



— City of —
Melville

REPORTS AND RECCOMENDATIONS
FROM THE
DEVELOPMENT ADVISORY UNIT
MEETING
HELD ON
12 MAY 2009

- 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: 15 MAY 2009



— 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 12 MAY 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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U09/0074– (RJ) - STREET TREE REMOVAL REQUESTS RELATIVE TO DEVELOPMENT PROPOSALS AT DAU MEETING 12 MAY 2008

No.	LOCATION	TREE/BACKGROUND	RECOMMENDATION
1	37 Queens Road Ardross	<p>Planning Assessment for a two storey dwelling corner of Strickland Road. Applicant has proposed to remove one street tree to allow crossover access from the Strickland Road frontage. The tree is a medium sized <i>Callistemon viminalis</i> (Weeping Bottlebrush) in average condition. Removal of this tree will improve crossover access which has already been deviated due to the existing electricity pole.</p> <p>See photo of tree below.</p>	<p>Remove and replace this tree with one 100 litre semi advanced <i>Corymbia ficifolia</i> (Red Flowering Gum) will improve the streetscape. All work by the City of Melville at the applicant's expense subject to Building Licence Approval and an application to the Manager of Parks & Environment.</p>



U09/0074– (RJ) - STREET TREE REMOVAL REQUESTS RELATIVE TO DEVELOPMENT PROPOSALS AT DAU MEETING 12 MAY 2008

No.	LOCATION	TREE/BACKGROUND	RECOMMENDATION
2	13 Pembroke Street Bicton	<p>Pathway request 107852 for removal of one street tree to allow construction of a crossover to access a proposed new dwelling. A development application has not been lodged at this time. The tree is a <i>Lophostemon conferta</i> (Box Tree) in good condition which forms part of an avenue of similar trees along this side of the street.</p> <p>See photos of tree and streetscape below.</p>	<p>The Street tree to be retained and the dwelling to be redesigned by either mirror imaging the entire layout with the crossover positioned on the eastern side (right hand side) of the Lot or by mirror imaging the front section being the garage & entry with the crossover positioned on the eastern side (right hand side) of the Lot.</p> <p>This will maintain the established streetscape along this side of Pembroke Street.</p>



**U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD,
APPLECROSS (REC) (ATTACHMENT)**

Ward : Applecross/Mount Pleasant Ward
Category : Operational
Application Number : DA-2009-158
Property : 3B Carron Road, APPLECROSS WA 6153
Proposal : Third-storey addition
Applicant : Emmerton Pty Ltd
Owner : Mr T Lomma
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 : Nil

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> |

**U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD,
APPLECROSS (REC) (ATTACHMENT)**

KEY ISSUES / SUMMARY

- The application is for a third-storey addition to a two-storey dwelling with undercroft, which is currently under construction.
- The application complies with the requirements of the Residential Design Codes of Western Australia ('R-Codes').
- Council Policy 06-PL-026 refers to the use of the Metropolitan Water Authority Perth BG 2000 Series Aerial Photography 1972-1975 maps. Due to an anomaly identified with respect to AHD levels depicted on the above data and those of more recent data source of the same 2000 Series maps. The application relies on the latter data in assessing building height.
- The application satisfies the provisions of Council Policy 06-PL-026 - Height of Buildings.
- Neighbour consultation has been undertaken in accordance with Council Policy 06-PL-003."Development Approvals".
- One (1) submission has been received, objecting to the proposal on the grounds of overshadowing and excessive building height and general amenity grounds.
- Application complies with Council and R-Code requirements, is not considered to impact on the amenity of the neighbour and is recommended for conditional approval.

U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD,
APPLECROSS (REC) (ATTACHMENT)



U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD, APPLECROSS (REC) (ATTACHMENT)

BACKGROUND

Scheme Provisions

MRS Zoning : Urban
 CPS 5 Zoning : RFS – River Foreshore
 R-Code : R12.5
 Use Type : Residential
 Use Class : Permitted

Site Details

Lot Area : 592 sqm
 Retention of Existing Vegetation : n/a
 Street Tree(s) : n/a
 Street Furniture (drainage pits etc) : n/a
 Site Details : See above image

[U09_0077_May_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 15 May 2009.

DETAIL

Development Requirements

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
Open Space	55%	No change to existing	Complies		
Plot Ratio	n/a	n/a			
Landscaping	n/a	n/a			
Building Height	8.8m (eaves) 10.5m (max)	n/a 10.5m max	Complies		
Carparking	2 bays (1 covered)	Already approved	Complies		
Over-shadowing	25%	19.7%	Complies		

(Note: Non compliance is emphasised in bold)

U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD, APPLECROSS (REC) (ATTACHMENT)

Setbacks

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
Primary Street	7.5m	14.2m	Complies		
Side (north)					
- Darkroom	1.4m	2.5m	Complies		
- Balcony	2.4m	3.6m	Complies		
Side (south)					
- Studio	2.5m	3.2m	Complies		
- Bed	1.4m	1.89m	Complies		
Rear (west)	1.6m	11.4m	Complies		

(Note: The setback requirements shown above are for the third-storey addition only)

PUBLIC CONSULTATION/COMMUNICATION

Advertising Required:	Yes – 2 adjoining residents
Neighbour's Comment Supplied:	Yes – 1 submission received
Reason:	As per requirements of Policy 06-003
Support/Object:	1 x objection

