

LEVEL 18 THE FORREST CENTRE  
221 ST GEORGES TERRACE  
PERTH WA 6000

PO BOX 7318  
CLOISTERS SQUARE PO  
PERTH WA 6850

**Telephone (08) 9218 7700**  
**Facsimile (08) 9218 7777**

EMAIL: pdobson@hotchkinhanly.com.au  
OUR REF: PBD:20227972 DOC: 1528891

# HOTCHKIN HANLY

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## L A W Y E R S

14 June 2022

City of Melville  
10 Almondbury Road  
BOORAGOON WA 6154

Dear Councillors

### **SUBMISSION TO AGENDA BRIEFING FORUM LOT 90 (NO. 23) CARRON ROAD, APPECROSS**

We act for Annie and Richard Gardner the registered proprietors of the property situated at 26 Strome Road (situated on the corner of Killilan Road), Applecross (**Strome Road Residence**) in relation to DA-2021-214/C (**Application**) being an application to amend an existing approval for a two storey single house with roof terrace at Lot 90 (No. 23) Carron Road, Applecross WA 6153 (**Development Site**).

This submission addresses the removal of the “view of significance” from the Strome Road Residence, if the proposed development is approved.

For the reasons that are developed in the submissions that follow, the Application should be **refused**.

#### **Relevant background**

1. In June 2021, development approval was granted for a two storey single house at the Development Site. The owner has sought and obtained 2 further amendments in July and September 2021.
2. By this fourth application, the owner now seeks further significant amendments, including:
  - (a) increased total building height and a pergola over an outdoor dining area;
  - (b) a reduced side setback to the western boundary; and
  - (c) a reduced primary street setback.
3. On 31 May 2022, the Application was recommended for approval by the DAU. The DAU report:

- (a) acknowledged that the proposed height does not meet the deemed to comply criteria in the R-Codes (page 7);
- (b) acknowledged that the proposed building height requires a performance assessment having regard to the design principles contained in Clause 5.1.6 'Building Height' of the R-Codes, which are directed to ensuring that development maintains access to views of significances where appropriate (page 10);
- (c) acknowledged that the property at 26 Strome Road "is considered to be the most impacted by this proposed building height" and that the rooftop structure blocked views from 26 Strome Road (page 10); and
- (d) the DAU report did **not**, however identify the "view of significance" affected.

**What is the "view of significance"?**

The first step must be the assessment of the view that will be affected if the Application is approved.

The view that is to be considered by the Council in its assessment is the panoramic view of the Perth city skyline from the Strome Road Residence. That view, is essentially an uninterrupted view of the entire Perth city skyline.

The following relevant principles assist in assessing the significance of a view<sup>1</sup>:

	<b>Principle</b>	<b>Strome Road Residence</b>
1.	Whole views are more significant than partial views.	The view is essentially a panoramic view of the entire Perth city Skyline
2.	Iconic views are more significant than views without icons.	The view of the Perth city skyline is, no doubt, an iconic view, sought after by landowners within the locality and throughout the wider metropolitan region.
3.	Views across front and rear boundaries are more significant than views across side boundaries.	Given the location of the Strome Road Residence on the corner, the views are from a frontage of the residence.
4.	Views from living areas are more significant than from bedrooms and service areas.	The view of the skyline is from the office and from the balcony. Mrs Annie Gardner, works full-time from home in the office. The balcony is an entertainment area.

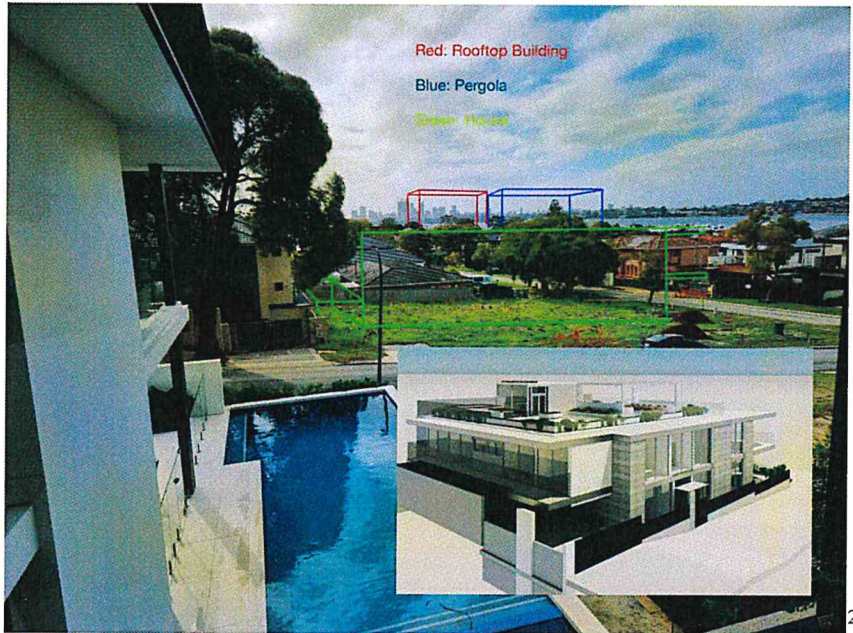
Assessed against these criteria, the panoramic view of the Perth city skyline from the Strome Road Residence is, plainly, a "view of significance". Indeed, it is the same view that the owner of the Development Site seeks to exploit (to the detriment of the Strome Road Residence) and is one that is common in the locality, due to the terrain.

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<sup>1</sup> *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC 140

**What is the impact on the view of significance?**

There is no doubt that the additional height will have a negative impact on the amenity of the Strome Road Residence. The panorama of the skyline will be almost completely obscured by both the services structure and pergola located on the roof-top.



**It is appropriate to maintain the view of significance**

There can be no real dispute that in the locality of the Development Site, views are highly valued and a significant part of the amenity of the locality. The Council of the City should, it is submitted, be persuaded that in such a locality it is appropriate to maintain access to views from properties potentially affected by development that impacts on that access to views.

<sup>2</sup> Mark-up created with data from a drone geo-located to applicant's plans

<sup>3</sup> The supports for the pergola are not "minimal" as the DAU states.

14 June 2022

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Houses that have been built to capture views of significance in prestige areas such as the locality of the Development Site, are a significant financial investment by owners. Removal of a view not only detracts from the enjoyment of living in a residence that enjoys that view but is also likely to result in a devaluation of the property.

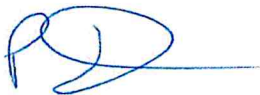
It is no answer to the prejudice that the owners of the Strome Road Residence face if their views are removed, to say that there is another view to the east, as is suggested in the applicant's viewing corridor plan. Firstly, the view to the east is a *different* view (i.e. it is a view without the skyline). Secondly, it is a view that is liable to be obscured by future development. The applicant's "viewing corridor" plan also wrongly suggests that the proposed development retains a view from the Strome Road Residence which it does not.<sup>4</sup>

From the unusually large scale of the proposed development it is to be inferred that the owner of the Development Site has significant resources to create a prestige development. It is respectfully submitted that those resources can be used to make relatively minor adjustments to the height of the building would allow the owner of the Development Site to build a large home, but not at the prejudice of Annie and Richard Gardner.

It is respectfully submitted that the Application should be refused.

Yours faithfully

**HOTCHKIN HANLY**



Phillip Dobson  
Partner

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<sup>4</sup> The applicant's viewing corridor plans suggest that the Strome Road Residence has a view to panorama of the skyline to the northwest, but that is incorrect because it overlooks the existence of a large tree on Killilan Road.

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