



— City of —  
**Melville**

**REPORTS AND RECOMMENDATIONS**

**FROM THE**

**DEVELOPMENT ADVISORY UNIT**

**MEETING**

**HELD ON**

**17 JUNE 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: 20 JUNE 2008**



— City of —  
**Melville**

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**REPORTS AND RECOMMENDATIONS FROM THE DEVELOPMENT ADVISORY UNIT  
MEETING HELD IN, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD,  
BOORAGOON, COMMENCING AT 1:30PM ON TUESDAY 17 JUNE 2008**

**PRESENT**

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

Manager Planning & Development Services  
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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**U08/0080 – (AJP) - HOME OCCUPATION FOR NATUROPATHIC CONSULTANT ON STRATA LOT 2 (58A) BAAL STREET PALMYRA (REC) (ATTACHMENT)**

Ward : Palmyra/Melville/Willagee  
Category : Operational  
Application Number : HO-232  
Property : Strata Lot 2 (58A) Baal Street Palmyra  
Proposal : Naturopathic Consultant  
Applicant : Ms V Schwab  
Owner : Mr P Edmondson  
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 : No relevant items

**AUTHORITY / DISCRETION**

- Quasi-Judicial Definition *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.*

**KEY ISSUES / SUMMARY**

- The application is for a home occupation for a naturopathic consultant on Strata Lot 2 (58A) Baal Street, Palmyra.
- The application complies with the Home Occupation standards prescribed by the Community Planning Scheme No. 5.
- Three (3) submission have been submitted, one (1) objecting and two (2) supporting
- It is recommended that the home occupation be supported.

**BACKGROUND**

Not applicable

**U08/0080 – (AJP) - HOME OCCUPATION FOR NATUROPATHIC CONSULTANT ON STRATA LOT 2 (58A) BAAL STREET PALMYRA (REC) (ATTACHMENT)**

**Scheme Provisions**

MRS Zoning : Urban  
 CPS 5 Zoning : Living Area – P1  
 R-Code : R20  
 Use Type : Residential  
 Use Class : Permitted use

**Site Details**

Lot Area : 1012sqm (parent lot)  
 Retention of Existing Vegetation : Yes  
 Street Tree(s) : Yes, no conflict  
 Street Furniture (drainage pits etc) : No  
 Site Details : [U08\\_0080\\_PROPERTY\\_MAP.pdf](#)

[U08\\_0080\\_June\\_2008.pdf](#) A copy of the plans forms part of the Attachments to the Agenda, which were distributed to Members of the Council on Friday 20 June 2008

**DETAIL**

**Development Requirements**

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
Carparking	2 bays for the existing dwelling plus 1 bay for client (total required - 3 bays)	3 bays	Complies		

**Setbacks**

Not applicable.

**U08/0080 – (AJP) - HOME OCCUPATION FOR NATUROPATHIC CONSULTANT ON STRATA LOT 2 (58A) BAAL STREET PALMYRA (REC) (ATTACHMENT)**

**PUBLIC CONSULTATION/COMMUNICATION**

Advertising Required: Yes  
 Neighbour's Comment Supplied: Yes  
 Reason: Home occupation is a discretionary use prescribed in the Community Planning Scheme No. 5.  
 Support/Object: 3 submissions: 1 objection / 2 no objection

Submission Number	Summary of Submission	Support/Objection	Officer's Comment	Action (Condition/Up Hold/Not Up Hold)
1.	The increase in traffic would be excessive for this type of strata development. The driveway is too narrow (3.0 metres wide) and steep. Driver's have been observed having difficulty operating their vehicles on the driveway.	Objection	The driveway is 3.0 metres wide which is suitable for access to the rear property considering the Australian Standard for off site car parking facilities. The car parking bay for a client will be required to be at the beginning of the driveway to the rear property. A client car will therefore be parked adjacent to the carport of the front property causing no adverse disturbance to the occupier of the front property.	.Not Up Hold
2.	No objection	No objection	Noted	Up Hold
3.	No objection	No objection	Noted	Up Hold

**REFERRALS TO GOVERNMENT AGENCIES**

Not Applicable

**U08/0080 – (AJP) - HOME OCCUPATION FOR NATUROPATHIC CONSULTANT ON STRATA LOT 2 (58A) BAAL STREET PALMYRA (REC) (ATTACHMENT)**

**STATUTORY AND LEGAL IMPLICATIONS**

The applicant may have the right to have the decision of the Council reviewed in accordance with Part 14 of the Planning and Development Act 2005.

**FINANCIAL IMPLICATIONS**

Not applicable

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Not applicable

**POLICY IMPLICATIONS**

Not applicable

**COMMENT**

The applicant proposes the following:

- Providing advice and conduct of natural therapies e.g. general health picture, health history, treat client with supplementation, massage, reflexology etc – whatever is the most appropriate treatment.
- Hours of operation proposed to be 9:00 am to 5:00 pm during weekdays only and 9:00 am to 12:00 noon Saturdays only. However the expectation is not to work full time within these hours. The expectation is to see clients during these hours and work on a part time basis only. The applicant will be caring for a small child from July onwards and this severely constrains the applicant's ability to see too many clients.
- Only one client at a time will be seen and there will be a short gap between appointments to avoid more than one person at a time being on the property in relation to the home occupation.

The application complies with the provisions of Part 5.6 of the Community Planning Scheme No. 5.

**U08/0080 – (AJP) - HOME OCCUPATION FOR NATUROPATHIC CONSULTANT ON STRATA LOT 2 (58A) BAAL STREET PALMYRA (REC) (ATTACHMENT)**

In relation to the client car parking bay, it should be conditioned to be located close to the street because this will provide safe access for clients to the property. Considering the standard for driveways prescribed by the 2008 Residential Design Codes, vehicles must enter the street in forward gear where the car space is located more than 15 metres from the street. There is no sufficient reversing area for a client vehicle at the site. It is recommended that the client car parking bay be located at the beginning of the driveway.

The client car parking bay will not interfere with the domestic requirements for parking and access as required by Section 5.6(e)(viii) of the CPS 5 because the applicant's partner will be either at work during the hours which the home occupation will operate or will not need to access the property.

One objection has been received in relation to the home occupation. The objection expresses concern relating to a driver's ability to safely access the site given the narrow driveway and steep gradient. The client car bay will be required to be at the beginning of the driveway and this will resolve the objector's concerns. It does also appear that the objector is concerned in relation to vehicle noise. The client car bay will be parked adjacent to the carport of the front strata and therefore there will be no adverse impact on residential amenity.

**CONCLUSION**

The application complies with the provisions of the Community Planning Scheme No. 5 and it is recommended that the proposal be supported.