U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD, APPLECROSS (REC) (ATTACHMENT)

Comment Number	Summary of Submission	Support / Objection	Officer's Comment	Action (Condition / Uphold / Not uphold)
1.	<p>Whilst the claimed shadow impact of the proposal is in accordance with cl. 6.9.1 of the R-Codes, Council is also required to have due regard to cl. 7.8 of CPS No. 5. Of relevance are the following matters of cl. 7.8:</p> <p><i>(c) the existing and likely future amenity of the area;</i> <i>(h) the nature of the proposed development in relation to development either existing or proposed on adjoining land and the need to upgrade existing roads;</i> <i>(i) the size, shape and character of the lot upon which the development is to be carried out, and the influence which this may have on the sitting and nature of any new building; and</i> <i>(k) any relevant submissions received on the application.</i></p>	Object	<p>The original approval for a two storey residence at 3B Carron Road supported a shadow impact of 16.1% onto the adjoining property.</p> <p>The proposed third-storey addition increases the shadow impact to 19.7%, which is also compliant with the 25% overshadowing classed as acceptable development under the provisions of the R-Codes.</p> <p>Scheme provisions under Clause 7.8 are considered to be satisfied. See further comments below for further explanation.</p>	Not uphold
	The shadow is concentrated over the existing dwellings northern aspect and blocks all openings from natural sunlight.	Object		Not Uphold
	The additional level would result in additional overshadowing that is not sympathetic to 'existing and likely future amenity of the area'.	Object		Not Uphold
	The fourth storey will reduce sustainability principles to No. 5 Carron Road.	Object	See detailed comments below relative to north facing windows on adjoining property.	Not Uphold

U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD, APPLECROSS (REC) (ATTACHMENT)

	<p>Whilst the current density does not permit subdivision; any future subdivision would be prejudiced by the extent of overshadowing that would result from the proposal.</p>	<p>Object</p>	<p>It is considered unnecessary and premature to consider potential overshadowing impact which may result out of future subdivision. Such matters cannot be fairly assessed until such time that subdivision and/or development is proposed.</p>	<p>Not Uphold</p>
	<p>Any future redevelopment of No. 5 Carron Road would be adversely impacted given the depth of the shadow that results from the proposed fourth storey.</p>	<p>Object</p>	<p>It is considered unnecessary and premature to consider potential overshadowing impact which may result out of future subdivision. Such matters cannot be fairly assessed until such time that subdivision and/or development is proposed.</p>	<p>Not Uphold</p>
	<p>The proposed additional level is considered an entire storey and exceeds an 8.0m building height to the top of the eaves. Whilst the ground levels are not shown on the southern elevation, the eaves to the fourth level are circa 10.0m from the ground levels. At this juncture we object to the proposed building height until such time that the plans clearly indicate the building height does not exceed 8.0m to the eaves or top of the wall of level four from the (then) Metropolitan Water Authority Perth BG 2000 Series Aerial Photography 1972-1975 maps.</p>	<p>Object</p>	<p>The proposal is in compliance with Council's Policy with regard to building height. Refer to comments section below regarding building height considerations.</p>	<p>Not Uphold</p>

U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD, APPLECROSS (REC) (ATTACHMENT)

REFERRALS TO GOVERNMENT AGENCIES

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

Should the Council refuse the application for planning approval, the applicant will have the right to have the decision reviewed in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS

There are no anticipated strategic or risk implications.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

There are no anticipated strategic or risk implications.

POLICY IMPLICATIONS

Policy 06-PL-003 – Development Approvals

Clause 1 of Policy 06-PL-003 stipulates that modifications or amendments to approved plans or proposed developments are only permitted on the following grounds:

- a) *The amendment conforms to all current policies of the Council.*
- b) *The amendment conforms to all statutory legislation applicable to the development.*
- c) *Where the abutting landowners was required for the original application then consent of abutting landowners to the amendment is also(to) be obtained.*
- d) *The amendment does not have a detrimental effect on the amenity of the locality.*

Neighbour consultation has been undertaken as per the above policy provision and in accordance with the R-Codes. One (1) submission objecting to the proposal has been received. Details relating to the submission have been detailed above.

**U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD,
APPLECROSS (REC) (ATTACHMENT)**Policy 06-PL-026 – Height of Buildings

Policy No 06-PL-206 stipulates that when measuring building height, buildings or other structures are to be measured from the natural ground level of a site. 'Natural ground level' means "the ground level shown on the (then) Metropolitan Water Authority Perth BG 2000 Series Aerial Photography 1972-1975 maps (herein referred to as the '1972 Maps'), except where subdivision has occurred and the natural ground level has been determined by bulk earthworks as approved by the City of Melville".

As the development site has been the subject of bulk earthworks as a result of the current construction phase of the approved dwelling as well as previous subdivision and demolition works associated with the adjoining property, it was deemed appropriate that the 1972 maps be used as a benchmark to determine the natural ground level/s of the property.

