



Special Council Meeting
Agenda
1 December 2016

NOTICE OF MEETING

Notice is hereby given that the

Shire of Exmouth Special Council Meeting

will be held on
1 December 2016
Commencing at 4.00pm

Turk Shales
Shire President

1 December 2016

Disclaimer

The advice and information contained herein is given by and to the Council without liability or responsibility for its accuracy. Before placing any reliance on this advice or information, a written inquiry should be made to the Council giving entire reasons for seeking the advice or information and how it is proposed to be used.

Please note this agenda contains recommendations which have not yet been adopted by Council.

No responsibility whatsoever is implied or accepted by the Shire of Exmouth for any act, omission, statement or intimation occurring during the Council/Committee meetings or during formal/informal conversations with staff. The Shire of Exmouth disclaims any liability for any loss whatsoever and however caused arising out of reliance by any person or legal entity on any such act, omission, statement or intimation. Any person or legal entity who acts or fails to act in reliance upon any statement does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broader disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or limitation of approval made by a member or officer of the Shire of Exmouth during the course of any meeting is not intended to be and is not taken as notice of approval from the Shire of Exmouth. The Shire of Exmouth warns that anyone who has an application lodged with the Shire of Exmouth must obtain and should only rely on **written confirmation** of the outcome of the application, and any conditions attached to the decision made by the Shire of Exmouth in respect of the application.

SHIRE OF EXMOUTH

DISCLOSURE OF INTEREST

To: Chief Executive Officer

As required by Section 5.65(1)(a) of the Local Government Act 1995, I _____ hereby declare my interest in the following matters included on the Agenda paper for the Council/Committee meeting to be held on _____ (Date).

Item No.	Subject	Details of Interest	*Extent of Interest (see below)

*Extent of Interest only has to be declared if the Councillor also requests to remain present at a meeting, preside, or participate in discussions or the decision making process (see item 6 below)

Councillor / Employee Signature _____ Date _____

NB:

1. This notice must be given to the Chief Executive Officer prior to the meeting or at the meeting immediately before the matter in which you have an interest is discussed, Section 5.65(2)(a) & (b).
2. It remains Councillor's responsibility to make further declarations to the Council if a matter arises during the course of a meeting and no previous declarations have been made.
3. It is a Councillor's responsibility to ensure that the interest is brought to the attention of the Council/Committee when the Agenda item arises and to ensure that it is recorded in the minutes.
4. It remains the Councillor's responsibility to ensure that he/she does not vote on a matter in which a declaration has been made, unless specifically entitled under the Local Government Act 1995. This responsibility also includes the recording of particulars in minutes to ensure they are correct when such minutes are being confirmed.
5. It is recommended that when previewing Agendas, Councillors mark Agendas with items on which an interest is to be declared and complete the declaration form at the same time.
6. Councillors may be allowed to remain at meetings at which they have declared an interest and may also be allowed to preside (if applicable) and participate in discussions and the decision making process upon the declared matter subject to strict compliance with the enabling provisions of the Local Government Act 1995 and appropriately recorded resolutions of the Council. Where Councillor's request consideration of such Council approval the affected Councillor must vacate the Council Chambers in the first instance whilst the Council discusses and decides upon the Councillor's application.
7. Local Governments are required to include in their codes of conduct certain provisions in relation to the disclosure of interests that are perceived to affect the impartiality of elected members or employees. It is the Councillor's responsibility to declare those matters where they perceive they may have an Impartiality Interest – however Councillor's are entitled to stay in the room, participate in the debate and vote on matters where they have declared an Impartiality Interest.

Remember: The responsibility to declare an interest rests with individual Councillors. If Councillor's are in any doubt seek legal opinion or, to be absolutely sure, simply declare in any case.

Office Use Only:

Date/Initial

1. Particulars of declaration given to the meeting _____

2. Particulars recorded in the minutes _____

Signed by the Chief Executive Officer _____

INDEX OF AGENDA

1.	DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS	5
2.	RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE	5
3.	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	5
4.	PUBLIC QUESTIONS TIME.....	5
5.	DECLARATIONS OF INTEREST	6
6.	PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS.....	6
7.	CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS	6
8.	APPLICATIONS FOR LEAVE OF ABSENCE	6
9.	ANNOUNCEMENTS BY THE PRECIDING PERSON WITHOUT DISCUSSION	6
10.	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING.....	7
10.1	PROPOSED DWELLING, RETAINING WALL, JETTY AND SWIMMING POOL - LOT 311 (30) GNULLI COURT, EXMOUTH.....	7
10.2	APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICER	18
11.	ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN.....	20
12.	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING.....	20
13.	MATTERS TO BE CONSIDERED BEHIND CLOSED DOORS.....	20
13.1	MC LEODS LEGAL OPINION REGARDING THE CCC TRANSCRIPT, SHIRE POLICY AND CONTRACTS OF EMPLOYMENT.....	20
14.	CLOSURE OF MEETING.....	20