**OFFICER RECOMMENDATION****APPROVAL**

**THAT THE APPLICATION FOR A HOME OCCUPATION FOR NATUROPATHIC CONSULTANT ON STRATA LOT 2 (58A) BAAL STREET PALMYRA BE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

**SPECIAL CONDITIONS:**

- 1. CLIENT CAR PARKING BEING PROVIDED ON THE SITE AS MARKED IN RED ON THE APPROVED SITE PLAN. IT IS THE LICENCEE'S RESPONSIBILITY TO NOTIFY CLIENTS OF THE REQUIREMENT TO PARK THEIR VEHICLE IN THE APPROVED CAR BAY.**
- 2. THE HOURS OF OPERATION OF THE HOME OCCUPATION BEING 9.00 AM TO 5.00 PM MONDAYS TO FRIDAYS AND 9.00 AM TO 12.00 NOON SATURDAYS.**

U08/0080 – (AJP) - HOME OCCUPATION FOR NATUROPATHIC CONSULTANT ON STRATA LOT 2 (58A) BAAL STREET PALMYRA (REC) (ATTACHMENT)

**SPECIAL CONDITIONS:**

1. THE APPLICANT MUST PERMANENTLY LIVE ON THE PREMISES.
2. IT DOES NOT ENTAIL MORE THAN ONE CUSTOMER OR CLIENT AT ANY ONE TIME OTHER THAN THOSE MEMBERS OF THE IMMEDIATE FAMILY TO TRAVEL TO AND FROM THE PREMISES IN RELATION TO THE BUSINESS.
3. NO EMPLOYEES OTHER THAN THE MEMBERS OF THE OCCUPYING FAMILY OF THE DWELLING BEING EMPLOYED IN THE OPERATION OF THE BUSINESS.
4. NO MORE THAN 38 SQUARE METRES OF THE DWELLING BEING USED FOR THE HOME OCCUPATION.
5. ALL PARKING ASSOCIATED WITH THE HOME OCCUPATION TO BE ACCOMMODATED WITHIN THE SUBJECT PROPERTY ONLY. ON-STREET PARKING IS NOT PERMITTED.
6. NOT MORE THAN ONE SIGN, BEARING THE NAME OF THE BUSINESS ONLY AND NOT EXCEEDING AN AREA OF 0.2 SQUARE METRES, SHALL BE ERECTED ON THE PROPERTY WITH REGARD TO THE HOME OCCUPATION.
7. THIS APPROVAL MAY NOT BE TRANSFERRED TO ANY OTHER PERSON OR PROPERTY.
8. THIS APPROVAL IS VALID FOR A PERIOD OF TWELVE (12) MONTHS FROM THE DATE OF APPROVAL ONLY AND THE APPLICANT IS TO SEEK RENEWALS THEREAFTER TO ENABLE CONTINUANCE OF THE HOME OCCUPATION.

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

Ward	:	Applecross-Mount Pleasant
Category	:	Operational
Application Number	:	DA-2007-1793
Property	:	15 Tweeddale Road, Applecross.
Proposal	:	Residential Development with 5 Multiple Dwellings and undercroft carparking.
Applicant	:	Tuscom Subdivision consultants Pty Ltd
Owner	:	Daystar Asset Pty Ltd
Disclosure of any Interest	:	No Officer involved in the preparation of this report has a declarable interest in this matter.
Responsible Officer	:	Julio Gonzalez Planning Services Coordinator
Previous Items	:	P07/3010 – Mixed Use Development Residential and Commercial on Lot 1057 (15) Tweeddale Road, Applecross – 15 May 2007

**AUTHORITY / DISCRETION**Definition

- |                                     |                |   |
|-------------------------------------|----------------|---|
| <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 &amp; policies.</i>  |
| <input type="checkbox"/>            | Review         | <i>when Council review 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> |

**KEY ISSUES / SUMMARY**

- Proposal is for a four storey residential building with 5 multiple dwellings.
- Undercroft carparking for 15 vehicles inclusive of 2 visitor bays in the front setback area..
- Total plot ratio is 1.027, in excess of the permitted 0.6 under R-Codes.
- Height limit variation is proposed for a small portion of the front roof.
- 13 submissions have been received 9 objecting and 4 supporting (including two petitions, one with 68 signatures supporting and another with 41 signatures objecting).
- Recommended for approval.

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

**BACKGROUND**

The Council at its Ordinary Meeting on 15 May 2007 refused an application for a four storey Mixed Use Development (7 offices and 5 multiple dwellings) with a proposed plot ratio of 0.863 (0.702 residential and 0.161 non-residential) for the following reasons:

- “1. *The proposed office component of the development is not considered appropriate within the surrounding residential environment.*
2. *The proposal significantly exceeds plot ratio requirements under both the Community Planning Scheme and Council Policy as the development site faces a living area precinct with an attractive residential streetscape.*
3. *Variation of Council Policy in this regard will create an undesirable precedent for future development within commercial centre frame precincts and potentially impact on residential streetscapes and amenity within adjacent living area precincts.*
4. *The proposal does not involve adequate provision for community benefit in order to satisfy the requirements of Council Policy 06–PL-029 – mixed use plot ratio bonus application.*
5. *An increase in residential plot ratio is not supported under the performance criteria of the Residential Design Codes 4.2.1 p1 as the proposal will result in a considerable increase in building bulk which will negatively impact on residential neighbourhood amenity and the streetscape.*
6. *The proposal if approved would be contrary to the orderly and proper planning of the locality and contrary to outcomes of the Council’s Melville Visions Project.*
7. *The proposed plot ratio and building bulk is contrary to the intent of the City of Melville Scheme Amendment 35 which proposes buildings of a reduced bulk.”*

**Scheme Provisions**

MRS Zoning	: Urban
CPS 5 Zoning	: CBF - Canning Bridge Frame
R-Code	: R50
Use Type	: Residential
Use Class	: Residential: D Use – Council discretion required.

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

**Site Details**

Lot Area	:	1010 sqm
Retention of Existing Vegetation	:	No
Street Tree(s)	:	Yes
Street Furniture (drainage pits etc)	:	No
Site Details	:	<a href="#">U08_0084_PROPERTY_MAP.pdf</a>

[U08\\_0084\\_June\\_2008.pdf](#) A copy of the plans forms part of the Attachments to the Agenda, which were distributed to Members of the Council on Friday 20 June 2008

**DETAIL**

The application proposes a four storey building for residential development with a total of 5 third floors.

A total of 13 carparking bays are proposed within the undercroft carparking plus 2 visitor bays in the front setback area.

A total plot ratio of 1.027 is proposed in lieu of 0.6 permitted under the 2008 Residential Design Codes.

The application proposes a small portion of the front roof, which is 13.8 metres in height above the natural ground level.

**Development Requirements**

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
Open Space	45%	53%	Complies		
<b>Plot Ratio Residential</b>	<b>0.6</b>	<b>1.027</b>	<b>Does Not Comply</b>	<b>MPDS</b>	
Landscaping	Scheme does not specify requirement	Yes	Complies		
<b>Building Height</b>	<b>10.0 metres</b> <b>13.5 metres</b>	<b>13.8 metres</b>	<b>Does Not Comply</b>	<b>MPDS</b>	
Carparking	10 bays	15 bays	Complies		

(Note: Non compliance is emphasised in bold)

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

**Setbacks**

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
Front GF / 1 F / 2 F / 3 F	4.0	7.515	Complies		
Rear GF 1 F 2 F 3 F	Nil 2.5 metres 4.0 metres 5.75 metres	Nil 8.88 metres 8.88 metres 8.88 metres	Complies		
<b>East Side</b> GF 1 F 2 F <b>3 F</b>	1.1/1.5 mts 1.2/3.5 mts 1.5/5.0 mts <b>10.5/1.75 mts</b>	1.18/2.0 mts 2.0/7.5 mts 2.0/7.5 mts <b>7.5/2.0 mts</b>	Complies   <b>Does Comply Not</b>		
<b>West Side</b> GF 1 F 2 F <b>3 F</b>	1.5/1.0 mts 1.2 metres 1.4 metres <b>8.75/1.7 mts</b>	7.5/2.0 mts 2.0 metres 2.0 metres 7.5/2.0 mts	Complies   <b>Does Comply Not</b>		

(Note: Non compliance is emphasised in bold)

**PUBLIC CONSULTATION/COMMUNICATION**

Advertising Required: Yes  
 Neighbour's Comment Supplied: Yes  
 Reason: "D" use not permitted unless the Council exercises discretion  
 Support/Object: 13 Submissions 9 objecting and 4 supporting (including two petitions). See attached Submission Table.