During the assessment of the application, a review of the 1972 maps and benchmark AHD points utilised by the Surveyor (engaged by the applicant) uncovered a discrepancy in the AHD levels on the 1972 Maps and survey plans. After investigation, it was identified that the survey plans provided by the applicant had been based on Water Corporation BG 2000 Series maps of a more recent aerial photography (herein referred to as the 'Series 2000 Maps'). Specifically, the discrepancy was evident by comparing the same benchmark spot level at an existing sewer manhole situated on Carron Road which showed a discrepancy in AHD level of approximately 1.0m. It is noted that whilst ground levels within a property may change, the Water Corporation has confirmed that the sewer manhole was installed in November 1967 and has not been altered since, thus confirming the assumption that the original data on the 1972 maps is incorrect.

Given the anomaly, the Series 2000 Maps are relied upon for the purposes of this determination as the data contained therein is considered to be more accurate to determine the natural ground levels. It is noted that the Water Corporation and Landgate have since superseded the 1972 Maps, electing to use the (current) data plotted on the Series 2000 Maps.

With regard to the implications of the application not using data contained on the 1972 Maps, Clause 9.6(f) of CPS No. 5 stipulates that "...a Policy shall not absolutely bind the Council in respect of any application for planning approval, but the Council shall have due regard to the provisions of the Policy and shall be satisfied that the application is not prejudicial to the objectives of the Policy before making its decision". The objective of Policy 06-PL-026 is "To control the height of buildings". The use of the Series 2000 Map does not, in any manner, prejudice the objective of Policy 06-PL-026 as the proposal does not vary from the requirements of the Policy nor does it seek any dispensation on allowing additional building height. The assessment simply acknowledges that there is more recent accurate data available to determine the natural ground level.

**U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD,
APPLECROSS (REC) (ATTACHMENT)****ALTERNATE OPTIONS & THEIR IMPLICATIONS**

This application is proposed to be approved under delegation through the Development Advisory Unit (DAU) process.

The proposed variation in relation to Policy 06-PL-026 may be determined without referral to Council through exercising Clause 9.6(f) of the Scheme which directs Council as having due regard to the provisions of Council Policy providing that the application is not prejudicial to the objectives of the Policy.

Notwithstanding, the DAU “call-up” procedures provide Elected Members the opportunity to call this matter up for formal Council consideration if required.

COMMENTS

The application site is located in a Living Area Precinct under the provisions of the City of Melville Community Planning Scheme No 5 (CPS No 5). The dominant land use activity in this Precinct is residential, and the existing immediate streetscape is made up of large single detached homes. The wider area typically houses executive domestic properties, and its location on the River Foreshore makes it an extremely desirable location for this form of executive residential development.

Whilst the property has been designed to comply with the requirements of the R-Codes and CPS No 5, a substantial objection raised by consultants on behalf of the owners of the adjacent property to the south at 5 Carron Road, calls into question the maximum building height of some elements of the proposed building, and considers that the extent of overshadowing, albeit within the tolerances established by the R codes. It is submitted that the proposal prejudices the amenity levels enjoyed by the occupiers of the residence at No 5, contrary to the provisions of Clause 7.8 of CPS No 5.

Building Height

Council Policy ref 06-PL-026 “Height of Buildings” requires building heights to be limited to 8.0m for eaves and 10.5m maximum (as prescribed by the Precinct requirements and Clause 5.11 of CPS No 5). The third-storey addition in question is designed to include a number of interlocking mono pitch roofs. The application details have been fully assessed against the height limitations of Council Policy and it is concluded that no part of the roof exceeds the maximum height provisions of CPS No 5 and Council Policy. For the purposes of measuring the building height and as outlined earlier in this report, the natural ground level has been taken using the Series 2000 contour data.

**U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD,
APPLECROSS (REC) (ATTACHMENT)**

The objector has questioned whether the height of the roof exceeds the maximum height provisions of Council Policy, presumably referring to a perforated stainless steel sun awning which is attached to the wall extending above the balcony area, and a minor overhang of the mono pitch roof in the north east corner. The awning projects beyond the 10.5m maximum height by approximately 200mm, whilst the roof overhang projects beyond the maximum height by approximately 100mm.

Under the provisions of CPS No 5 (Clause 5.11(a) (ii)) and Council Policy 06-PL-026 "Height of Buildings" (Clause 3), architectural features to buildings may be permitted at a height greater than the basic maxima applicable to eaves provided that the amenity of surrounding properties is not unduly affected.

The sun awning will not have any detrimental impact on the amenity levels enjoyed by the adjoining neighbours given that it does not result in further overshadowing, it is attached to the northern elevation and it will not be visible from street level. As such the retention of this architectural feature is supported.

The roof overhang forming part of the mono pitch roof is deemed to be an architectural feature which articulates, caps and balances out the visual appearance of the roof. The inclusion of an architectural feature such as this is commonplace throughout the City of Melville, particularly given the range of contemporary residential architecture that has been witnessed in new residential developments throughout the City of Melville in recent years.

With regard to eave height, Council Policy 06-PL-026 requires buildings to achieve a maximum of 8.0m, or 8.8m absolute maximum (i.e. 10% variation) subject to the discretion of the Manager of Planning and Development Services. For developments with flat or mono pitch roofs such as the subject proposal where no ridge line is proposed to elevate the roof further in height, it has been Council practice that the eave height maximum does not apply, generally due to the fact that a typical eave does not exist.