SPECIAL COUNCIL MEETING AGENDA

Our Vision

To support and develop a vibrant, welcoming community that embraces its past, values its present and plans for a sustainable future

Our Purpose

To responsibly provide governance for the whole community in the best interest of current and future generations

Our Strategic Objectives

- To provide sustainable management of the organisation
- To consistently apply the principles of Good Governance
 - To communicate effectively
 - To promote socioeconomic development
 - To value our environment and heritage

1. DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

2. RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

4. PUBLIC QUESTIONS TIME

In accordance with section 5.24 of the Local Government Act 1995, a 15 minute public question time is made available to allow members of the public the opportunity of questioning Council on matters concerning them.

Council Consideration Towards Public

When public questions necessitate resolutions of Council, out of courtesy and at the President discretion the matter is to be dealt with immediately to allow the public to observe the determination of the matter (obviates the need for the public to wait an undetermined period of time).

When a matter is listed on the Agenda and member/s of the public are in attendance to observe the determination of the matter, out of courtesy and at the discretion of the President the matter is to be brought forward on the agenda and dealt with immediately

to allow the public to observe the determination of the matter (again this obviates the need for the public to wait an indeterminate period of time).

The Deputy Shire President opened public question time. A number of people submitted similar questions in relation to the rate increase issue.

5. DECLARATIONS OF INTEREST

6. PETITIONS/DEPUTATIONS/PRESENTATIONS/SUBMISSIONS

In relation to Report 9.2 (Proposed Dwelling Lot 311 (30 Gnulli Court, Exmouth) Grant Bennett (landowner and proponent) and Ben Doyle (Town Planning Consultant) will be in attendance to present a deputation and speak against the officer's recommendation.

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

That the Minutes of the Ordinary Meeting of the Shire of Exmouth held on the 27 October 2016 and the Special Council Meeting held on the 18 November 2016 be confirmed as a true and correct record of proceedings.

8. APPLICATIONS FOR LEAVE OF ABSENCE

The Local Government Act 1995 (Section 2.25) provides that a Council may, by resolution, grant leave of absence to a member for Ordinary Council Meetings. A member who is absent, without first obtaining leave of the Council, throughout three consecutive Ordinary meetings of the Council is disqualified from continuing his or her membership of the Council.

Disqualification from membership of the Council for failure to attend Ordinary Meetings of the Council will be avoided so long as the Council grants leave prior to the member being absent. The leave cannot be granted retrospectively. An apology for non-attendance at a meeting is not an application for leave of absence.

9. ANNOUNCEMENTS BY THE PRECING PERSON WITHOUT DISCUSSION

10. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING

10.1 PROPOSED DWELLING, RETAINING WALL, JETTY AND SWIMMING POOL - LOT 311 (30) GNULLI COURT, EXMOUTH

File Reference:	PA127/16; A1425
Responsible Officer:	Executive Manager Town Planning Services
Date of Report:	15 November 2016
Applicant/Proponent:	DMG Australia (Architecture)
Disclosure of Interest:	Nil
Attachment(s):	<ol style="list-style-type: none">1. Proposal Plans2. Cover Letter and Attachments3. Further Justification Letter4. Net Developable Area and Conditional Developable Area Plan5. Figure 5, 6, 7 and 8 of Council's 6.16 – Design Guidelines for Exmouth Marina Village Precinct 'A'