**REFERRALS TO GOVERNMENT AGENCIES**

Not Applicable

**STATUTORY AND LEGAL IMPLICATIONS**

Should the City of Melville 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.

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)****FINANCIAL IMPLICATIONS**

Not Applicable

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Not Applicable

**POLICY IMPLICATIONS**

Policy No. 06-026 Height of the Building.

Policy No. 06- PL-036 Planning Process and Decision Making – as this application is major and involves a significant variation from the plot ratio standards for residential development, the process would normally require that this application be referred to an Elected Members Workshop and then Council.. The application was referred to the Workshop on 27 June 2008.

**ALTERNATE OPTIONS & THEIR IMPLICATIONS**

The Council may refuse the application should it be considered that the development does not comply with the provision of the City of Melville Community Planning Scheme No. 5 as the proposal exceeds the maximum 0.6 plot ratio. However it should also be considered that the proposal complies with the R50 coding, it is located within the Canning Bridge Frame and in general complies with the requirements of Community Planning Scheme No. 5, Council Policies and the 2008 Residential Design Codes with the exception of plot ratio. In addition, comparisons should be made with the companion application in terms of whether a straight residential development (the subject of this application) is more desirable than a mixed-use development (subject of the other application).

**COMMENTS**

Another application for Mixed-Use development, on the same property, is being considered by the Council as part of this Agenda. That proposal comprises 4 offices and 3 Multiple Dwellings within a four storey building with undercroft carparking.

The current proposal raises the following matters for consideration.

*Submissions*

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

13 Submissions have been received, 9 objecting to the proposal and 4 supporting the proposal (including two petitions, one with 68 signatures supporting the proposal and another with 41 signatures objecting to development above the R30 Code). The objections are mainly concerned with the loss of amenity along Tweeddale Road, eroded streetscape, increase in traffic and lack of carparking.

Some of the submissions make comment that the proposal being R50 coding shouldn't be permitted in an area with a R30 code. In this regard, it would appear that these respondents are of the view that the R30 proposal under Amendment No 35 has already been adopted. This is not the case as Amendment No. 35 is currently on hold and subject to further study and considerations by the Council and Department of Planning and Infrastructure in relation the "Canning Bridge Study".

The submissions in support include an unofficial petition containing 68 signatures. The submission does not refer to whether it relates to the straight residential development or the mixed-use development. However, one supporter made reference to supporting only the residential development. Therefore is assumed that the other supporters are generally supportive of the residential development as well as the mixed-use development.

It should be noted that two property owners across Tweeddale Road, facing the proposal, are in support of the residential use and the mixed use.

#### Height of the Building

The application proposes a maximum building height of 13.8 metres for a small portion at the front of the roof in lieu of 13.5 metres. This non-compliance is for the proposed roof on top of the balcony of the penthouse on the third floor. Council could require this portion of the roof to be removed or support a minor variation in consideration of the roof being classified as an architectural feature.

#### Car Parking

The total required carparking for residential in accordance with the Residential Design Codes (Variation 1) is 10 bays (2 bays per dwelling) including 1 bay for visitors. The application proposes 15 bays, including 2 visitor bays. It should be noted that the application initially included 16 bays, however bay 12 is required to provide a reversing bay at the end of the parking area in accordance with Australian Standards

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

Traffic

The average weekly traffic along Tweeddale Road between Forbes Road and Moreau Mews of 375 vehicles in 2004.

The total vehicular trips should be in the order of 5 vehicles trips per day (VTPD) per dwelling (Based on roads and Traffic Authority of NSW – VTPD) and the proposed 5 multiple dwellings will generate a total of 25 VTPD which is considered to have no further impact onto this section of Tweeddale Road.

Engineering Services have advised as follows:

1. Whilst the development might only generate 26 vehicular movements per day, and will not appear to impact on the road network, a cumulative effect may arise in adjacent streets when the area is fully developed. These matters will need to be taken into consideration in the Canning Bridge Study or supplementary reports on the development of the area.
2. Details are required with regard to the slope of the access way and how they relate to the two (2) parking bays at the front of the property. In addition, it is noted that the crossover to the development will need to be relocated to provide appropriate clearance to an existing street tree. This may place further constraints on access to these bays and require the front setback area to be redesigned to accommodate the 2 bays with suitable access. An appropriate condition is to be applied in this regard.
3. All parking bays, inclusive of disabled parking bays and ramps for vehicles and pedestrian movement are to be provided in accordance with Australian Standards.
4. Signage advising residents to give way to pedestrians when egressing the basement parking area is recommended.
5. A dedicated bin collection area is to be provided on the verge and not to interfere with the use and operation of the footpath. This may require relocation of the footpath. A suitable condition is recommended in this regard.

Setbacks

The reduced side setbacks of 7.5 metres to the penthouse balcony on each side of the proposal, does not comply with the Acceptable Development standards of the R-Codes, however are deemed to comply with the Performance Criteria relative to assessment of the effects of sun, shadow, ventilation, privacy and building bulk on both properties which are considered to be insignificant and therefore compliant.

It should be noted that the balcony side setbacks to the first and second floor are in compliance with the R-Codes.

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

Streetscape

The original residential character and amenity of the streetscape which was predominantly characterized by single residential along that section of Tweeddale Road has been substantially modified with redevelopment of the area in recent years.

The nine (9) original properties on the southern side of Tweeddale Road, within the Canning Bridge Frame and R50 coding, have been redeveloped as follows:

- 4 properties have been redeveloped with a three (3) grouped dwellings of 2 storeys each. Two of these properties have a 2 storey dwelling plus undercroft garage fronting Tweeddale Road.
- 2 properties have been redeveloped with a 3 storey dwelling each.
- 1 property has been redeveloped with a 4 storey building plus undercroft garage, with seven (7) multiple dwellings.
- 1 property has 2 grouped dwellings of single storey and one of them with undercroft garage.
- 1 property is the subject of this application.

The northern side of Tweeddale Road is zoned residential with R30 coding and its 10 properties have been redeveloped mainly with 2 storeys dwellings as follows:

- 3 properties have been redeveloped with 2 storey house each.
- 1 property has been redeveloped with three (3) grouped dwellings of 2 storeys each.
- 2 properties have been subdivided into five (5) green title lots and four (4) of them have been redeveloped with 2 storey houses each and one of them with additional undercroft garage.
- 1 property has been redeveloped with two (2) houses of 2 storey each plus undercroft garage.
- 1 property is of a single storey house.
- 1 property is of a single storey house plus undercroft garage.
- 1 property still vacant and has been subdivided into three (3) green title lots, two (2) of them facing Tweeddale Road.