Where minor overhangs do exist for the purposes of aesthetic means such as the subject development and/or, practical means such as allowing for rainwater to be contained within a subject lot, these features have been accepted as architectural or design features which, as per Policy 06-PL-026, may be approved at a height greater than the basic maxima provided that the amenity of surrounding properties is not unduly affected. In this instance, no amenity impacts are considered likely.

Accordingly, the proposal is considered to meet the requirements of the Scheme and Council Policy and the proposed building height is therefore supported.

**U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD,
APPLECROSS (REC) (ATTACHMENT)**Overshadowing Impact

The Acceptable Development Criteria of the R-Codes permits a maximum overshadowing impact of 25% for the subject site. The additional storey now proposed results in a minor increase in the amount of overshadowing towards the adjacent property to the south above and beyond that envisaged from the development as previously approved. This will be 19.7%, in lieu of 16.1% that would have resulted from the initial approval.

Concern is expressed by consultant acting on behalf of the adjoining neighbour at 5 Carron Road that, although compliant with the acceptable development provisions of the R-Codes, the amount of overshadowing that will result from this development will prejudice the levels of residential amenity enjoyed by those residents, contrary to the provisions of Clause 7.8 of CPS No 5.

It is noted that the original application for the subject site at 3B Carron Road would have resulted in the overshadowing of the entire northern aspect at ground floor level of the objectors property. It was noted at the time of the previous determination that the ground floor aspect of the northern elevation was already overshadowed by virtue of an existing boundary fence sited along the party boundary between No's 3B and 5 Carron Road.

In relation to the impact of overshadowing on the aspect from the upper floor of the northern elevation, the assessment undertaken concludes that the additional overshadowing impact of the extension will be negligible. The northern aspect of the second floor at 5 Carron Road, Applecross consists of a wrap-around balcony and a bedroom wall (8.5m length) with 2 minor openings (not major openings). The additional overshadowing caused by the proposed third-storey addition does not conflict with the Performance Criteria 6.9.1 of the R-Codes which state that '*...major openings to habitable rooms*' are to be taken into account when considering overshadowing impact. The shadow impact onto the balcony and adjoining habitable rooms with major openings is also deemed minor given that the eave-overhang of the roof already shadows a considerable portion based on an midwinter noon vertical sun angle of 34° (i.e. 21 June) and major openings relative to these habitable rooms are shaded by the balcony roof overhang and the above prescribed time.

With regard to yard areas, the adjoining property has expansive private open space areas at the front and rear of the property and the additional shadow cast by the proposed extension will not unreasonably prejudice the owner's enjoyment of these open space areas.

Based on the above, the overshadowing impact of the proposed third-storey addition is not considered to have an adverse amenity impact on the adjoining property and accordingly the proposal is supported in this regard.

U09/0077 - (HS) THIRD-STOREY ADDITION ON LOT 5 (3B) CARRON ROAD, APPLECROSS (REC) (ATTACHMENT)

CONCLUSION

As the proposal is in full compliance with the provisions of the R-Codes and satisfies the requirements of CPS No. 5 and relevant Policies, it is recommended that the application be conditionally approved.

OFFICER RECOMMENDATION

APPROVAL

- A) That Council Policy 06-PL-026 Heights Of Buildings be varied to acknowledge the discrepancy with regard to levels indicated on current Water Corporation 200- Series maps and the application for a third-storey addition on Lot 5 (3B) Carron Road, Applecross be approved with the following conditions:**

Standard Conditions:

- 1. All stormwater and drainage run off to be contained on site. An onsite stormwater drainage system with a capacity to contain a 1:100 year storm of a twenty-four (24) hour duration is to be provided prior to the development first being occupied and thereafter maintained to the satisfaction of the Manager Planning and Development Services. All downpipes to be connected to soakwells. The proposed stormwater drainage system is required to be shown on the building licence submission for approval prior to the commencement of construction.**
 - 2. Nothing in this planning approval authorises any works outside the surveyed boundaries of the lot the subject of this planning approval.**
 - 3. The materials and finishes of the development to complement the existing building to the satisfaction of the Manager Planning and Development Services.**
 - 4. 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 overflow.**
 - 5. Ground levels may not be changed other than approved as part of this approval.**
- B) The applicant and adjoining property owners to the development be advised in writing of A) above.**

**U09/0078 - (HS) TWO STOREY SINGLE RESIDENCE ON LOT 500 (4) CREST AVENUE,
MOUNT PLEASANT (REC) (ATTACHMENT)**

Ward : City Ward
Category : Operational
Application Number : DA-2008-1729
Property : 4 Crest Avenue, MOUNT PLEASANT
Proposal : Two Storey Single Residence
Applicant : Lomma Homes
Owner : Mr F Yapp and S S Chow and Ms A S Khing
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

Definition

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- Executive *the substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets*
- Legislative *includes adopting local laws, town planning schemes & policies.*
- Review *when Council reviews decisions made by Officers.*
- Quasi-Judicial** *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.*