PURPOSE

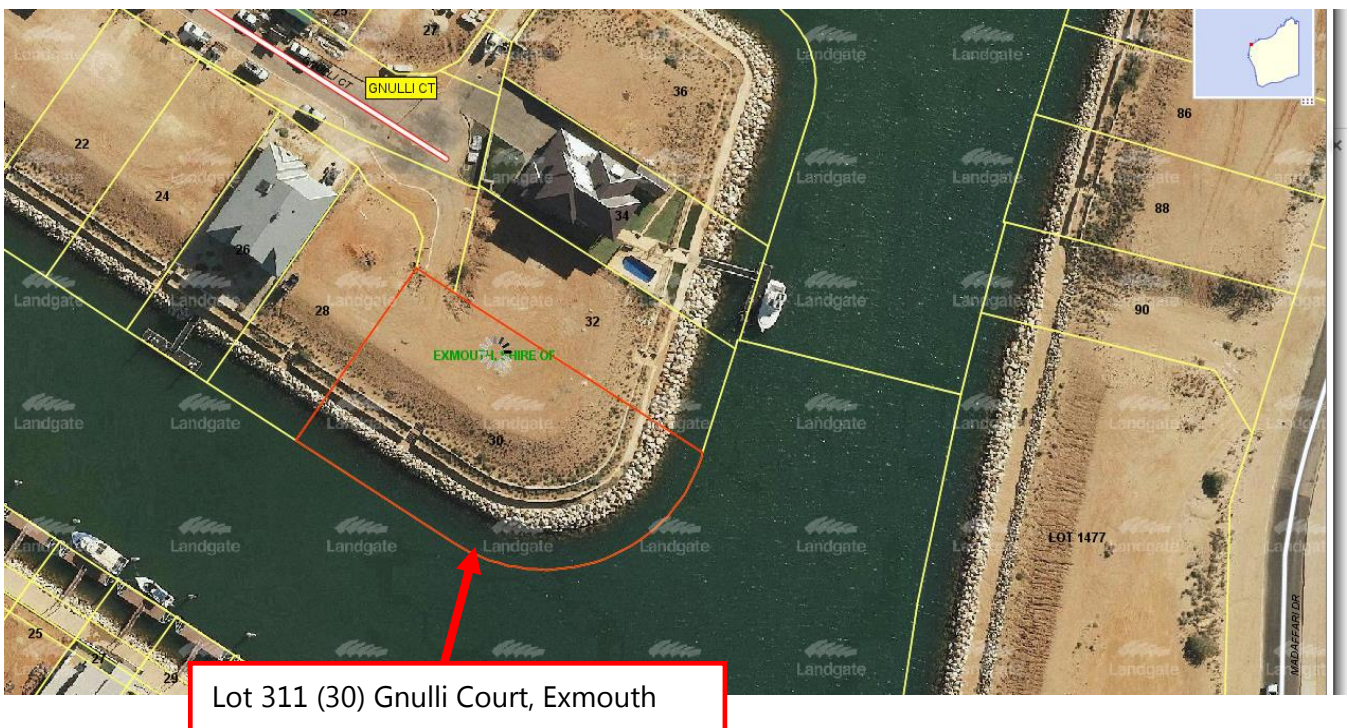
That Council consider a development application for a proposed dwelling, retaining wall, jetty and swimming pool at Lot 311 (30) Gnulli Court, Exmouth.

BACKGROUND

The property is currently a vacant canal fronting lot within the Exmouth Marina Village Estate. The applicant is seeking approval for the development of a dwelling, retaining wall, jetty and swimming pool (refer Attachment 1). The application substantially varies Council's Policy No. 6.16 – Design Guidelines for Exmouth Marina Village Precinct 'A' and cannot be determined under delegated authority. Please see the following list of all the proposed variations:

- Proposed 1.5m front boundary setback to the garage in lieu of the prescribed 5.5m setback.
- Proposed 1.792m northern side boundary setback to the play room in lieu of the prescribed 2m setback based on the 6.35m wall length and average 4.5m wall height from natural ground level.
- A nil western side boundary setback to the garage in lieu of the prescribed 1.5m setback based on the 14.5m wall length and average 3.76m wall height from natural ground level.
- A nil northern side boundary setback to the patio wall adjacent the pool in lieu of the 1.5m prescribed setback based on the 11.85m wall length and average 3.54m wall height above natural ground level.
- Walls, enclosed rooms and screening substantially protrude into the Conditional Development Area which are not open structures. The Guidelines only permit open structures with no walls within the Condition Development Area.
- Open structures within the Conditional Development Area with a finished floor level of 5.00AHD or less protrude into the prescribed 4m setback from canal side of the upper existing retaining wall to a minimum setback of 1.16m.

- Open structures within the Conditional Development Area with a finished floor level above 5.00AHD protrude into the prescribed 6m setback from canal side of upper existing retaining wall with a minimum setback of 3.23m.
- Retaining walls within the Conditional Development Area with a finished floor level of 4.75AHD setback 2.6m from the canal side of the upper existing retaining wall in lieu of 3.33m.
- Retaining walls within the Conditional Development Area with a finished floor level of 5.25AHD setback 3.35m from the canal side of the upper existing retaining wall in lieu of 4.66m.
- Retaining walls within the Conditional Development Area with a finished floor level of 5.507AHD setback 3.4m from the canal side of the upper existing retaining wall in lieu of 5.35m.
- The proposed Jetty is not fully contained within the existing Jetty Envelope.



COMMENT

The subject property is zoned 'Marina' by Town Planning Scheme No. 4. The objectives of the Marina zone are as follows:

5.5.1 Objectives

- to provide for residential, tourist, commercial, and marine industrial development with waterfront access adjacent to the Exmouth small-boat harbour.*
- to integrate with other land uses, particularly tourist and town centre related, to benefit the whole community.*
- to complement and not compete with the town centre for civic, cultural, and commercial uses.*
- to provide for marine research educational facilities to an appropriate scale and character.*
- to provide for visitors and pedestrian movements.*
- to create an attractive and viable project.*

- (g) promote and safeguard health, safety, convenience, environmental quality and the general welfare and amenity of the locality.*
- (h) to encourage a high standard of development within the zone.*
- (i) to promote a high standard of maintenance of artificial waterways and other waterways through cooperation with the Waterways Manager and the Department for Planning and Infrastructure.*