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

It should be noted that this northern section of Tweeddale Road, under the previous City of Melville Town Planning Scheme No. 3 was coding R17.5.

At the present time, the southern side of Tweeddale Road (with original nine lots) has a total of 21 dwellings facing it (excluding the subject property of this application) and the northern side (with original 10 lots) has a total of 17 dwellings facing it, plus 3 vacant lots with potential to be developed in the near future.

It is therefore noted that this portion of Tweeddale Road has been substantially modified in recent years. Although the zoning remains residential, its architectural character and amenity has been significantly modified over time.

Plot Ratio

The application proposes a plot ratio of 1.027 (1037.4 square metres) in lieu of 0.6 (606 square metres) required under the 2008 Residential Design Codes. It should be noted that this plot ratio has been increased by additional areas relative to the foyer area of 28.75 square metres on first and second floor due to that foyer being used for the exclusive use of the residents of that particular floor. Similar situations exist for the penthouse located on the third floor, which includes the foyer, lift and stairs, as these areas are to be used exclusively by the residents of the penthouse. Consequently a total of 109.22 square metres are added to the total plot ratio of 1037.4 square metres for these exclusive areas.

The proposed plot ratio is 431.1 square metres above the maximum permitted plot ratio of 0.6 (606 square metres), however the proposal is in accordance with the coding R50 as the subject site has a potential for 5 multiple dwellings and 5 dwellings are proposed.

Clause 4.3 of Community Planning Scheme No 5 provides for Council to consider variation of any standard or requirement of Part 4 (with exception to the density of development) through a Special Majority decision. The Precinct requirements under Part 4 for the Canning Bridge Frame provide for R Code standards in accordance with Clauses 5.1 and 5.2 of the Scheme. These provisions indicate that development is to accord with the applicable Residential Development standards of the Codes and accordingly, Council has discretion to vary the plot ratio standards of the Codes under the Scheme. This is consistent with legal advice on plot ratios applicable for mixed use development which was provided last year by Council's solicitors.

It is noted that Clause 4.3 of the Scheme does not specify any criteria for consideration of variation to the development standards. Notwithstanding, any application for development must be considered in the context of Clause 7.8 of the Scheme and in this regard, the following matters are considered appurtenant to this application:

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

1. Objectives and provisions of the Scheme – In this regard, it is noted that the Statement of Intent for the Canning Bridge Frame (CBF) states, “*Primarily residential but may include offices and medical practitioners where privacy of neighbours is respected and design has a residential character.*” It is considered that the proposal is consistent with the Statement of Intent. The design is in keeping with the existing 4 storey building (with undercroft garage) next door on 13 Tweeddale Road and with the other residential dwellings of 3 and 2 storeys along Tweeddale Road.
2. Orderly and proper planning of land in the area – as indicated above, the proposal is consistent with development which has recently established within this portion of Tweeddale Road.
3. Existing and likely future amenity of the area – as indicated above, the proposal is consistent with existing recent development in this section of Tweeddale Road. The density of development would not be consistent with the proposed R30 residential density under Amendment No 35 if gazetted in accordance with the advertised documents in 2006 and now awaiting possible review dependant on the outcomes of the “Canning Bridge Study.” It is noted that if the Amendment had been gazetted with the current advertised proposals in place, Amendment No 35 would provide for 3 multiple dwellings in lieu of the proposed 5, and be limited to a maximum height of 10.5 metres in lieu of the current 13.5 metres. Notwithstanding, an application for variation in height to accommodate 3 dwellings could be made and would need to be considered under similar criteria as this application. In addition, it is too early to identify what the final outcomes of the Canning Bridge Study will be and accordingly, it is difficult to categorically state that the proposal will be out of keeping with future development standards in the area.
4. Nature of development proposed or existing on adjoining land – as indicated above, the proposal is consistent with adjoining development.
5. Design and external appearance and impact on amenity of the surrounding area – the proposal has a high quality finish, consistent with adjoining development.
6. Relevant submissions – these are dealt with in this report.
7. Any other relevant planning considerations – the companion application for a mixed-use development on the subject property would have significantly more impacts on the residential amenity of this section of Tweeddale Road than a straight residential development. In addition, it is noted that the application could have a plot ratio which is consistent with the base 0.6 requirements under the Codes, but maintain the same height within a reduced foot print moved forward on the property so as to maintain the same building bulk when viewed from the street or from properties to the rear. Finally, it should be noted that this increase in plot ratio would have an estimated value of approximately \$1.2m.

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS (REC)**

**CONCLUSION**

The proposed residential use will not have any further impact on neighbourhood amenity and the streetscape and it is considered appropriate within a residential environment. Accordingly the application is recommended for approval

**OFFICER RECOMMENDATION**

**REFERRAL**

**THAT THE APPLICATION FOR PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH FIVE MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS BE REFERRED TO THE NEXT AVAILABLE COUNCIL MEETING WITH A RECOMMENDATION FOR APPROVAL.**

**OFFICER RECOMMENDATION**

**SPECIAL MAJORITY APPROVAL**

**THAT THE APPLICATION FOR A PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH FIVE MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPECROSS BE APPROVED BY SPECIAL MAJORITY OF THE COUNCIL, SUBJECT TO THE FOLLOWING CONDITIONS:**

**SPECIAL CONDITIONS**

- 1. A DETAILED LANDSCAPING AND RETICULATION PLAN BEING SUBMITTED AND APPROVED FOR THE SUBJECT SITE AND ROAD VERGE ADJACENT TO THE SITE. THE APPROVED LANDSCAPING PLAN SHALL BE FULLY IMPLEMENTED PRIOR TO THE FIRST COMMENCEMENT AND OPERATION OR OCCUPATION OF THE DEVELOPMENT AND MAINTAINED THEREAFTER TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES**
- 2. THE EXISTING STREET TREE MARKED ON THE DEVELOPMENT PLANS IS TO BE RETAINED AND THE DRIVEWAY AND CROSSOVER TO BE MODIFIED ACCORDINGLY.**
- 3. THE PROVISION OF ONE (1) STREET TREE IN THE VERGE AREA OF THE SUBJECT PROPERTY IN 100L CONTAINER, AT THE APPLICANTS / OWNERS FULL COST TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. DETAILS OF THE PROPOSED STREET TREES AND LOCATION TO BE INCLUDED IN THE LANDSCAPING AND RETICULATION PLAN STATED IN SPECIAL CONDITION 1 ABOVE.**