**U09/0078 - (HS) TWO STOREY SINGLE RESIDENCE ON LOT 500 (4) CREST AVENUE,
MOUNT PLEASANT (REC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- The application is for a two-storey single dwelling.
- A number of R-Code variations are proposed as part of the development.
- The majority of R-Code variations are support under Performance Criteria inclusive of a questionable variation to the front setback requirement.
- A conflict in the interpretation of how the front setback may be calculated has been the subject of debate between the Applicant and Officers.
- Council's Solicitors have advised that the provisions relating to calculating the front setback may be read two ways.
- The first method submitted by the applicant is that the average setback between the two adjoining properties may be averaged within the development site.
- The second method is that the average setback within the site only relates to the setback stipulated under Table 1 of the Residential Design Codes (7.5m for R12.5 property).
- Legal advice indicates that the requirement of the Codes is ambiguous in its meaning, however it is recommended by Council's Solicitors that the preferred way in which to calculate the setback is as proposed by the applicant.
- Notwithstanding this anomaly, an amenity impact assessment has been conducted and it is considered that the proposal suitably addresses amenity requirements under CPS No 5 – Clause 7.8.
- The proposal achieves an average front setback of in lieu of 7.5m (consistent with Council's Solicitors interpretation of Clause 6.2.1 A1.1 of the Residential Design Codes and a minimum of 4.65m (ground floor) and 4.3m (upper floor) setback proposed.
- Neighbour consultation was undertaken for variations to R-Codes proposed as part of the development (not including the front setback). Three (3) objections were received.
- Objections relating to the reduced front setback are not supported.
- Application is recommended for conditional approval.

U09/0067 - (HS) TWO STOREY SINGLE RESIDENCE ON LOT 500 (4) CREST AVENUE,
MOUNT PLEASANT (REC) (ATTACHMENT)



**U09/0078 - (HS) TWO STOREY SINGLE RESIDENCE ON LOT 500 (4) CREST AVENUE,
MOUNT PLEASANT (REC) (ATTACHMENT)**

BACKGROUND

Scheme Provisions

MRS Zoning : Urban
CPS 5 Zoning : RFS – River Foreshore
R-Code : R12.5
Use Type : Residential
Use Class : Residential

Site Details

Lot Area : 514 sqm
Retention of Existing Vegetation : n/a
Street Tree(s) : Yes – to be retained
Street Furniture (drainage pits etc) : n/a
Site Details : See above image

[U09_0078_May_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 15 May 2009.

DETAIL

Development Requirements

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
Primary Street	Average 6.1m and minimum 3.05m	Average 6.14m (GF) and 6.35m (UF) and minimum 4.65m (GF) 4.3m(UF)	Complies		
Open Space	55%	53.8%	Complies		
Driveway width	40% (4.4m)	4.4m	Complies		
Building Height	8.0m (eave) 10.5m (max)	5.6m 7.8m	Complies Complies		
Overshadowing	25%	Shadow to street	Complies		
Car Parking	2 bays (1 covered)	2 covered bays	Complies		
Garage door width	60%	56.9%	Complies		

(Note: Non compliance is emphasised in bold)

**U09/0078 - (HS) TWO STOREY SINGLE RESIDENCE ON LOT 500 (4) CREST AVENUE,
MOUNT PLEASANT (REC) (ATTACHMENT)**

Setbacks

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
Rear – north	Min. 6.0m	GF – 13.8m UF – 29.0m	Complies Complies		
(GF) Side - west					
Lounge / Family	0m	0m	Complies		
PWD	1.5m	1.78m	Complies		
Study / Laundry	0m	0m	Complies		
Entry / Stairs	1.0m	1.21m	Complies		
Garage	1.5m	4.611m	Complies		
(UF) Side - west					
Void / Stairs / Bed 2	1.6m	1.21m	Does not comply	MPDS	
Sitting	1.8m	4.51m	Complies		
(GF) Side – east					
Garage	1.0m	0m	Does not comply	MPDS	
Mast. Bed / ENS	1.0m	1.21m	Complies		
Kitchen / Dining / Alfresco	1.5m	1.47m	Complies (minor deficit)		
(UF) Side - east					
Sitting	2.5m	1.2m	Does not comply	MPDS	
Bed 3	1.2m	2.5m	Complies		
Bath / WC	1.8m	1.8m	Complies		
Sitting / Bed 4	1.2m	1.22m	Complies		

(Note: Non compliance is emphasised in bold)

PUBLIC CONSULTATION/COMMUNICATION

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

**U09/0078 - (HS) TWO STOREY SINGLE RESIDENCE ON LOT 500 (4) CREST AVENUE,
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Submission Number	Summary of Submission	Support / Objection	Officer's Comment	Action (Condition/ Uphold/ Not Uphold)
1.	6.0m primary street setback to be enforced. This was conditional for their development.	Objection	Proposal complies with recommended legal advice from Council's Solicitors. Refer comments section below.	Not Uphold
	<p>Primary street setback as proposed shall result in:</p> <ul style="list-style-type: none"> • View down Crest Ave to river being impeded. • Development will reduce morning light thus casting shadow onto property. • Detract the presentation of our home from the road. 	Objection	<p>Whilst it is established legal principle in planning that there is 'no right to a view', where a discretionary decision is sought from Council, views are matters which may be considered as part of a resident's amenity. Notwithstanding that legal advice considers this application to comply with the Acceptable Development requirements of the Codes, amenity considerations are required under Clause 7.8 of CPS No 5 – see comments section below.</p> <p>The proposal complies with the overshadowing requirements of the R-Codes.</p>	Not uphold

