



— City of —
Melville

REPORTS AND RECOMMENDATIONS

FROM THE

DEVELOPMENT ADVISORY UNIT

MEETING

HELD ON

6 JANUARY 2008

- NOTES:**
1. This Meeting makes Recommendations to the Manager Planning & Development Services.
 2. Should any Elected Member want any matter referred and considered by the Council, please contact the Manager Planning & Development Services prior to the Tuesday (or Wednesday if Monday is a public holiday) following the date of this Meeting.
 3. Unless 'called in' by an Elected Member it is expected that the Manager Planning & Development Services will after the 'call in' date approve the recommendations, refer the matter to the Council or back to the Development Advisory Unit for further considerations.

DISTRIBUTED: 9 JANUARY 2008



— City of —
Melville

10 Almondbury Road Booragoon WA 6154
Postal Address: Locked Bag 1, Booragoon WA 6954
Tel: 08 9364 0666
Fax: 08 9364 0285
Email: melinfo@melville.wa.gov.au
Web: www.melville.wa.gov.au

**REPORTS AND RECOMMENDATIONS FROM THE DEVELOPMENT ADVISORY UNIT
MEETING HELD IN, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD,
BOORAGOON, COMMENCING AT 1:30PM ON TUESDAY 6 JANUARY 2009**

PRESENT

D Vinicombe (Presiding Member)
J Gonzalez
P.Prendergast
T Capobianco
D Monteiro
R Jessup
R Bailey

Manager Planning & Development Services
Planning Services Coordinator
Planning Services Coordinator
Principal Building Surveyor
Environmental Health Officer
Senior Horticultural Technical Officer
Technical Officer

APOLOGIES

IN ATTENDANCE

OBSERVERS

DISCLOSURES OF INTEREST

ELECTED MEMBERS' ATTENTION

Nil

DELEGATED AUTHORITY – PLANNING POLICY (1) 2

The following items are recommendations to the Manager Planning & Development Services for decision.

DISCLOSURE OF FINANCIAL INTERESTS LOCAL GOVERNMENT ACT 1995

Members' interests in matters to be discussed at meetings to be disclosed

S.5.65 (1) A member who as an interest in any matter to be discussed at a Council or Committee meeting that will be attended by the member must disclose the nature of the interest -

- (a) in a written notice given to the Chief Executive Officer before the meeting; or
- (b) at the meeting immediately before the matter is discussed.

Penalty: \$10,000 or imprisonment for 2 years.

Meeting to be informed of disclosures

S.5.66 If a member has disclosed an interest in a written notice given to the Chief Executive Officer before a meeting then before the meeting -

- (a) the Chief Executive Officer is to cause the notice to be given to the person who is to preside at the meeting; and
- (b) the person who is to preside at the meeting is to bring the notice to the attention of the persons who attend the meeting.

Disclosing members not to participate in meetings

S.5.67 A member who makes a disclosure under Section 5.65 must not -

- (a) preside at the part of the meeting relating to the matter; or
- (b) participate in, or be present during, any discussion or decision making procedure relating to the matter,

unless, and to the extent that, the disclosing member is allowed to do so under Section 5.68 or 5.69.

Penalty: \$10,000 or imprisonment for 2 years.

Please refer to your Handbook for definitions of interests and other detail.

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U09/0002 - (HS) AVIARY ON LOT 836 (47) MACLEOD ROAD, APPLECROSS WA 6153
(REC) (ATTACHMENT)

Ward : Applecross/Mount Pleasant Ward
Category : Operational
Application Number : DA-2008-649
Property : 47 MacLeod Road, APPLECROSS WA 6153
Proposal : Aviary
Applicant : Mr K C Taylor
Owner : Mr K C Taylor and Ms R Taylor
Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
Responsible Officer : Mr David Vinicombe
Manager Planning and Development Services
Previous Items : Not applicable.