The proposal is not considered to undermine the objectives of the zone. However, as stated above, the proposal substantially varies Council's Policy No. 6.16 – Design Guidelines for Exmouth Marina Village Precinct 'A' which Council has adopted to guide the development of the area. Any variations to the Guidelines should be consistent with the objectives and setback considerations contained within the document. These are as follows:

5.1 Objectives

- To ensure a consistently high standard of development is maintained within the Marina Village with quality dwelling elevations that highlight and provide visual interest to the detail and scale of the design, and positively contribute to the streetscape and canal environment.*
- To facilitate a harmonious and attractive living environment which can be appreciated by both residents of the Precinct and the wider community.*
- To promote high quality and attractive dwellings with a consistency of more uniformed setbacks while allowing flexibility for innovative design.*

6.2 Setbacks

The Guidelines seek to apply consistent setbacks to both the street frontage and the rear canal frontage to:

- Provide some uniformity and continuity of the streetscape and view of lots from public areas, such as the canal.*
- Encourage dwellings to actively address available street, canal and open space frontages.*
- Provide a visual setting whilst allowing a transition zone between public areas and the private dwelling.*
- Provide a buffer to the street and canal with sufficient space for landscaping, privacy, parking and outdoor living areas.*
- Maximise views of the canal, residential amenity and avoid extensive solid walls within the Conditional Development Area (CDA) to maintain an open and pleasant environment.*
- Ensure that any significant works being undertaken in the CDA does not adversely affect the ability of the Waterways to sufficiently accommodate a 1:100 year flood event for the functional life of the structure.*
- Ensure that any significant works being undertaken in the CDA does not adversely affect the stability and structural integrity of the lot in a 1:100 year flood event for the functional life of the structure.*
- To provide for a positive interface between the CDA of adjacent residential lots.*
- To prevent pollution/contamination of the Exmouth Marina waterways.*
- To ensure a reasonable level of visual privacy for adjoining residents by consistently applying side setbacks within the CDA.*

6.2.5 General Setback Considerations

In considering setback to allow development in the CDA, Council will have regard that;

- *It is desirable to maintain an open 'waterway/coastal' environment adjacent to the canals to prevent the 'boxing' in of neighbours dwellings and allow for casual surveillance / interaction between the dwelling and the canal.*
- *Any development within the CDA should be open sided and visually permeable to provide a scenic environment and high level of amenity without significantly interrupting the open vista.*
- *Consistent setbacks along the canal are encouraged for the main dwelling – refer Figure 6 (refer Attachment 5).*

The following provides the Officer's assessment and recommendation regarding the different variations proposed.

Lot Boundary Setbacks within Net Developable Area (NDA)

A 1.5m front boundary setback to the garage is proposed in lieu of the prescribed 5.5m setback within the NDA (refer Attachment 4). The lot has a very peculiar access arrangement with the road reserve being similar to a battle-axe type access. In addition, the property frontage is very small, being 8.6m long, the width of the battle-axe road reserve. The access arrangement makes it difficult to achieve the appropriate front setback in designing the Dwelling given the layout and orientation of the NDA. Therefore, it is considered acceptable to assess the frontage as part of the northern side boundary. The Guidelines outline that side setbacks in the NDA are to be in accordance with State Planning Policy 3.1 Residential Design Codes (R-Codes) for the R20 density code. The proposal complies with the prescribed minimum 1.1m setback given the 8m long wall and 4.65m average wall height. The wall has no major openings.

A 1.792m northern side boundary setback to the play room in lieu of the prescribed 2m setback based on the 6.35m wall length and average 4.5m wall height from natural ground level. A play room is within the definition of a habitable room, therefore the subject wall possesses a major opening. Where development does not comply with the deemed-to-comply provisions of the R-Codes, which prescribes the nominal site and development requirements, it can still be in accordance with the R-Codes if Council considers the development consistent with all the relevant design principles which are as follows:

5.1.3 Lot boundary setback

P3.1 Buildings set back from lot boundaries so as to:

- *reduce impacts of building bulk on adjoining properties;*
- *provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and*
- *minimise the extent of overlooking and resultant loss of privacy on adjoining properties.*

The proposed setback variation is considered negligible. It is not considered to increase the impact of building bulk on the adjoining property. The orientation of the sun is considered from directly north of proposed buildings for the purpose of the R-Codes, therefore the variation will not overshadow the affected property. There is a sufficient setback for ventilation. Furthermore, the proposal complies with the overlooking requirements of the R-Codes.

Boundary Walls

Two walls are proposed to be built up side boundaries with a nil setback within the NDA. One wall is the western side of the garage which is 14.5m long with an average height of 3.76m from natural ground level. The prescribed setback is 1.5m as the wall has no major openings. The second wall is the northern side of the patio proposed over the pool which is 11.85m long and has an average height of 3.54m above natural ground level. The prescribed setback is 1.5m as the wall has no major openings.