**U09/0078 - (HS) TWO STOREY SINGLE RESIDENCE ON LOT 500 (4) CREST AVENUE,
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			The frontage of the proposed development is a modern design which is articulated and incorporates design elements to improve the visual impact of the proposal on the streetscape.	
	<p>Concerns in relation to second-storey wall exceeding 9.0m in length:</p> <ul style="list-style-type: none"> • Result in increased shadow onto property. • Decreased street appeal / reduced aesthetics. • Huge wall will look unsightly from courtyard area and inhibit afternoon sea breeze. 	Objection	<p>The proposal complies with overshadowing requirements of the Codes as these fall onto the road which is located to the south. The Codes do not consider overshadowing impacts to the east or west and requires consideration of the overshadowing impacts at 12.00 noon on June 21 – shortest day of year (at winter sun angle).</p> <p>The subject wall proposes a minor articulation and includes differing finishes to reduce bulk impacts. These elements are located towards the front of the proposed building and will be the predominant elements viewed from the adjoining property, which does not contain walls with major openings in this location.</p>	Not Uphold

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			<p>Afternoon sea breeze is not a planning consideration. Notwithstanding, sea breezes will be from the west (the adjoining property technically will shield the subjects property from afternoon sea breezes). As the objector's home is situated west of the proposed development, the objection is not valid.</p>	
2.	R12.5 only allows single-storey garage to encroach the 7.5m primary street setback.	Objection	<p>This is incorrect. There are no such provision/s contained under the R-Codes. Setbacks to garages may be reduced to 4.5m, however all front setbacks may be averaged (see further comment below).</p>	Not Uphold
	Living room contravenes Council's Building Codes.	Objection	<p>Building Codes shall be considered during Building Licence stage.</p>	Not Uphold

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	<p>Parapet wall (approx. 6.0m high and 8.0m long) and approx. 3.5-4.0m forward of 2 Crest Avenue is not appropriate given that:</p> <ul style="list-style-type: none"> • Bulk and scale of the wall is unsightly. • No view up street. • This type of subdivision interferes with sea-breeze. • Home will not be viewed from street until almost in front of house. • Devalue home. • Majority of streetscape, except corner blocks are setback as per codes. 	<p>Objection</p>	<p>Parapet wall impacting the neighbour measures 7.5m (length) x 3.0m (height).</p> <p>Additional comments provided below.</p>	<p>Not Uphold</p>
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**U09/0078 - (HS) TWO STOREY SINGLE RESIDENCE ON LOT 500 (4) CREST AVENUE,
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	Ample room for development at rear of lot.	Objection	It is agreed that additional space is available at the rear of the property to set the proposed development further back, however, as the front setback achieves the required standards in accordance with Council's Solicitors recommended interpretation of the front setback requirements under the Codes, and it is clear that the applicant wishes to take advantage of river views afforded by building to the proposed front setback, it would be inappropriate for Council to require an increased front setback.	Not Uphold
	Parapet wall in three locations contradicts R-Codes.	Objection	R-Codes do not stipulate such requirement. Notwithstanding, the construction of boundary walls on R12.5 property does not meet the Acceptable Development requirements of the Codes (unless abutting a similar constructed boundary wall). However, boundary walls may be approved if they satisfy the Performance Criteria of the Codes - see details below.	Not Uphold

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3.	Concerns that reduced front setback of 4.5m in lieu of 6.0m will result in overlooking to our balcony area and into ground floor courtyard.	Objection	The balcony area is already visible and open from public view. Although the subject property contains a full height front fence, it is separated from the application site by a 20m wide road reserve (Crest Avenue) which is considered to meet privacy setback requirements (6.0m as required by the Codes).	Not Uphold
	4A Crest Avenue is setback 6.0m. The proposed development being 1.5m in front would look most odd and detract from the presentation of houses in immediate area.	Objection	As indicated above and detailed below, the proposed front setback satisfies the requirements of the the Residential Design Codes as recommended by Council's Solicitors.	Uphold

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.

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POLICY IMPLICATIONS

Not applicable.

ALTERNATE OPTIONS & THEIR IMPLICATIONS

This application is proposed to be approved under delegation through the Development Advisory Unit (DAU) process.

The front setback calculation has been the subject of considerable debate and legal interpretation. The concluding advice from Council's Solicitors is that the applicant's interpretation is correct. Notwithstanding, as views from the adjoining property to the west will be impacted, an amenity assessment of this impact is provided further in this report. Should Elected members have an alternative view, the DAU "call-up" procedures provide opportunity to call this matter up for formal Council consideration.

COMMENTS

Primary Street Setback

The proposal seeks approval for a reduced primary street setback of 4.65m for the ground floor and 4.3m for the upper floor in lieu of the required 6.1m. There are three (3) Acceptable Development options, relevant to the subject proposal, which can be used in calculating primary street setback for the proposed development in accordance with the R-Codes as follows:

- A1.1 Building setback from the primary street in accordance with table 1; or*
- i corresponding to the average of the setback of existing dwellings on each side fronting the same street; or in accordance with Figure 1a, reduced by up to 50 per cent provided that the area of any building, including a carport or garage, intruding into the setback area is compensated for by at least an equal area of contiguous open space between the setback line and line drawn parallel to it at twice the setback distance.*

Figure 1a provides a diagrammatic interpretation of the Acceptable Development Criteria and annotates that the prescribed Primary Street setback (which may be averaged) relates to the setback as provided under Table 1 (7.5m for R12.5 property) or the average of setbacks either side.