AUTHORITY / DISCRETION

- | | <u>Definition</u> |
|--|---|
| <input type="checkbox"/> Advocacy | <i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i> |
| <input type="checkbox"/> Executive | <i>the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets</i> |
| <input type="checkbox"/> Legislative | <i>includes adopting local laws, town planning schemes & policies.</i> |
| <input type="checkbox"/> Review | <i>when Council reviews decisions made by Officers.</i> |
| <input checked="" type="checkbox"/> Quasi-Judicial | <i>when Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i> |

**U09/0002 - (HS) AVIARY ON LOT 836 (47) MACLEOD ROAD, APPECROSS WA 6153
(REC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- Application is for two (2) multi-specie aviaries approximately 48m² each and four (4) small aviaries approximately 5m².each. Total aviary size of 116m².
- Proposed total number of birds to be kept is 68.
- Objections received from surrounding neighbours for the application raising concerns relating to: noise, odour, rodents, overall appearance and non-compliance with City's Policy.
- Two-stage noise assessment undertaken by Environmental Health Officer – one measuring ambient noise of the subject site, second assessment measuring noise generated from 36 birds contained within a 2.0m x 3.0m enclosure.
- 2.0m x 3.0m enclosure constructed on the subject site does not require Planning or Building approval.
- Results of the noise assessment found that ambient noise was greater than noise generated by the 36 birds contained within the 2.0m x 3.0m enclosure.
- Odour and rodent concerns can be managed.
- Noise emission must be limited to comply with the *Environmental Protection (Noise) Regulations 1997* at all times.
- It is recommended that the application be conditionally approved.

BACKGROUND**Scheme Provisions**

MRS Zoning	:	Urban
CPS 5 Zoning	:	Living Area – A1 Applecross
R-Code	:	R15
Use Type	:	Residential
Use Class	:	Outbuilding

Site Details

Lot Area	:	2039.92 sqm
Retention of Existing Vegetation	:	n/a
Street Tree(s)	:	n/a
Street Furniture (drainage pits etc)	:	n/a
Site Details	:	U09_0002_PROPERTY_MAP.pdf

[U09_0002_January_2009.pdf](#) A copy of the plans forms part of the Attachments to the Agenda, which were distributed to Members of the Council on Friday 9 January 2009

DETAIL

**U09/0002 - (HS) AVIARY ON LOT 836 (47) MACLEOD ROAD, APPECROSS WA 6153
(REC) (ATTACHMENT)**

Development Requirements

Residential Design Codes of Western Australia

Clause 6.10.1 – Outbuildings:

Criteria	Required	Proposed	Comment	Delegation to approve variation
Setback - North - South	1.0m 1.0m	9.0m 3.2m	Complies Complies	n/a
Maximum Size (outbuildings)	60m ² or, 10% of site area (whichever is lesser)	117m ²	Does not comply	MPDS
Maximum height - Wall height - ridge height	2.4m 4.2m	Approx. 2.1m 3.0m	Complies Complies	n/a
Building materials	Non-reflective	Not reflective and not visible from street	Complies	n/a

(Note: Non compliance is emphasised in bold)

PUBLIC CONSULTATION/COMMUNICATION

Advertising Required: Yes
Neighbour's Comment Supplied: Yes
Reason: Variation to Council Policy and R-Codes
Support/Object: Object

U09/0002 - (HS) AVIARY ON LOT 836 (47) MACLEOD ROAD, APPECROSS WA 6153
(REC) (ATTACHMENT)

Submission Number	Summary of Submission	Support/ Object	Officer's Comment	Action (Uphold/ Not Uphold)
1.	Concerns raised in relation to: <ul style="list-style-type: none"> • Noise • Smell • Overall appearance • devaluing home 	Object	<ul style="list-style-type: none"> • There is no measurable noise related impact from this proposal. This view is borne out by the results of a noise assessment exercise undertaken as part of the assessment of this planning application (refer to comments section below). • Smells from the proposed aviary can be addressed through careful management of the use including regular cleaning. • Aviary will not be visible due to existing landscaping/trees which provide an effective screen. • Devaluation of property is not a material planning consideration. 	Not Uphold

