEVELOPMENT APPLICATION ASSESSMENT**  
**Report to Manager Planning and Development Services**

**Proposed Bed and Breakfast at 86 (Lot 104) Woodland Drive, Burnside**

**(Level 3) Refusal Recommended**

**P221704; PTY/7050**

REPORTING OFFICER : Lina O'Halloran  
 DISCLOSURE OF INTEREST : Nil

General Information	
Lot Area	12,779m <sup>2</sup>
Zone	<b>Rural Residential</b>
Proposed Development	<input checked="" type="checkbox"/> Single House <input type="checkbox"/> Grouped Dwelling
Proposed use	<p>A planning application has been received for a Bed and Breakfast for up to two short stay guests at any one time within a freestanding 'cabin' detached from the main dwelling on the site.</p> <p>The cabin was granted planning approval (P218494) as <i>Dwelling Additions (Freestanding Bedroom)</i> issued 7 December 2018. A site inspection confirms that the cabin is intended and used for self-contained accommodation.</p> <p>The proposed short stay use of the cabin does not meet the policy provisions under:</p> <ul style="list-style-type: none"> <li>• <i>Local Planning Policy 7 Short Stay Accommodation (LPP7)</i>;</li> <li>• <i>State Planning Policy 3.7 Planning in Bushfire Prone Areas (SPP3.7)</i>;</li> <li>• <i>Guidelines for Planning in Bushfire Prone Areas (the Guidelines)</i></li> <li>• <i>Position Statement for Tourism Land Uses in Bushfire Prone Areas (TPS)</i>; and</li> <li>• <i>Local Planning Scheme No.1 (LPS1)</i>.</li> </ul> <p>The application is therefore recommended for refusal.</p>
Permissible Use Class	'A' – discretionary use requires advertising
Advertising Required	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Reason not exempted from planning approval?	Discretionary uses are not permitted unless the Shire exercises its discretion by granting development approval.
Heritage/Aboriginal Sites	N/A
Encumbrance	N/A
Date Received	01/10/2021
Date of Report	11/01/2021



<b>Bed and Breakfast is located within part of the existing dwelling?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Refer discussion below
<b>Bed and Breakfast consists of no more than two (2) bedrooms and one (1) bathroom?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Car Parking – 1 bay per bedroom provided within the Site?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>BAL and Emergency Evacuation Plan provided?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No A Bushfire Management Plan (BMP) and Bushfire Attack Level (BAL) Assessment Report have been provided which demonstrate the site achieves a BAL-FZ rating. The BAL rating cannot be reduced given there is insufficient space between the cabin and southern side boundary to implement the required Asset Protection Zone (APZ). The cabin has been constructed to a BAL-FZ standard.
<b>Comments Received</b>	
<b>Nature of Submission</b>	<b>Officer Comments</b>
<p><b>Department of Fire &amp; Emergency Services (DFES):</b></p> <p>DFES does not support the proposal for the reasons summarised below:</p> <ul style="list-style-type: none"> <li>The BMP states that the lot is within a Threatened Ecological Community as well as a Black Cockatoo and Possum habitat area. It is unclear if any of the proposed APZ can be cleared to meet the standard of Schedule 1 within the Guidelines.</li> <li>The proposed 10,000L water tank for fire fighting purposes is not shown to be located within an area of risk, whereby the tank and adjacent hard-stand can achieve BAL-29 or below and are accessible to a type 3.4 appliance.</li> <li>In accordance with Clause 6.6.2 of SPP3.7, development applications for vulnerable land uses in areas of BAL-FZ will not be supported unless they comply with Clauses 6.7.2.</li> </ul>	<p>The BMP contains a response to the Bushfire Protection Criteria as per <i>State Planning Policy 3.7 Planning in Bushfire Prone Areas</i> (SPP3.7), as well as a response to the Acceptable Solutions of the <i>Position Statement for Tourism Land Uses in Bushfire Prone Areas</i> (TPS).</p> <p>The following comments are made in response to DFES advice:</p> <p>Insufficient information has been provided to determine the impact of vegetation modification required to implement fire management measures including the APZ and the driveway. In order to comply with SPP3.7, the driveway would require a 4m trafficable surface, 6m horizontal clearance, 4.5m vertical clearance and 17.5m wide turn around area. The site is accessed by a loop driveway which may be considered in lieu of a 17.5m turn around area. Notwithstanding, the impacts to vegetation on site cannot be determined, and insufficient information has been provided to demonstrate the driveway can meet the requirements for turn around areas or construction standards.</p> <p>The applicant has responded that locating tanks for firefighting purposes within BAL-29 areas is not required by the SPP3.7 framework and that implementing an APZ around the tank to achieve BAL-29 would require a large amount of unnecessary clearing. This is not in keeping with DFES advice and the Shire's Community Emergency Services Manager (CESM) has also confirmed that locating the tank in an area exceeding BAL-29 would likely render it too dangerous to access in an emergency situation. Furthermore, the TPS requires fire fighting tanks to be '<i>located such that fire services can readily gain access...in a safe manner</i>'. A tank within an area exceeding BAL-29 would not be considered to be safely accessible.</p> <p>Clause 6.7.2 provides that the proposal would not be supported unless it meets the definition of 'unavoidable development'. Examples of unavoidable development in the <i>Guidelines for Planning in Bushfire Prone Areas</i> (the Guidelines) include critical State infrastructure or emergency services. The subject application does not meet the definition of unavoidable development.</p> <p>The applicant has responded to this point stating that the proposal complies with the TPS. The TPS provides Acceptable Solutions to guide tourism land uses that may not be able to comply with the provisions of SPP3.7. Compliance with the TPS has not however been fully demonstrated in relation to vehicular access and the provision of a tank for firefighting in a safely accessible location as discussed above.</p>
<b>Policy &amp; LPS1 Considerations</b>	
<p><b>Statement of Planning Policy 3.7</b></p> <p>The proposal is unacceptable when assessed against the provisions of SPP3.7 for a number of reasons:</p> <ul style="list-style-type: none"> <li>The site has a rating of BAL-FZ and a lower BAL rating cannot be achieved. Pursuant to SPP3.7 clause 6.6.2 the vulnerable land use is not acceptable on this site due to the extreme fire risk posed.</li> </ul>	