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

4. DURING EXCAVATIONS, ALL NECESSARY PRECAUTIONS TO BE TAKEN TO PREVENT DAMAGE OR COLLAPSE OF ANY ADJACENT STREETS OR ADJOINING PROPERTIES. IT IS THE RESPONSIBILITY OF THE BUILDER TO LIAISE WITH ADJOINING AND ADJACENT PROPERTY OWNERS PRIOR TO CARRYING OUT WORK.
5. PRIOR TO THE ISSUE OF A BUILDING LICENCE, THE APPLICANT TO SUBMIT A DILAPIDATION REPORT TO THE APPROVAL OF THE PRINCIPAL BUILDING SURVEYOR.
6. ALL SECURITY ALARM DEVICES TO BE “SILENT MONITORED” SYSTEMS TO ADDRESS POTENTIAL IMPACTS ON SURROUNDING RESIDENTIAL AMENITY TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.
7. THE FAÇADE OF THE BUILDING AND WALLS TO BE TREATED WITH AN ANTI-GRAFFITI AGENT TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.
8. THE ROOF OF THE BUILDING NOT TO BE ZINCALUME OR WHITE METAL (E.G. COLORBOND SURFMIST) OR ANY OTHER MATERIAL / COLOUR CONSIDERED TO BE HIGHLY REFLECTIVE UNLESS OTHERWISE APPROVED BY THE MANAGER PLANNING AND DEVELOPMENT SERVICES. DETAILS OF THE PROPOSED ROOF MATERIAL AND COLOUR TO BE SHOWN ON THE DEVELOPMENT PLANS PRIOR TO THE ISSUE OF A BUILDING LICENCE.
9. THE DIMENSIONS OF ALL CAR PARKING BAYS, AISLE WIDTHS AND CIRCULATION AREAS, TOGETHER WITH ACCESS RAMPS FOR VEHICLES AND PEDESTRIANS COMPLYING WITH AUSTRALIAN STANDARDS.
10. SUBMISSION OF A GLARE REFLECTIVITY STUDY BY A SUITABLY QUALIFIED PROFESSIONAL AND ANY GLARE ISSUES TO BE ADDRESSED PRIOR TO THE ISSUE OF A BUILDING LICENCE.
11. THE SUBMISSION OF A COLOUR SCHEDULE BOARD DETAILING THE USE OF MATERIALS, FINISHES AND COLOURS FOR THE MIXED USE BUILDING TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES PRIOR TO THE ISSUE OF A BUILDING LICENCE.
12. EQUIPMENT SUCH AS AIR CONDITIONERS OR EXHAUST VENTS, BUT NOT INCLUDING ANY SOLAR PANEL, WHICH ARE LIKELY TO DETRACT FROM THE VISUAL APPEARANCE OF THE BUILDING SHALL NOT BE LOCATED ON THE ROOF OR OTHERWISE EXPOSED TO PUBLIC VIEW.

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

- 13. PROVISION OF A NOISE MANAGEMENT PLAN FOR THE DEVELOPMENT INDICATING HOW THE NOISE FROM THE CARPARKING, AIR CONDITIONING AND OTHER MECHANICAL EQUIPMENT WILL IMPACT ON THE NEIGHBOURING PROPERTIES AND RECOMMENDATIONS FOR REDUCING ANY POTENTIAL NOISE IMPACT TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. THE RECOMMENDATIONS SHALL BE INCORPORATED IN THE PLANS SUBMITTED FOR A BUILDING LICENCE.**
- 14. LIGHTING TO BE PROVIDED TO ALL CARPARKING AREAS AND THE EXTERIOR ENTRANCES TO ALL BUILDINGS IN ACCORDANCE WITH AUSTRALIAN STANDARD AS 1158.3.1 (CAT. P). ALL EXTERNAL LIGHTING TO BE HOODED AND ORIENTED SO THAT THE LIGHT SOURCE IS NOT DIRECTLY VISIBLE TO THE TRAVELLING PUBLIC OR ABUTTING RESIDENCES.**
- 15. PRIOR TO THE ISSUE OF THE BUILDING LICENCE, THE APPLICANT/OWNER IS REQUIRED TO SUBMIT A CONSTRUCTION MANAGEMENT PLAN FOR THE PROPOSAL, TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES, DETAILING HOW IT IS PROPOSED TO MANAGE:**
  - THE DELIVERY OF MATERIALS AND EQUIPMENT TO THE SITE;**
  - THE STORAGE OF MATERIALS AND EQUIPMENT ON THE SITE;**
  - THE PARKING ARRANGEMENTS FOR CONTRACTORS AND SUBCONTRACTORS;**
  - IMPACT ON TRAFFIC MOVEMENT AND;**
  - OTHER MATTERS LIKELY TO IMPACT ON THE SURROUNDING RESIDENTS.**
- 16. ON COMPLETION OF CONSTRUCTION, ALL EXCESS ARTICLES, EQUIPMENT, RUBBISH OR MATERIALS AND TEMPORARY FACILITIES ARE TO BE REMOVED AND THE SITE AND SURROUNDING AREA USED DURING THE DEVELOPMENT IS TO BE MADE GOOD AND LEFT IN AN ORDERLY AND TIDY CONDITION TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

17. DETAILS ARE REQUIRED WITH REGARD TO THE SLOPE OF THE ACCESS WAY AND HOW THEY RELATE TO THE TWO (2) PARKING BAYS AT THE FRONT OF THE PROPERTY. SHOULD THE RELOCATED CROSSOVER REQUIRED BY CONDITION 2 OR THE DESIGN OF THE BAYS RELATIVE TO THE SLOPE OF THE DRIVEWAY RESULT IN CONSTRAINED ACCESS TO THE FRONT VISITOR PARKING BAYS AND NOT BE TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES, THE FRONT SETBACK AREA IS TO BE REDESIGNED TO ACCOMMODATE THE 2 BAYS WITH SUITABLE ACCESS TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.
18. SIGNAGE ADVISING RESIDENTS TO GIVE WAY TO PEDESTRIANS WHEN EGRESSING THE BASEMENT PARKING AREA IS TO BE PROVIDED TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.
19. A DEDICATED BIN COLLECTION AREA IS TO BE PROVIDED ON THE VERGE AND NOT TO INTERFERE WITH THE USE AND OPERATION OF THE FOOTPATH TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.. THIS MAY REQUIRE RELOCATION OF THE FOOTPATH.

**STANDARD CONDITIONS**

19. 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.
20. THE CONSTRUCTION OF RETAINING WALLS NOT TO EXCEED THE HEIGHTS SPECIFIED ON THE APPROVED PLANS UNLESS OTHERWISE APPROVED BY COUNCIL. DETAILS, SIGNED BY A PRACTICING STRUCTURAL ENGINEER MUST BE SUBMITTED FOR APPROVAL AT THE TIME OF SUBMITTING A BUILDING LICENCE APPLICATION.
21. THE DEVELOPMENT IS TO BE CONNECTED TO THE WATER CORPORATION'S RETICULATED SEWERAGE SYSTEM.
22. GROUND LEVELS MAY NOT BE CHANGED OTHER THAN APPROVED AS PART OF THIS APPROVAL.