The R-Codes does contain deemed-to-comply provision 5.1.3(C3.2) which allows certain walls to be built up to property boundaries, other than street boundaries. This provision prescribes a maximum wall length of 9m with a maximum height of 3.5m and average height of 3m above natural ground level, which may be built to one side boundary only. The proposal also does not comply with this provision, therefore the following design principles apply:

5.1.3 Lot boundary setback

P3.2 Buildings built up to boundaries (other than the street boundary) where this:

- *makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;*
- *does not compromise the design principle contained in clause 5.1.3 P3.1 (see above);*
- *does not have any adverse impact on the amenity of the adjoining property;*
- *ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and*
- *positively contributes to the prevailing development context and streetscape.*

The proposal is considered to result in building bulk on adjoining properties which adversely impacts the amenity of those properties. The proposed walls are substantially larger than other walls which have been built up to boundaries within 'Precinct A'. Therefore, they are not consistent with the prevailing development context. Given that it is not consistent with all the design principles it is not considered consistent with the R-Codes and should not be supported. As a precedent, currently there are no boundary walls within Precinct 'A' on multiple boundaries within the NDA which exceed the criteria set out by 5.1.3(C3.2). Given the ability of boundary walls to impact existing and future adjoining landowners and out of consistent decision making, it is considered that any boundary walls should be consistent with the previous development in order to be consistent with the design principles regarding bulk and prevailing development context.

Given the proposed boundary walls are considered too bulky the proposal is not considered compatible with the surrounding development. Therefore, pursuant to deemed provision 67(m) of the *Planning and Development (Local Planning Scheme) Regulations 2015* it is recommended that the walls should not be supported. Deemed provision 67(m) is a matter to be considered as follows:

- (m) *the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;*

Enclosed Structures and Walls within Conditional Development Area (CDA)

Walls, enclosed rooms and screening substantially protrude into the CDA (refer Attachment 4) which are not open structures. The Guidelines only permit open structures with no walls within the CDA through the setback requirements contained in provisions '6.2.4', '6.2.5.1(i)' and '6.2.5.1(ii)' as follows:

- 6.2.4 Rear (Dwelling setback to C.D.A.):

May have a nil setback to the Conditionally Developable Area (CDA) for the main dwelling (including building pad, enclosing walls of the dwelling etc) from the rear Net Developable Area (NDA) as depicted in Appendix C. This does not include detached open structures such as pergolas, patios or gazebo – refer Figure 5) (refer Attachment 5).

- 6.2.5.1 Specific Setback Requirements for all Development within the CDA

Notwithstanding the above, Council may allow development within the Conditional Developable Area (CDA) where reasonable privacy and view lines to the canal from neighbouring properties are maintained and the development maintains protection of the 1.6 metre wide Nutrient Retention Area (NRA) at all times;

(i) Open structures, such as verandahs, balconies, decks, porticos, and outdoor living areas attached to the main dwelling which are open on all sides shall have a minimum setback of 6 metres from the canal side of the secondary retaining wall. An example plan is included in Figure 7 (refer Attachment 5).

OR

(ii) The setback for open structures attached or detached to the main dwelling (such as verandahs, alfresco areas, pergolas, decks, patios and gazebos) can be reduced to 4 metres from the canal side of the secondary retaining wall if the maximum FFL is 5.00m AHD. An example plan is included in Figure 8 (refer Attachment 5).

The proposed protrusion of walls and screening into the CDA is not considered consistent with the setback considerations of the Guidelines. The considerations are primarily to provide uniformity and continuity of the view from the canal, a buffer between the canal and the building, an open canal waterway, consistent setbacks to the canal, open side and visually permeable structures, prevent the boxing out of adjoining property owners and to avoid solid obstructions, such as walls and screening within the CDA.

Based on the above it is considered that the proposal should not be supported as there is ample space within the NDA which has been used for landscaping and open structures instead of the enclosed portions of the Dwelling.

Rear Setbacks in the CDA

The following open structures are proposed within the CDA which do not comply with the rear setback requirements.

- Open structures within the Conditional Development Area with a finished floor level of 5.00AHD or less protrude into the prescribed 4m setback from canal side of the upper existing retaining wall to a minimum setback of 1.16m.
- Open structures within the Conditional Development Area with a finished floor level above 5.00AHD protrude into the prescribed 6m setback from canal side of upper existing retaining wall with a minimum setback of 3.23m.

Similar to the enclosed structures outlined above, it is considered that the rear setback variations for the open structures within the CDA should not be supported. The variations are not considered to be consistent with the setback considerations in that they result in the adjoining properties being boxed out by rooflines, inconsistent canal setbacks and no development uniformity and continuity.

In addition, where the protrusion is as little as 1.16m from the canal side of the upper existing retaining wall the transition zone is almost removed completely.