- The applicant has been provided with an opportunity to respond to the concerns raised by DFES in relation to the BMP but has not adequately demonstrated that fuel load can be reduced and managed within the boundaries of the site to achieve an acceptable risk rating. Further the BMP does not demonstrate that suitably located fire fighting equipment and access can be provided on site.
- In accordance with SPP3.7 clause 6.6.1 an acceptable BMP for the land use has not been provided to demonstrate how the fire risk on the site can be effectively reduced and managed.

#### **Guidelines for Planning in Bushfire Prone Areas V1.4**

In December 2021, version 1.4 of the *Guidelines for Planning in Bushfire Prone Areas* (the Guidelines) was released to supersede version 1.3, against which the above comments are made. Version 1.3 of the Guidelines remain in effect until 13 March 2022 and as such the above comments remain valid. Notwithstanding, an assessment against the updated version of the Guidelines is also provided.

A fifth Bushfire Protection Criteria element has been introduced in the new Guidelines, *Element 5 – Vulnerable Tourism Land Uses*, replacing the former TPS. The proposal is assessed against Element 5 (A5.4 – A5.6) as follows:

##### A5.4 Siting and design:

- A5.4a) requires a habitable building to be surrounded by an APZ in accordance with A2.1 APZ requirements. A suitably sized APZ to achieve BAL-29 is not possible within the boundaries of the lot – **Does not comply.**

##### A5.5 Vehicular access:

- A5.5a) public road access required in two directions – **complies.**
- A5.5b) public roads to be through roads – **complies.**
- A5.5c) N/A
- A5.5d) public roads to comply with Table 6, Column 1 requirements – **complies.**
- A5.5e) requirements for private driveways longer than 50m – BMP states the driveway will be upgraded to comply, however insufficient information has been provided to demonstrate this is achievable – **insufficient information provided.**
- A5.5f) signage – details not provided. Compliance can be ensured by a condition of planning approval – **complies.**

##### A5.6 Provision of water:

- A5.6a) N/A
- A5.6b) water tanks required in accordance with Element 4, Schedule 2, 2.2 Technical Requirements. Compliance can be ensured by a condition of planning approval – **complies noting the water tank could not be located in an area of BAL-29 which conflicts with DFES and CESM advice.**

#### **Local Planning Policy 7 Short Stay Accommodation (LPP7)**

LPP7 states that “*Short stay accommodation proposed in areas with a Bushfire Attack Level Assessment rated at BAL-40 of FZ are unlikely to be granted planning approval*”. This policy provision is consistent with SPP3.7 and, for the reasons discussed above, the proposal is unacceptable when assessed in this regard.

In previous versions of LPP7, Bed and Breakfast uses were considered in buildings that were separate to the main dwelling, however, under the current version of LPP7 this is no longer permitted. LPP7 states that “*[r]ooms available for short stay guests must be located within the main dwelling on the property....*” The LPP7 requirement for newly proposed Bed and Breakfasts to be located in the main dwelling has been consistently applied to new applications.

While the Shire has honoured applications to renew valid approvals for short stay in detached buildings, including on the lot neighbouring the subject site, it has not supported newly proposed Bed and Breakfasts in buildings separate to the main dwelling as is the case with the subject application.