**U08/0084 - (JG) PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC)**

- 23. ALL SEWERAGE WASTES AND WATER PIPES TO BE CONCEALED WITHIN THE BUILDING.**
- 24. 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 100 MM; HAVE A BASE OF 4.0 SQM AND A HEIGHT OF 1.0 M AND A HINGED LID. THE RECEPTACLE SHOULD NOT BE ALLOWED TO OVERFILL.**
- 25. DURING CONSTRUCTION ACCESS TO THE LOT TO BE VIA THE STREET FRONTAGE ONLY AND THAT NO BUILDING RUBBLE BE PERMITTED TO OVERSPILL THE SITE.**
- 26. ELECTRICAL INSTALLATION TO BE CONSTRUCTED AND MAINTAINED TO THE SATISFACTION OF WESTERN POWER IN ACCORDANCE WITH THE SAA WIRING RULES NO.CC1, PART 1, 1961.**
- 27. 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 APPROVAL 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. THE LODGING OF DETAILED LANDSCAPE AND RETICULATION PLANS, TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES FOR THE DEVELOPMENT OF THE SITE AND THE ADJOINING ROAD VERGE(S) AT THE TIME OF SUBMITTING A BUILDING LICENCE APPLICATION.**

**IT IS NOTED THAT THE INCREASE IN PLOT RATIO, THE SUBJECT OF THE APPLICATION HAS BEEN ESTIMATED TO HAVE A VALUE OF APPROXIMATELY \$1,200,000.**

**U08/0085 - (JG) APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942). (REC) (ATTACHMENT)**

Ward : Applecross / Mount Pleasant  
Category : Planning / Building Development  
Application Number : DA-2006-1942/A  
Property : 133 The Esplanade, Mount Pleasant WA 6153  
Proposal : Amend application DA-1942 for Two Storey Single Dwelling  
Applicant : Beaumonde Homes  
Owner : Ms S F Russell  
Disclosure of any Interest : No officer involved in the preparation of this report has a declarable interest in this matter.  
Responsible Officer : David Vinicombe  
Manager Planning & Development Services  
Previous Items : DA-2006-1942 approved by DAU on 20 February 2007.

**AUTHORITY / DISCRETION**

Definition

- Advocacy *when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.*
- 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 review 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.*

**U08/0085 - (JG) - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942). (REC) (ATTACHMENT)**

**KEY ISSUES / SUMMARY**

- Application is to amend the two-storey single dwelling approved on 28 February 2007, involving replacement of approved obscure glass with clear glass to habitable (and non-habitable) rooms on the second storey, facing the southern boundary and changes to the southern balcony end on the second storey, from a full height wall to a 1.0 m high balustrade. Consequential setback modifications are also required.
- Three (3) letters of objection have been received from the owners of the property to the south.
- The objections have been lodged by Lawyers on behalf of the adjoining owner. Due to the involvement of the adjoining owner's Lawyers, this report has been legally vetted by Council's solicitors.
- The applicants have lodged an appeal with the State Administrative Tribunal as the City had not determined the application within the statutory 60 day period. The appeal is due to be considered on 20 August 2008. The adjoining owner's solicitors have made a request for intervention in the appeal and the hearing date for this request is 30 June 2008.
- It is considered that the application suitably addresses the performance criteria under the 2008 Residential Design Codes relative to privacy.
- Recommended for approval subject to conditions.

**BACKGROUND**

Approval was issued for a two storey single residence on 28 February 2007 with three special conditions relating to tree removal plus several standard conditions. The building is being built in general accordance with the approved plans (subject to modifications detailed below).

Three (3) windows from habitable rooms on the second storey facing the southern boundary were proposed and approved with obscure glass in accordance with Element 8 of the Residential Design Codes (2002). The southern end of the front balcony on the second storey was proposed and approved with a full height wall.

However the applicant now proposes to change the obscure glass of the above windows to clear glass and the balcony is proposed to have a standard balustrade with a height of 1.0 metre from the finished floor level (in lieu of the approved screen wall).

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**U08/0085 - (JG) - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942). (REC) (ATTACHMENT)****Scheme Provisions**

MRS Zoning	:	Urban (Abuts Parks and Recreation Reserve Inclusive of The Esplanade road reserve)
CPS 5 Zoning	:	Living Area Precinct – River Foreshore
R-Code	:	R12.5
Use Type	:	Residential
Use Class	:	Permitted Use

**Site Details**

Lot Area	:	725 square metres
Retention of Existing Vegetation	:	No
Street Tree(s)	:	Jacaranda (Coogee Road) – Good Condition
Street Furniture (drainage pits etc)	:	Power Pole, 2 Street Signs (The Esplanade)
Site Details	:	<a href="#">U08_0085_PROPERTY_MAP.pdf</a>

[U08\\_0085\\_June\\_2008.pdf](#) A copy of the plans forms part of the Attachments to the Agenda, which were distributed to Members of the Council on Friday 20 June 2008

**DETAIL**

The windows of dining, kitchen and wet kitchen located on the second storey and facing the common southern boundary with 135 The Esplanade are proposed to be of fixed clear glass up to 1.65 metres in height and slide opening above. In addition, the southern end of the front balcony on the second storey, facing the common southern boundary, is proposed to have a balustrade with a height of 1.0 metres from the finished floor level.

The windows of the dining room and kitchen are setback 1.5 metres from the side boundary. The window of the wet kitchen is setback 2.0 metres from the side boundary.

**U08/0085 - (JG) - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942). (REC) (ATTACHMENT)**

### Development Requirements

#### Setbacks

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
<b>Southern Side</b>	5.3 metres	1.5/2.0 metres	<b>Does Not Comply</b>	MPDS	

(Note: Non compliance is emphasised in bold)

### POLICY IMPLICATIONS

Not Applicable

### PUBLIC CONSULTATION/COMMUNICATION

Advertising Required: Yes  
 Neighbour's Comment Supplied: Yes  
 Reason: Visual Privacy issues  
 Support/Object: 1 Submission (5 letters received to date) objecting to proposal – see submission table attached

### REFERRALS TO GOVERNMENT AGENCIES

Not Applicable

**U08/0085 - (JG) - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942). (REC) (ATTACHMENT)****STATUTORY AND LEGAL IMPLICATIONS**

This application was lodged on 11 November 2007. Following consultation and lodgement of a legal submission from the neighbouring objectors to Council in regard to the application, the applicant was requested to provide further comment in relation to satisfaction of the performance criteria of the Codes relative to privacy requirements or provide "Lumisty" screening to the subject windows. It was suggested that the performance criteria and legal challenge should be addressed by Council's solicitor to provide the City with confidence in the assessment of the interpretation of the performance criteria relative to privacy. The applicant instead decided to have a planning consultant experienced in appeals provide the relative performance criteria and at the same time lodge an appeal with the State Administrative Tribunal (SAT) in accordance with Part 14 of the Planning and Development Act 2005. The appeal is currently awaiting determination of this application. If the application is approved, the appeal will be withdrawn. If refused, the matter will be considered by the SAT on 20 August, 2008. It is noted that the adjoining owner's solicitors have made a request for intervention in the appeal and the hearing date for this request is 30 June 2008.

**FINANCIAL IMPLICATIONS**

Defence of an appeal will be of significant cost to the City as experienced in recent appeal matters determined by the SAT. This will to a certain extent be dependant on the extent that Council's solicitors are involved. At this point the applicant has elected to have the appeal conducted without legal representation, however the matter of the request for intervention by the neighbour's solicitors will involve legal representation and this may set the pattern for the remainder of the appeal process. In addition, should the adjoining owner's solicitors be aggrieved by Council's favourable determination of this matter, defence of a prerogative writ in the Supreme Court will be of considerable expense if this eventuates.

Nevertheless, the risk of legal costs in itself cannot be taken into account as a factor in the planning assessment decision which Council needs to make. That is, if Council accepts that, on proper assessment of the planning issues identified the correct and preferable decision is to approve, then Council should not be deflected from that decision by the risk of legal action. If Council considers that the correct and preferable decision is to refuse, then Council should not be deflected from that decision by the costs involved in defending an appeal.