There is ample room within the NDA which has been used for landscaping which could be used for the proposed enclosed structures. Resultantly, moving the entire structure further back into the NDA would increase the rear setbacks within the CDA. Therefore, it is recommended that the proposed rear setback is not supported.

Retaining Walls within CDA

The Guidelines require that retaining within the CDA is a maximum of 0.75m above natural ground level. On average this results in the retaining wall being 0.75m high above the height of the upper existing retaining wall (3.50AHD) when setback 2m from the canal side of this wall and an additional 0.75m high for every 2m increase in this setback. A retaining wall has been proposed within the Conditional Development Area with a finished floor level of 5.507AHD setback 3.4m from the canal side of the upper existing retaining wall in lieu of 5.35m. The proposal is not considered consistent with the setback considerations of the Guidelines as it does not provide uniformity and continuity as viewed from the canal and consistent setbacks with retaining walls developed in the area under the current Guidelines considering its height. Therefore, it is recommended that this retaining wall is not supported.

In addition the applicant has proposed the following unroofed decking within the CDA:

- with a finished floor level of 4.75AHD setback 2.6m from the canal side of the upper existing retaining wall in lieu of 3.33m.
- with a finished floor level of 5.25AHD setback 3.35m from the canal side of the upper existing retaining wall in lieu of 4.66m.

The decking is technically subject to the 4m and 6m prescribed setbacks above based on its finished floor level. However, the decking has been considered under the above retaining wall provisions. This does allow a slightly smaller setback than the prescribed 4m and 6m. Given that it is unroofed it is considered more reasonable to treat the decking as a retaining wall as it effectively has the same visual impact.

The proposed decking is still not consistent with the prescribed retaining wall setback for its height. Furthermore, it is not considered consistent with the setback considerations of the Guidelines for the reasons outlined for the retaining wall above. Therefore, it is recommended that this decking wall is not supported.

Proposed Jetty

The jetty structure protrudes 3.6m outside of the Jetty Envelope to the east. The Guidelines require the jetty structure to be fully contained within the Jetty Envelope. Only detached mooring pylons are permitted to be located within the Mooring Envelope. These requirements have been put in place in conjunction with the Department of Transport who share the same requirement through their license requirement process. Therefore, it is recommended that the proposed Jetty should not be supported.

Draft Local Planning Scheme No. 4 (LPS4)

Council is currently in the process of adopting draft Local Planning Scheme No. 4 (LPS4) to replace Town Planning Scheme No. 3. Council has completed the advertisement of this document and it is therefore a seriously entertained planning instrument. Pursuant to deemed provision 67(b) of the *Planning and Development (Local Planning Scheme) Regulations 2015* Council is required to have

due regard to orderly and proper planning which includes any proposed local planning scheme which Council is seriously considering adopting. Draft LPS4 includes all of the same provisions provided in the Guidelines. Therefore, the proposal is not consistent with LPS4 and should not be supported out of orderly and proper planning.

Applicant's Justification

A cover letter was provided with the application in support of the proposal (refer Attachment 2).

The Officer provides the following comments in regard to the cover letter:

- The matter of predominant wind is not considered sufficient justification to depart from the Guidelines. This is something that should have been considered prior to purchasing the property as there are numerous corner properties which result in the dwelling blocking wind coming from the south east when built in the NDA. If the pool must remain in the current location the Dwelling can still be designed in a manner which still complies with the Guidelines. In addition, developing the house into the CDA to position landscaping within the NDA is not considered sufficient justification to vary the setback requirements when such landscaping can easily be contained in the CDA.
- The nominal area of the NDA and CDA is larger than almost all other properties within Precinct A of the Exmouth Marina Village. The only thing unique about the property is the property frontage and it being a corner canal lot. The front setback variation is supported for this reason. The property being a corner canal lot provides a larger CDA frontage where nil setbacks are permitted to enclosed rooms at the rear of the NDA. Therefore, the unique aspects of this property actually make compliance with the Guidelines easier than other properties which are subject to the Guidelines as the development potential is much greater within the NDA. The percentage of the total property area that the NDA and CDA comprise is not considered relevant as this is something that could have been considered prior to purchasing the property.
- The storage of an oversized boat is not a justification to develop an oversized garage. The onus is on landowners to develop residential properties in a manner that meets the site and development requirements which allows the lawful storage of their belongings and achieves the necessary privacy. There is ample opportunity to do this at the subject property without substantial variation to the Guidelines, especially considering the increased development potential of the NDA.

The Applicant has engaged a planning consultant to provide further justification for the proposal based on preliminary discussion with Council Officers (refer Attachment 3). The Officer provides the following comments in regard to the letter:

- It is considered that the on boundary walls are consistent with some of the design principles, hence they have not been discussed above. However, to be determined as being consistent with the R-Codes development needs to be considered consistent with *all* the applicable design principles. The applicant's justification is not considered sufficient to determine that adjoining properties will not be impacted by building bulk on shared property boundaries. It cannot be assumed that there is a guarantee that adjoining Dwellings will be developed in a manner that will not be impacted by the bulk of the proposed boundary walls. The walls are considered too bulky.