**U09/0002 - (HS) AVIARY ON LOT 836 (47) MACLEOD ROAD, APPECROSS WA 6153
(REC) (ATTACHMENT)**

2.	<p>Concerns raised in relation to:</p> <ul style="list-style-type: none"> • The keeping of birds in captivity • Noise • Health hazard – rodents, vermin, infectious bird diseases • Non-compliance with provisions of Council Policy 	Object	<ul style="list-style-type: none"> • The arguments for or against the keeping of birds in captivity are subjective and are not material planning considerations. • There is no measurable noise related impact from this proposal. This view is borne out by the results of a noise assessment exercise undertaken as part of the assessment of this planning application (refer to comments section below). • Smells and health related hazards can be addressed through careful management including regular cleaning. • Non-compliance with Policy provisions is subject to MPDS approval under delegation. 	Not Uphold
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REFERRALS TO GOVERNMENT AGENCIES

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

Should the City of Melville refuse the application, the applicant will have the right to appeal the decision in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS

Not applicable.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Not applicable.

**U09/0002 - (HS) AVIARY ON LOT 836 (47) MACLEOD ROAD, APPECROSS WA 6153
(REC) (ATTACHMENT)**

POLICY IMPLICATIONS

Policy No: 06-033 – Building Licence Requirements – Incidental Structures

The objective of Policy No. 06-033 is to formally identify structures which are considered minor in nature (i.e. incidental), and therefore do not require Building Licence Approval. As the size of this proposal exceeds the maximum size envisaged by this policy, the proposed structure is not classed as incidental and, Planning and Building Approval is required. The provisions of this Policy are therefore not applicable in this case.

COMMENTS

The main issues for consideration in the determination of this application relate to a variation sought under the provisions of the R-Codes to the maximum outbuilding size requirement, (117sqm's in lieu of 60sqm's). In addition there are health and noise issues which need to be addressed.

Variations to R Code Requirements

Under the "Incidental Development Requirements" provisions of the R Codes, Clause 6.10.1 "Outbuildings" outlines a set of acceptable development criteria for the provision of outbuildings in a residential scenario. The development the subject of this application complies with these provisions with the exception of the floor area proposed which at 116 sqm's exceeds the maximum envisaged under the Codes by 56 sqm's. Notwithstanding this, under the Performance Criteria of Clause 6.10.1 "*Outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties*" may be acceptable.

It is considered that the proposed aviary structure does not detract from the streetscape or visual amenity of residents or neighbouring properties for the following reasons:

- The proposed aviary is not visible from the front of the property, and therefore does not detract from the visual character of the existing streetscape in this locality;
- 45 MacLeod Road (to north) – the proposed structure is screened from view from this adjoining property by virtue of an existing shed. The proposed aviary will only be visible from a bathroom window located on the second storey of the existing residence;
- 49 MacLeod Road (to south) – the proposed structure is screened from view from this property by virtue of a belt of existing densely planted shrubs and trees. These, coupled with the dividing fence between the two properties, as well as the proposed setback from the side boundary of 3.0m further mitigates against any adverse visual impact. The applicant has indicated a willingness to further bolster this landscaping via additional planting within his lot boundary, and this will provide further mitigation; and,

**U09/0002 - (HS) AVIARY ON LOT 836 (47) MACLEOD ROAD, APPECROSS WA 6153
(REC) (ATTACHMENT)**

- 1/78 Matheson Road (to west) – the proposed structure is setback in excess of 26 m from the rear boundary of 1/78 Matheson Road. Furthermore, the subject site is situated considerably lower than 1/78 Matheson Road, and this , together with the generous setback, provides the necessary mitigation.

Noise Impact

In response to the concerns aired by neighbouring occupiers, the City's Environmental Health Officer has undertaken a two stage noise assessment at the subject property, one measuring the ambient noise levels and a second assessment measuring noise generated from a constructed 2.0m x 3.0m aviary structure housing 36-birds on the subject property.