**STRATEGIC AND RISK MANAGEMENT IMPLICATIONS**

Not Applicable

**U08/0085 - (JG) - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942). (REC) (ATTACHMENT)**

**COMMENT**

The applicant proposes to change the approved obscure glass of the windows on the dining room, kitchen and wet kitchen located on the second storey and facing the common boundary with 133 The Esplanade to fixed clear glass up to 1.65 m in height above the finished floor level and slide opening above. Also, the approved full height brick wall on the southern end of the front balcony is proposed to be replaced by a balustrade 1.0 m in height.

The applicant sent a letter to the abutting affected owners advising them of the amended application being lodged within the City of Melville. The abutting owner's Lawyers have submitted 5 letters objecting the proposed changes on the grounds of lost of privacy due to overlooking from those windows and the balcony.

Visual Privacy

The Acceptable Development requirements (6.8.1 A1) of the 2008 Residential Design Codes indicate as follows:

*“Major openings and unenclosed outdoor active habitable spaces (balconies, verandahs, terraces or other outdoor living areas) which have a floor area more than 0.5 m above natural ground level and which overlook any part of any other residential property behind its street setback line, to comply with the following:*

- i Are setback, in direct line of sight within the cone of vision, from the boundary a minimum of:*
  - 4.5 m in the case of bedrooms and studies;*
  - 6 m in the case of habitable rooms other than bedrooms other than bedrooms and studies; and*
  - 7.5 min the case of unenclosed outdoor active habitable spaces; or*
- ii Are provided with permanent vertical screening to restrict views within the cone of vision from any major opening of an active habitable space; or*
- iii Are provided with permanent vertical screening or equivalent, preventing direct line of sight within the cone of vision to ground level of the adjoining property if closer than 25 m to the opening or equivalent.”*

**U08/0085 - (JG) - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942). (REC) (ATTACHMENT)**

In this regard, the property boundary is located within the appurtenant cones of vision from the major openings and balcony and accordingly, performance criteria assessment under the Codes is required. In this regard, the Performance Criteria (6.8.1 P1) of the 2008 Residential Design Codes indicate as follows:

*“Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness.*

*Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscure glass.*

*Where these are used, they should be integrated with the building design and have minimal impact on residents’ or neighbours’ amenity.*

*Where opposite windows are offset from the edge of one window to the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows.”*

In addition to the above, Clause 3.6 (b) of the Codes states,

*“Where a proposed major opening to an active habitable space is less distant from the nearest point of common boundary than the setbacks set out in design element 6.8, the following information shall be provided:*

- (i) The position and dimensions of any balcony or major opening to any active habitable space in any wall of an adjoining building which is visible from the development site and is located within 6 m of a boundary of the development site.*
- (ii) The position and level of any accessible area (eg lawn, paving, decking, balcony or swimming pool) on any adjoining property within 6 m of a boundary of the development site.*
- (iii) Provision of additional marked-up plans and sections showing the cone of vision and critical lines of sight from those major openings as they relate to the adjoining property.*
- (iv) Details of screening or other measures proposed to be used to reduce overlooking.”*

In this regard, it should be noted that the windows of the bedrooms, living and meal areas on the adjoining property are located more than 6.0 metres from the common boundary. It is also noted that the proposed clear glass windows and balcony may enable view towards to the openings of the bedrooms, living and meals areas of the adjoining dwelling, nevertheless these openings are clearly visible from the street (refer to attached photos).

**U08/0085 - (JG) - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942). (REC) (ATTACHMENT)**

In addition to the 2008 Residential Design Codes, Explanatory Guidelines relative to the privacy requirements prepared and presented as part of the Codes include the following extracts:

*“A lesser need for privacy protection is usual in the case of front gardens and areas visible from the street.... The basis for this acceptance is that control of overlooking for areas visible from public areas would be largely ineffective in terms of privacy protection and also could limit outlook over, and surveillance of, the public places themselves.*

*The acceptable development provisions are limited to protection of areas of adjoining property behind its street setback line.*

*Acceptable point-to-point privacy distances can be calculated by aggregating the privacy setbacks of the acceptable development provisions.*

*In the case of active habitable spaces, including outdoor living areas and balconies, an effective separation distance would be in the order of 15 m or more. Clearly this is not realistically achievable. An acceptable compromise setback, where intervening screening is not provided, would perhaps be in the order of 7.5 m.*

*Assessment of applications which involve departures from the acceptable development provisions generally will require plotting the position of the adjacent dwelling, the location of any major openings to habitable rooms and any associated outdoor living areas. This will enable identification of areas and openings which fall in the cone of vision.*

*Evaluation of proposals should take into account only the potential impact of sight lines in those sectors in the plane of vision where separation distances do not meet the acceptable development provisions. With respect to those sectors of the plane of vision where separation distances accord with the acceptable development provisions, a higher standard of privacy protection would not be justified.*

*Minimisation of overlooking should not be interpreted as an absolute prohibition on visual interaction. The objective for this element is to minimise the impact of development on the visual privacy of nearby residents. It is clear that complete protection of privacy is not realistically achievable. Limits to the protection of privacy are also borne out by reference to the general approach to separation as an alternative to the interruption of sight lines, to achieve what is referred to as an acceptable compromise.*

*With reference to the application of the performance criterion in circumstances where an applicant seeks a departure from the acceptable development provisions, the focus should be on what constitutes a reasonable level of privacy in the circumstances and what is realistically achievable. This may vary depending on the circumstances, with general higher levels of privacy achievable in low-density areas than is practical in the higher-density areas. Differing community expectations in different situations also should be kept in mind.....”*

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The key privacy consideration is therefore whether the application achieves a reasonable level of privacy taking into account appropriate levels of separation or “remoteness”. It is apparent that “remoteness” is considered to be that area of vision which extends beyond the defined cone of vision under the acceptable development requirements and beyond the first 6.0 m of the adjoining property. In addition, it is apparent that areas which are visible from public places, even though they may be behind the front setback line, should not be afforded the same levels of privacy as those sensitive private open space areas on the adjoining property (eg – rear open space areas or areas in front of the property hidden behind enclosed fencing).

The subject clear windows and 1.0 m high balustrading proposed in this application are already installed. The following observations are made:

1. The wet kitchen is located facing a two storey wall of the dwelling at 135 The Esplanade. The proposed clear glass window faces a fixed frosted glass window on the second storey of the abutting dwelling and two fixed frosted glass windows on the ground floor. No overlooking to the rear tennis court yard or any other sensitive area of the adjoining property is apparent. As the proposed windows are opposite fixed frosted glass windows, it is considered that there are no overlooking issues from the wet kitchen into any sensitive areas of the abutting property to the south.

Notwithstanding the above, it is noted that in accordance with the definitions under the 2008 Residential Design Codes, “Active habitable space” is any habitable room with an area greater than 10.0 square metres. The wet kitchen is only 9.0 square metres and therefore is not technically considered as an active habitable space and consequentially the visual privacy requirements of the Codes do not apply.

2. The kitchen window is also located facing the above two storey wall. This clear glass window overlooks two fixed frosted glass windows on the second storey of the adjoining property, one appurtenant to a habitable room (sewing room on building plans) and the other located at the end of a balcony. A third fixed frosted glass window is overlooked on the ground floor which relates to the end of the balcony located above the undercroft garage. From the kitchen window, the cone of vision extends into a portion of the existing driveway which is not considered to be a sensitive area. It is considered that even with the proposed clear glass, visual privacy of the adjoining property is maintained. In addition, some river views are achieved from this kitchen window which will draw the attention away from the adjoining dwelling.