- The applicant has failed to note setback requirements 6.2.5.1(i) and 6.2.5.1(ii) which are provisions of the Guidelines clearly stating that structures are to be open sides. These setback requirements are based on general setback considerations within the Guidelines, some of which the applicant has identified. However the applicant has failed to identify the following consideration which outline that development should be open sided:
 - Provide some uniformity and continuity of the streetscape and view of lots from public areas, such as the canal.
 - Maximise views of the canal, residential amenity and avoid extensive solid walls within the Conditional Development Area (CDA) to maintain an open and pleasant environment.
 - Any development within the CDA should be open sided and visually permeable to provide a scenic environment and high level of amenity without significantly interrupting the open vista.
 - Consistent setbacks along the canal are encouraged for the main dwelling.
- Although the proposed CDA development is consistent with some of the setback considerations of the Guidelines it is not consistent with all of the considerations. If the property was developed in accordance with the site and development requirements of the Guidelines it is considered that the development would achieve consistency with all the setback considerations. Therefore, based on the merits and outcome performance of the proposal it is considered that proposal should not be supported as it still undermines some of the setback considerations.
- Local planning policies are not afforded the statutory powers of a local planning scheme to maintain their flexibility. Resultantly, Council does have the ability to approve the application considering the referral process has been conducted. However, the adoption of a local planning policy results in Council adopting a position on a matter, such as the development of Dwelling's within 'Precinct A' of the Exmouth Marina Village Estate. Consequently, subsequent development approvals are determined in accordance with that position. Therefore, there should be an exceptional circumstance to warrant the significant variation of a local planning policy as this would result in a departure from consistent decision making and precedence. The subject property is not considered to pose an exceptional circumstance which would warrant the proposed variations. The outcomes of the subject proposal that the applicant has used as justification for the proposed variations can be achieved through a development which complies with Council's Guidelines.
- The proposal does set a precedent for similar development in the future. Boundary walls have been proposed on normal side boundaries possessed by every property within 'Precinct A'. In addition, every canal fronting property possesses a Nett Developable Area and CDA. The only unique aspects of this property is the access and street frontage and it being a corner canal lot. As outlined above these aspects actually increases development potential which is justification that the significant variations should not be supported.

Conclusion

Given the substantial variations outlined in this Comment section it is considered that the application cannot be approved in a manner which would achieve an acceptable outcome outlined by Policy No. 6.16 – Design Guidelines for Exmouth Marina Village Precinct 'A', even through the application of conditions. The proposal requires substantial amendment to achieve an acceptable outcome.

Therefore, it is recommended that Council refuse to grant development approval for the proposal for the reasons outlined in the Officer's Recommendation.

CONSULTATION

Given the proposal varies Council's Policy No. 6.16 – Design Guidelines for Exmouth Marina Village Precinct 'A' it was referred to the affected surrounding landowners to provide comment in accordance with the Policy and the *Planning and Development (Local Planning Scheme) Regulations 2015*. The proposal was referred with a minimum 14 day submission period from the 3 November 2016 to the 18 November 2016. One submission was received as follows:

Property Referred	Submitters Response	Officer Comments
Lot 310 (28) Gnulli Court, Exmouth	I am the western neighbour. The intrusions into the Conditional Development Area are seriously obstructive. The garage wall is too high. There needs to be normal setbacks on the western boundary and southern CDA.	Noted. The protrusions in the CDA are considered to undermine the setback considerations of <i>Policy No. 6.16 – Design Guidelines for Exmouth Marina Village Precinct 'A'</i> . In addition, the proposed garage wall is considered too bulky which is not consistent with all the applicable design principles of the R-Codes. Therefore, it is recommended that the proposal is not supported.

The applicant has provided a letter of support from the owners of Lot 312 (32) Gnulli Court, Exmouth with the cover letter (refer Attachment 2). Support from the adjoining landowner is still not considered sufficient justification for the proposed variations given the reasons outlined in the comment section above and the precedence that approval of the application would result in.

STATUTORY ENVIRONMENT

Planning and Development Act 2005

Planning and Development (Local Planning Scheme) Regulations 2015

Town Planning Scheme No. 3

POLICY IMPLICATIONS

Policy 6.2 – Colour Palette for Developments

Policy 6.16 – Design Guidelines for Exmouth Marina Village Precinct 'A'

State Planning Policy 3.1 Residential Design Codes

Draft Local Planning Scheme No. 4

FINANCIAL IMPLICATIONS

Nil

STRATEGIC IMPLICATIONS

This item is relevant to the Councils approved Strategic Community Plan 2011-2021 and Corporate Business Plan 2016-2020.

