

City of Melville Review of Complaints (Building and Planning) by Weir Legal and Consulting
“A Way Forward” Recommendations and Responses

EXECUTIVE SUMMARY

In 2020, the City engaged consultant, Weir Legal and Consulting (WLC) to undertake an independent review of complaints associated with building, planning and environmental health at the City of Melville. The review had a focus on the issues raised by two residents (the Complainants).

Following a 10-month review by WLC, The Weir Legal and Consulting – City of Melville Review of Complaints – Building and Planning Report dated 17 September 2021, (Final Weir Report) was received by the City and Elected Members.

The Final Weir Report includes 15 recommendations and the City has accepted these as opportunities to strengthen our customer responsiveness and capabilities in key areas. As such, the City has actively progressed the 15 recommendations of the Final Weir Report, at an organisational level, with improvements being embedded into our business processes, management and customer service systems.

In line with the Report's recommendations, the following key actions have been undertaken:

- A comprehensive review of the Planning/Building/Health service areas, undertaken by an independent consultant, with a focus on capability and structure, including benchmarking with best practice organisations and increased compliance expertise and accountability.
- Embedding a more responsive approach to community adverse impacts resulting from developments, including:
 - the formation of an internal compliance team of multi-disciplinary officers to identify, assess and action non-compliance issues.
 - the establishment of an officer presence for rapid response development compliance in high impact areas such as Canning Bridge.
- Recognition of the need to better respond to customer complaints in a timely manner, including a review of internal complaints handling processes and the introduction of a complaints categorisation and improvement procedures to streamline the process.
- Rolling out of Customer First Strategy as a Transformational program to put customers at the centre of everything we do across the organisation.
- An acknowledgment and proactive response to strengthen compliance resources and responsiveness across a range of areas (building, planning, health, verge, trees. These improvements are now evident through new positions, increased response capabilities, training and process improvements.
- Strengthening of Council Policy CP-114 Compliance and Enforcement (21 June 2022).

The following table shows the City's progress on the 15 recommendations from Final Weir Report.

Final Weir Report Recommendation	Actions in relation to Findings and Recommendation
<p>Recommendation 1</p> <p>The City should review its policy on the initial notification of development applications where the CBACP applies and consider revising it to ensure that those notified are told they if they wish to make a submission, their submission will be considered and they will be informed of relevant process that they can participate in. (see question 1A)</p>	<p>Response to Recommendation 1 - In Progress</p> <p>The process recommended has been in place since March 2017.</p> <p>Plans and relevant information associated with DA's that are the subject of public consultation are routinely placed on the City's website prior to advertising.</p> <p>This process was in place at the time of the [REDACTED] informal notification in January 2017, and a check of the City's website records confirms that the plans and supporting information in respect of the DA and the informal notification process were published to the website at that time.</p> <p>The Policy is due to be reviewed by February 2023.</p>
<p>Recommendation 2</p> <p>The City should provide an explanation to [REDACTED] and [REDACTED] of:</p> <p>a) why the impact of visitor parking and overflow parking from residents from the [REDACTED] development did not need to be considered in the Traffic Impact Report; and</p> <p>b) how the City took into account the stated objective of the CBACP 'To ensure that adequate vehicle parking and access is provided for multi-storey development, ensure that off-street parking is linked to pedestrian routes and to ensure car parking and servicing activities to not dominate the street (page 37 of the CBACP). (see questions 4A and 5A)</p>	<p>Response to Recommendation 2 – Completed</p> <p>The City has reviewed the responses to [REDACTED] And [REDACTED] on parking and traffic impacts and provide an updated explanation.</p> <p>The City has provided an explanation to [REDACTED] and [REDACTED] on the decision taken by the JDAP which was based on what was considered to be correct advice, notwithstanding the content of the Traffic Report. 5A Noted.</p>