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The dining room clear glass window is primarily facing the existing driveway of the adjoining dwelling. Its 6.0 m cone of vision intersects the balconies of the ground floor and upper floor of the adjoining property but does not intersect with the major openings (floor to ceiling windows) to the habitable room behind the balconies and facing the street. It should be noted that all these areas, balconies, windows and driveway of the adjoining property can be seen from The Esplanade and adjacent Canning River foreshore. The balconies have a metal balustrade that allows vision through to the major openings of the habitable rooms.

As above, it is considered that the visual privacy of the adjoining property is maintained relative to the dining room window. River views are also achieved from this dining room window, thereby drawing attention away from the adjoining dwelling.

4. The objectors have expressed special concerns relative to privacy for the bedroom, living and meals areas and have stated that although these areas face the street, only a small portion of these rooms are in fact visible from the street due to the elevation of the block and location of the bedrooms on the second storey. In response, it is noted that the attached photographs taken from The Esplanade and the Canning River foreshore indicate that the front of the adjoining property is clearly visible from the street. Notwithstanding, it is not considered appropriate to rely on this factor in this matter as the argument that these rooms are not fully visible from the street and privacy is protected to some degree within these rooms by virtue of the angle of view and balcony screening portion of the view has some merit. Accordingly, other aspects of privacy consideration within the Codes and Explanatory Guidelines should be taken into account.

The design of the objectors' house contributes to the challenge of the privacy issue here. The objectors' house incorporates three separate front facades, stepped back from one another. The front-most facade is at the front setback line. The wall which represents the "stepping-back" between the forward-most front facade and the next front facade incorporates a balcony and bedroom window that is oriented towards the subject property, hence the comment that the design of the objectors' house contributes to the challenge of the privacy issue. In any event, regardless of that observation, the aggregated separation distances are adequate here in any case and result in a reasonable privacy outcome... The relevance of the reference to the objector's house design is solely that it should not be thought that the subject proposal involves a design that is unusual or un-neighbourly relative to the general run of applications.

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5. It is significant to note that the separation distances between the main bedroom of the adjoining dwelling and the balcony and dining areas of the subject property are approximately 12 m and the aggregated point-to-point privacy distances (as referred to above) is 10.5 m between the bedroom and the dining room and 12 m between the bedroom and balcony. The development clearly achieves this standard in this instance, notwithstanding that the Explanatory Guidelines acknowledge that the acceptable compromise would be the greater of the two separation distances. In this regard it is noted that the point-to-point separation distance between the dining room window and the immediately adjacent habitable room on the adjoining property exceeds 6 m as detailed below. Whilst this does not achieve the aggregated distance of 10.5 m the above acknowledgment applies and the separation distance is considered acceptable.
6. The previously approved full height screen wall at the southern end of the front balcony has not been erected and a 1.0 m high clear glass balustrade is proposed. The balcony's 7.5 m cone of vision overlooks the existing driveway which is not considered as a sensitive area and which is also exposed to views from the street. The cone of vision does not intersect with the existing building and as indicated above, the distance from elements of the adjoining building such as the main bedroom are considered acceptable due to "remoteness".

With due regard to the above, it is considered that there is no "direct overlooking" into active habitable spaces on the adjoining dwelling due to the separation with the proposed amended windows and balcony. Accordingly, it is considered that the proposal complies with the Performance Criteria P1 of element 6.8 Visual Privacy of the 2008 Residential Design Codes.

#### Side Setback

When the application was previously approved with obscure glass windows, the windows were not defined as major openings and accordingly the dwelling was assessed and approved with a compliant 1.5 m setback to the balcony, dining room and kitchen; and 2.0 m setback to the wet kitchen. The windows to the habitable rooms are now defined as major openings and a 5.3 m side setback applies. Accordingly, the 1.5 m side setback does not satisfy the acceptable development requirements of the Codes and assessment of the reduced setback is required under the performance criteria.

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The 2008 Codes state the term 'up to the boundary' meaning either on the boundary or between the boundary and the setback provided by tables 1, 2a and 2b, figures 2a-2e, and figure 3. The result of this essentially requires the consideration of the Performance Criteria under 6.3.1 (Buildings setback from the boundary) and satisfaction of either the Acceptable Development requirements or Performance Criteria under 6.3.2 (Buildings on boundaries). In this instance it is noted that as the property is coded R12.5, that there are no acceptable development standards for boundary walls under the Codes. Accordingly, assessment of the technical boundary wall must be made under Performance Criteria 6.3.2 P2 (Buildings on boundary).

In terms of 6.3.1, the following Performance Criteria applies:

“Buildings setback from boundaries other than street boundaries so as to:

- *provide adequate direct sun and ventilation to the building;*
- *ensure adequate direct sun and ventilation being available to adjoining properties;*
- *provide direct sun to the building and appurtenant open spaces;*
- *assist with protection of access to direct sun for adjoining properties;*
- *assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *assist in protecting privacy between adjoining properties.”*

It is noted that the bulk of the building is not going to change as a result of this application. In fact, the proposal is already in an advanced stage of construction and nearly completed. The proposed wall represents a minor intrusion into the required setback area. If it contained minor openings as initially approved, it would comply with the Acceptable Development Standards for building setback from the boundary. It is considered that the proposed wall satisfies the above Performance Criteria in that there is no further adverse impact on building bulk, does not impact further on access to sunlight or ventilation relative to the adjoining property. Furthermore, as determined above, there are no deemed privacy impacts. Accordingly, it is considered that the proposal complies with the Performance Criteria P1 of Clause 6.3.1 (Buildings setback from the boundary).

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With regard to 6.3.2, the performance criteria for buildings on boundary indicate as follows.

“Buildings built up to boundaries other than the street boundary where it is desirable to do so in order to:

- make effective use of space; or
- enhance privacy; or
- otherwise enhance the amenity of the development;
- not have any significant adverse effect on the amenity of the adjoining property; and
- ensure that direct sunlight to major openings to habitable rooms and outdoor living areas of the adjoining properties is not restricted.

Again, it is noted that the building is not going to change as a result of this application. The reduced setback makes effective use of the development site and in accordance with the above privacy considerations, does not have a further impact on privacy or impact on the amenity of the adjoining property and does not place further restrictions on the adjoining property's direct access to sunlight from major openings of habitable rooms.

## **CONCLUSION**

The proposal is considered to comply with the 2008 Residential Design Code requirements with regard to visual privacy, setbacks from the boundary and boundary walls as detailed above. Accordingly, the proposal is recommended for approval.

## **OFFICER RECOMMENDATION**

## **REFERRAL**

**THAT THE APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942), BE REFERRED TO THE NEXT AVAILABLE COUNCIL MEETING WITH A RECOMMENDATION FOR APPROVAL.**

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**OFFICER RECOMMENDATION**

**APPROVAL**

THAT THE APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942), BE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

REMAINDER OF DEVELOPMENT COMPLYING WITH CONDITIONS AND PLANS APPROVED ON 28 FEBRUARY 2007 FOR PLANNING APPLICATION DA-2006-1942, INCLUDING THE DATE OF EXPIRY OF THE APPROVAL.