#### **Local Planning Scheme No. 1**

Given the location of the cabin and its self-contained use, it could be considered that the proposal meets the definition of a Chalet under *Local Planning Scheme No. 1* (LPS1), rather than a Bed and Breakfast. LPS1 defines a Chalet as:

*“a self-contained accommodation unit (i.e. containing cooking, bathroom, sleeping and living area facilities) used for short term accommodation.”*

A Bed and Breakfast is defined as:

*“part of a dwelling, used for short-term accommodation providing not more than two single bedrooms and one bathroom and run by the owner/occupier of the dwelling on a commercial basis”.*

A Chalet is an ‘X’ use (not permitted) within the Rural Residential zone. The LPS1 provides that the Local Government must refuse an ‘X’ use on the land. Furthermore, the proposal does not meet the definition of a ‘Bed and Breakfast’ given the cabin does not form part of the dwelling. The proposal to use the cabin for short stay accommodation is unable to be supported by either definition of a Bed and Breakfast or a Chalet under LPS1 and is therefore recommended for refusal.

## OFFICER RECOMMENDATION

That the Manager of Planning & Development Services REFUSE TO GRANT Planning Consent under Delegated Authority Instrument No. 34 pursuant to clause 68 (2) of the Deemed Provisions of Local Planning Scheme No. 1 for Bed & Breakfast at 86 (Lot 104) Woodland Drive, Burnside for the following reasons:

### REASONS FOR REFUSAL

1. The application fails to meet the definition of a Bed and Breakfast under *Local Planning Scheme No. 1*. The proposed Bed and Breakfast is not '*part of a dwelling*' but rather is independent from the main dwelling due the physical separation between the buildings, the self contained use of the cabin and distinct access arrangements for both buildings.
2. The proposal is consistent with the definition of a Chalet under *Local Planning Scheme No. 1* which means '*...self contained accommodation unit (i.e. containing cooking, bathroom, sleeping and living area facilities) used for short term accommodation*'. A Chalet is an 'X' use (not permitted) in the Rural Residential zone. *Local Planning Scheme No. 1* provides that the local government must refuse to approve an 'X' use.
3. The proposal is not accompanied by a bushfire management plan that is acceptable to the Department of Fire and Emergency Services or the Shire of Augusta Margaret River and therefore the proposal does not comply with clause 6.6.1 of *State Planning Policy 3.7 – Planning in Bushfire Prone Areas*.
4. The proposal for a vulnerable land use in an area of BAL-FZ risk, does not meet the definition of unavoidable development nor is the site within an area that can be classified as minor development. Therefore, the proposal is inconsistent with clause 6.6.2 of *State Planning Policy 3.7 – Planning in Bushfire Prone Areas*.
5. The proposal has not demonstrated compliance with the *Position Statement for Tourism Land Uses in Bushfire Prone Areas* including:
  - Acceptable Solution 2.4 has not been met given insufficient information has been provided to demonstrate that the driveway can meet the requirements for turn around areas or construction standards.
  - Acceptable Solution 3.3 which provides that dedicated water supplies shall be 'located such that fire services can readily gain access to appropriate fittings and connect fire fighting vehicles to dedicated water supplies in a safe manner'. The proposed water tank for firefighting purposes would be located in an area of extreme fire risk and therefore is not safely accessible in an emergency situation.
6. The proposal has not demonstrated compliance with version 1.4 of the *Guidelines for Planning in Bushfire Prone Areas*, Element 5: Vulnerable Tourism Land Uses including:
  - Acceptable Solution A5.4a) has not been met given a suitably sized Asset Protection Zone to achieve BAL-29 is not possible within the boundaries of the lot.
7. The proposal is inconsistent with the objectives of *Local Planning Policy 7 Short Stay Accommodation* due to the self contained nature of the cabin. Short stay use of the cabin would be inconsistent with objective 5 of the policy which states "*Small, purpose built affordable accommodation such as single bedroom and ancillary dwellings remain available for affordable and long term accommodation*".
8. The proposal is inconsistent with the Policy Provisions of *Local Planning Policy 7 – Short Stay Accommodation* for the following reasons:
  - a. The cabin proposed for Bed and Breakfast use is not '*within the main dwelling*' as required by provision BB2. Due to the cabin's self-contained nature it is considered more akin to an Ancillary Dwelling. BB2 also requires that a Bed and Breakfast use is '*not within an ancillary dwelling on the same lot*'.
  - b. The Bed and Breakfast use within the single bedroom, self-contained cabin is inconsistent with provision SB1 which requires that "*Single bedroom dwellings are not to be used for short stay accommodation purposes*".
  - c. The site has an extreme fire risk rating BAL-FZ and a lower BAL rating cannot be achieved. Approval of the proposal would be in conflict with policy provision GF3 which states that "*Short stay accommodation proposed in areas with a Bushfire Attack Level Assessment rated at BAL-40 or FZ are unlikely to be granted planning approval*".
9. Approval of the proposal would set an undesirable precedent for approval of similar development applications, where vulnerable land uses are proposed on sites that pose an extreme fire risk and do not comply with the intent and provisions of the Shire's *Local Planning Policy 7 Short Stay Accommodation*. This would not be in the interests of the community as a whole.