- Economic:
- 1 To be a diverse and innovative economy with a range of local employment opportunities.
 - 1.1 *To increase the number of local businesses, industries and services that will provide a range of employment opportunities for the people of Exmouth.*

- Civic Leadership: 4 To work together as custodians of now and the future.
- 4.1 *To be a collaborative community with the capacity to manage the current and future direction of Exmouth.*
- 4.2 *A local government that is respected, professional, trustworthy and accountable.*

VOTING REQUIREMENTS

Simple Majority

OFFICER'S RECOMMENDATION

ITEM 10.1

That Council refuse to grant development approval for a proposed dwelling, retaining wall, jetty and swimming pool at lot 311 (30) Gnulli Court, Exmouth for the following reasons:

1. The proposal does not comply with Council's Policy No. 6.16 – Design Guidelines for Exmouth Marina Village Precinct 'A' as follows:
 - a. The proposal is not consistent with the design principles of State Planning Policy 3.1 Residential Design Codes regarding lot boundary setbacks within the Net Developable Area;
 - b. Walls, enclosed rooms and screening substantially protrude into the Condition Development Area;
 - c. Open structures within the Conditional Development Area do not meet the rear setbacks;
 - d. Retaining walls within the Conditional Development Area do not meet the maximum height and/or setback requirements;
 - e. The Jetty is not fully contained within the Jetty Envelope;
 - f. The proposal is not considered consistent with all the setback considerations outlined in the Policy; and
2. Pursuant to deemed provision 67(b) of the *Planning and Development (Local Planning Scheme) Regulations 2015*, approval of the proposal would not be orderly and proper planning as it is not consistent with draft Local Planning Scheme No. 4;
3. Pursuant to deemed provision 67(m) of the *Planning and Development (Local Planning Scheme) Regulations 2015*, the proposed boundary walls within the Net Development Area are not compatible to development on adjoining land given their height, bulk and scale; and
4. Approval of the application would set an undesirable precedence for similar development in the future.

Advice

- i. If an applicant or owner is aggrieved by this determination there is a right of review by the State Administrative Tribunal in accordance with the *Planning and Development Act 2005* Part 14. An application must be made within twenty eight (28) days of the determination.

10.2 APPOINTMENT OF ACTING CHIEF EXECUTIVE OFFICER

File Reference:	GV.CM.0
Responsible Officer:	Shire President
Date of Report:	1 December 2016
Applicant/Proponent:	Nil
Disclosure of Interest:	Nil
Attachment(s):	Nil

PURPOSE

That Council appoint Mr Keith Woodward, Executive Manager Engineering Services as the Acting Chief Executive Officer (Senior Employee) until notified by Council, for a term not exceeding 12 Months in accordance with the *Local Government Act 1995* Part 5 Division 4 Section 5.36, 5.42 and Section 5.69 (1a) (a).

BACKGROUND

To facilitate the functions of the Local Government Chief Executive Officer an Acting Chief Executive Officer must be appointed to carry out the duties of the *Local Government Act 1995* in accordance with Part 5 Division 5 Section 5.41.

COMMENT

Nil

CONSULTATION

Shire President and Council

STATUTORY ENVIRONMENT

Local Government Act 1995 Part 5, Division 4, Section 5.36, Section 5.41, Section 5.42, Section 5.43 and section 5.69.

POLICY IMPLICATIONS

Policy 1.24 – Acting Chief Executive Officer
Policy 1.1 – Senior Employees

FINANCIAL IMPLICATIONS

Remuneration accounted for in the 2015/2016 Shire Budget.

STRATEGIC IMPLICATIONS

This item is relevant to the Councils approved Strategic Community Plan 2011-2021 and Corporate Business Plan 2016-2020.

Civic Leadership:	4	<u>To work together as custodians of now and the future.</u>
	4.1	<i>To be a collaborative community with the capacity to manage the current and future direction of Exmouth.</i>

- 4.2 *A local government that is respected, professional, trustworthy and accountable.*
- 4.3 *To be strong advocates representing the region's interests.*

VOTING REQUIREMENTS

Absolute Majority

OFFICER'S RECOMMENDATION

ITEM 10.2

That Council:

1. Appoint Mr Keith Woodward, Executive Manager Engineering Services as the Acting Chief Executive Officer (Senior Employee) until notified by Council for a term not exceeding 12 Months in accordance with the *Local Government Act 1995* Part 5 Division 4 Section 5.36,5.42 and Section 5.69 (1a) (a).
2. The Acting Chief Executive Officer will be compensated at a higher duties rate of 100% per hour of the current Chief Executive Officer rate.

- 11. ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 12. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING**
- 13. MATTERS TO BE CONSIDERED BEHIND CLOSED DOORS**
 - 13.1 MC LEODS LEGAL OPINION REGARDING THE CCC TRANSCRIPT, SHIRE POLICY AND CONTRACTS OF EMPLOYMENT**
- 14. CLOSURE OF MEETING**