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Should the Acceptable Development requirements of the Codes not be achieved, assessment for any given primary street setback may be calculated based on Performance Criteria, this being:

- P1 Buildings setback from street boundaries an appropriate distance to ensure they:*
- *Contribute to the desired streetscape*
 - *Provide adequate privacy and open space for dwellings; and*
 - *Allow safety clearances for easements for essential service corridors.*

The applicant argues that the power to reduce the front setback by up to 50% (subject to meeting the provisions of a compensation area being provided), may apply to either the prescribed street setback stipulated in Table 1 or alternatively, to the average setbacks of existing dwellings on each side of the development site.

The subject provision remains ambiguous in its meaning given the absence of wording which details at what distance the 50% reduction may apply under. That is, Clause 6.2.1 A1.1 does not expressly define how the 50% reduction is calculated with regard to the prescribed street setback.

Notwithstanding the ambiguity noted above, Council's Solicitors have advised that the recommended interpretation is the applicant's view on the basis that Figure 1a clearly illustrates that the prescribed street setback may be either as per Table 1 or alternatively, the average of setbacks either side and that the reduced setback is not less than half of the prescribed setback.

CPS No. 5 requires amenity (and 'quality of life') to be protected. The amenity impact of the subject proposal draws down to the impact on the resident at 4A Crest Avenue, Mount Pleasant to which existing views may be (partially) hindered as a result of the proposed front setback. Whilst there is established legal principle in planning of 'no rights to a view' (except where protected by a statutory mechanism e.g. Planning Scheme or Title covenant), it is acknowledged by the State Administrative Tribunal (SAT) that views contribute to amenity. Particular attention has been given to maintaining, not diminishing amenity in this regard. Given the incursion of the proposed development into the front setback area and as a result, reducing existing views (thus amenity), the proposed development requires a detailed assessment of these impacts as follows.

Based on an average setback of 7.5m as provided by Table 1 of the Codes, the minimum setback would be 3.75m. Based on the average setback of development either side the prescribed setback as detailed above would be 6.1m at the ground floor with a minimum setback of 3.05m (at the upper floor level, the required setback average is greater than that applicable under Table 1, therefore the 7.5m average and 3.75m minimum applies).

The minimum setbacks in this instance are 4.65m for the ground floor and 4.3m for the upper floor sitting room. These setbacks are therefore substantially greater than the minimums required under either scenario (3.75m for the 7.5m setback under table 1 or 3.05m setback as required relative to the reduced average of the setbacks of development either side).

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The impact on the streetscape is only expressed in terms of the reduced average setback, not specifically the minimum setback (it is noted that the average could be achieved by increasing the setback of the building behind the setback line). In addition, the incursion into the front setback area is located on the eastern side of the property, thereby reducing the impact on views from the western property to the east (Canning River).

It is concluded therefore that the amenity impacts on the neighbours views are less than that could be expected from the minimums which could apply to either front setback calculations as provided under the Codes. On this basis, although views from the western property towards the Canning River may be impacted, the development could have been designed to reduce front setbacks even further and meet average and minimum setbacks under either scenario by providing greater articulation in the front elevation of the dwelling. In addition, the development has been designed to minimise the impacts of such whilst still maintaining a reasonable level of amenity to the western property.

Western Side Setback

A 12.1m long portion of the upper floor is proposed to be setback 1.21m in lieu of 1.6m to western boundary. The Performance Criteria of the R-Codes (Clause 6.3.1) requires buildings to be setback from boundaries so as to provide adequate sun and ventilation to the building and open spaces on the subject lot and adjoining property and ameliorate the impacts of bulk and protect privacy.

It is considered that the minor setback variation shall have minimal impact to the levels of residential amenity currently enjoyed by the occupiers of the adjoining residence to the west in terms of access to sunlight and ventilation. It is noted that the neighbour's property consists of a parapet wall (of which the subject wall shall abut) and a three-storey wall which does not contain any major openings. Also, the side elevation of the subject residence has been designed without major openings along its upper floor level where it abuts the objector's residence in order to maintain privacy. It is noted that overshadowing impact of the proposal is negligible given the north-south orientation of the lot (i.e. shadow cast will be onto the street).

Accordingly, the variation to the side setback is supported.

Eastern Side Setback- Ground Floor

A 7.5m long portion of the garage wall is proposed on the boundary in lieu 1.0m to the eastern boundary. The performance criteria of the R-Codes (cl. 6.3.2) stipulates that buildings built up to boundaries, where desirable, are to make effective use of space or enhance privacy or amenity of the development, not have detrimental impact to the amenity of adjoining properties and provide adequate sun and ventilation to the building and open spaces.

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It is considered that the subject variation is supported given the following reasons:

- Given the narrow nature of the lot (i.e. 11.06m in width), a parapet garage wall shall make effective use of space;
- The parapet wall which measures approximately 7.5m in length is not directly visible from the adjoining neighbour as both ground and first floors do not contain major openings.
- An existing mature tree and landscaping shall soften the impact of the parapet wall if viewed from the street.
- There will be no loss of amenity or access to direct sun for the adjoining neighbour as the parapet wall does not face onto habitable rooms which may be detrimentally impact by the subject wall.