The results of the noise assessments demonstrate that the ambient noise levels (i.e. background noise without the captive birds) was slightly greater than the noise measurement taken with the 36-birds contained within the 2.0m x 3.0m aviary structure. These results suggest that:

- The addition of captive birds in the area has not had any impact on the background noise generated by wild birds;
- Noise generated from the captive birds is not considered unreasonable or excessive as it is lower than the background noise in the area. The background noise level recorded (42-44dB) is already in excess of the assigned levels for a residential property stipulated under the *Environmental Protection (Noise) Regulations 1997* (i.e. 36dB) between 10pm and 7am.

Furthermore, the noise assessment was undertaken on the subject property itself. If the noise assessment was undertaken from a neighbouring property, ambient noise levels would be broadly similar to those found to exist at the subject lot, but the impact of noise generated from the proposed aviary would be reduced by virtue of the separation that would exist between the neighbouring receptor and the aviary.

As a result of these findings, it is concluded that in noise terms, the proposed use can successfully operate without prejudice to the levels of residential amenity currently enjoyed by occupiers of neighbouring properties.

Health Impact

Health concerns can be appropriately addressed via regular cleaning and maintenance. The following precautions are proposed:

- Odour – All seeds shall be captured within custom plastic containers and emptied weekly. Faecal matter shall also be cleaned on a weekly basis.

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- ats/Mice – No fruiting trees or other food sources shall be contained within the aviary. Hardiflex or steel sheeting is also proposed surrounding the base of the aviary to prevent rats/mice burrowing through the ground. Bird feed shall be stored within a plastic bin. It should be noted that the applicant is concerned to ensure that no rats/mice can enter the aviary as they will attack the birds.

CONCLUSION

It is concluded that subject to the imposition of suitable and relevant planning conditions, the proposed aviary development can operate without prejudice to the intent of the R Codes, and without detriment to residential amenity. As such it is recommended that conditional approval be granted.

OFFICER RECOMMENDATION**APPROVAL****SPECIAL CONDITIONS:**

- 1. THE AVIARY USE SHALL BE OPERATED IN ACCORDANCE WITH THE DETAILS PROVIDED AND THE APPLICANT SHALL ENSURE THE IMPLEMENTATION OF NECESSARY PRECAUTIONS IN MANAGING ODOUR, VERMIN AND RELATED NUISANCES.**

STANDARD CONDITIONS:

- 2. PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION THE COUNCIL REQUIRES THE PROVISION OF A SUITABLE RECEPTACLE FOR THE CONTAINMENT OF WINDBLOWN RUBBISH. THE RECEPTACLE (GENERALLY A WIRE MESH CAGE) SHOULD HAVE MAXIMUM OPENINGS OF 100MM; HAVE A BASE OF 4M² AND A HEIGHT OF 1M AND A HINGED LID. THE RECEPTACLE SHOULD NOT BE ALLOWED TO OVERFILL.**
- 3. THE BUILDING IS NOT TO BE USED FOR HABITABLE OR NON RESIDENTIAL PURPOSES.**

FOOTNOTES:

- 1. THE PROPOSED DEVELOPMENT SHALL OPERATE IN COMPLIANCE WITH THE PROVISIONS OF THE ENVIRONMENTAL PROTECTION (NOISE) REGULATIONS 1997 AT ALL TIMES.**

U09/0003– (RJ) - STREET TREE REMOVAL REQUESTS RELATIVE TO DEVELOPMENT PROPOSALS AT DAU MEETING JANUARY 6 2009

No.	LOCATION	TREE/BACKGROUND	RECOMMENDATION
1	7 Noalimba Crescent Bateman	Request to remove one street tree to allow construction of a crossover to a new dwelling almost complete. The tree is a small Eucalypt species, a young tree planted by the Developer as part of the subdivisional conditions approximately 2.0 metres in height. There are no specific conditions on the Development Approval or the Building License in respect to this tree. The tree is shown on plans approved for the Building License positioned within the proposed crossover on the very left hand side. The approved plan has a notation "verge tree to be relocated as per shire requirements"	It is recommended that the tree be removed and replaced with one semi-advanced Jacaranda mimosifolia in a 100 litre container, subject to: all works by the City of Melville at applicant's expense