Accordingly, the western boundary wall is supported.

Eastern Side Setback – Upper Floor

A 3.01m portion of the sitting room wall is proposed to be setback 1.2m in lieu of 2.5m to the eastern boundary.

The section of the first floor sitting requiring a setback of 2.5m relates to the fact that there is a major opening on the corner measuring approximately 0.8 x 1.6m in size. If the wall is treated as a wall with no major opening, the subject wall would comply as a setback of only 1.2m is required.

It is noted that given the portion of the sitting room window will be contained within the primary street setback area. The impact of the setback variation is deemed to be minimal as there are no privacy concerns directly to the east as a privacy screen wall, vegetation and a front veranda prevent viewing into the front windows of the adjoining property consistent with the privacy provisions of the Codes. The remaining cone of vision is towards the street and the open front setback area of the adjoining property which is not the subject of privacy issues.

The Performance Criteria of the R-Codes (Clause 6.3.1) requires buildings to be setback from boundaries so as to provide adequate sun and ventilation to the building and open spaces on the subject lot and adjoining property and ameliorate the impacts of bulk and protect privacy.

It is considered that the subject variation shall allow adequate space for ventilation to the development and adjoining residence, whilst there will be no impact on access to sun given the north-south orientation of the lot. In addition, bulk impact is negligible as there are no major openings on the adjoining neighbour from which the subject wall shall be visible from.

Accordingly, the eastern setback variation is supported.

**U09/0078 - (HS) TWO STOREY SINGLE RESIDENCE ON LOT 500 (4) CREST AVENUE,
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It is concluded that the proposed development is in full compliance with the provisions of the R-Codes and the City of Melville Community Planning Scheme No. 5 and meets acceptable levels of amenity for abutting properties. As such, it is recommended that conditional approval be granted.

OFFICER RECOMMENDATION**APPROVAL**

A) That the application for two storey single dwelling on lot 500 (4) Crest Avenue, Mount Pleasant be approved with the following Standard Conditions:

- 1. All parking bay/s, driveway/s and points of ingress and egress areas are to be constructed, drained, marked prior to the development first being occupied and thereafter maintained to the satisfaction of the manager planning and development services.**
- 2. All unused crossover(s) to be removed and the kerbing and verge to be reinstated at the applicant/owner's full expense to the satisfaction of the Manager Planning and Development Services.**
- 3. All stormwater and drainage run off to be contained on site. An onsite stormwater drainage system with a capacity to contain a 1:100 year storm of a twenty-four (24) hour duration is to be provided prior to the development first being occupied and thereafter maintained to the satisfaction of the Manager Planning and Development Services. All downpipes to be connected to soakwells. The proposed stormwater drainage system is required to be shown on the building licence submission for approval prior to the commencement of construction.**
- 4. Nothing in this planning approval authorises any works outside the surveyed boundaries of the lot the subject of this planning approval.**
- 5. The development complying with any amendments and notations marked in 'red' as shown on the approved plans.**
- 6. The external face of the parapet wall to be finished to the satisfaction of the adjoining neighbour or, in the event of a dispute to be finished to the satisfaction of the Manager Planning and Development Services.**
- 7. 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 overflow.**

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8. All unused crossover(s) are to be removed and the kerbing and road verge are to be reinstated at the owners full cost to the satisfaction of the Manager Planning and Development Services.
9. Maximum vehicles access gradient ratio of 1:5 being achieved.
10. All new residential dwellings to be serviced by a concrete or brick paved vehicle crossing of no greater width than the lesser of 6m or 40% of the width of the frontage of the lot and constructed in accordance with the council's specification to the satisfaction of the Manager Planning and Development Services.
11. The parking bay/s, driveway/s and points of ingress and egress to be designed in accordance with the council plan nos 528a2-91e (barrier kerb crossover), 284a2/84e/7 (minimum clearances) unless otherwise specified by this approval. Where any damage is caused to a council facility, tree or street furniture, or where alteration to a council facility is required, the cost of the applicant shall pay for such damage or alteration. A concrete apron having width of 0.75m must be installed between a brick paved crossing and the bitumen surface of a road. The cost of damage to a street tree will be determined in accordance with the "tree amenity valuation formula" adopted by the council.
12. A 1.8 metre high fence to be provided from the highest retained ground level. All fencing to be provided in accordance with the dividing fences act. And be constructed as a minimum standard of fibre cement.
13. Specific approval must be obtained to remove a street tree to permit the construction of a vehicle crossover otherwise it should be assumed that street trees are to be retained. Any written approval for the removal of street trees is subject to the applicant/owner paying all costs and may entail removal and relocation costs; or removal and replacement costs.
14. The development is to be connected to the water corporation's reticulated sewerage system.
15. Ground levels may not be changed other than approved as part of this approval.

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16. During excavations, all necessary precautions to be taken to prevent damage or collapse of adjoining properties (driveways, garden beds, walls, etc). It is the responsibility of the builder/owner to liaise with adjoining and adjacent property owners prior to carrying out work.
- B) The applicant and adjoining property owners who objected to the development be advised in writing of a) above.