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<p>Recommendation 3</p> <p><i>The City should not include conditions like condition 14 of the [redacted] permit in their planning approvals and instead state more clearly that the approval provides for the use of site sheds and other structures to enable construction but that an application for a permit for materials on the verge may be made. (see question 13A).</i></p>	<p>Response to Recommendation 3 – (a) Completed, (b) In Progress</p> <p>(a) Reviewed the wording of the standard conditions, these apply to the land related to the DA. The verge or road reserve are excluded from a DA application.</p> <p>(b) An application for structures on a verge or road reserve is associated with a building permit application. The City will review to provide greater clarity related to the use of facilities and structures on the verge or road reserve.</p>
<p>Recommendation 4</p> <p><i>The City should prepare an information sheet for the public about permits for materials on the verge including:</i></p> <ul style="list-style-type: none"> a) <i>their purposes and when they are issued;</i> b) <i>that the City is inclined to issue them to enable construction to occur on sites where there are large developments; and</i> c) <i>setting out the kinds of conditions that are imposed to mitigate impacts on safety and the community.</i> <p><i>The information sheet should also state clearly that adjoining neighbours are not consulted as part of the application process. (see question 13A)</i></p>	<p>Response to Recommendation 4 – Completed</p> <p>Recommendation 4 items have been added to the application form for the Materials On Verge Permit and City of Melville website</p> <p>Application form: https://www.melvillecity.com.au/our-city/publications-and-forms/building-and-development/application-to-deposit-materials-on-or-near-a-verg</p> <p>Website: https://www.melvillecity.com.au/planning-and-building/building-or-renovating/verges</p>

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<p>Recommendation 5</p> <p><i>As a matter of priority, the City should develop Construction Management Plan and Traffic Management Guidelines and related documents in consultation with a range of stakeholders including community representatives. (see question 14 A and 15A)</i></p>	<p>Response to Recommendation 5 –In Progress</p> <p>The City agrees that the development of a Construction Management Plan and Traffic Management Plan and Traffic Management Guidelines related documents are required.</p> <p>The compliance issues and impact on the amenity for neighbouring properties needs to be clearer. This includes who has jurisdiction to resolve issues around dust, traffic, safety, noise etc.</p> <p>This will require an increased level of service in compliance activities to ensure more active management and enforcement (where appropriate) in regard to the impact of development throughout the City.</p> <p>A Local Planning Policy for Construction Management has been prepared, was presented to the May 2022 Council meeting, was endorsed by Council for public advertising and has now been the subject of consultation in accordance with the Planning Regulations. Subject to a report to Council in November 2022, this will become an adopted Local Planning Policy.</p> <p>A Compliance Coordinator position and two additional compliance officer positions have been created in the Urban Planning Directorate.</p>

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<p>Recommendation 6</p> <p><i>The City should resource a construction management compliance team that can respond promptly to complaints and work with the community and industry to address breaches of construction management plans and traffic management plans. (see question 14 A and 15A)</i></p>	<p>Response to Recommendation 6 –In Progress</p> <p>The City agrees that the development of a Construction Management Plan and Traffic Management Plan and Traffic Management Guidelines and related documents are required.</p> <p>The compliance issues and impact on the amenity for neighbouring properties needs to be clearer. This includes who has jurisdiction to resolve issues around dust, traffic, safety, noise etc.</p> <p>This will require an increased level of service in compliance activities to ensure more active management and enforcement (where appropriate) in regard to the impact of development throughout the City.</p> <p>A Local Planning Policy for Construction Management has been prepared, was presented to the May 2022 Council meeting, was endorsed by Council for public advertising and has now been the subject of consultation in accordance with the Planning Regulations. Subject to a report to Council in November, this will become an adopted Local Planning Policy.</p> <p>A Compliance Coordinator position and two additional compliance officer positions have been created in the Urban Planning Directorate.</p>

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<p>Recommendation 7</p> <p><i>The City should review the enforcement mechanisms available to it to respond to non-compliance with approved construction management plans and traffic management plans. This may include the development of dedicated local laws with provision for the issuing of infringements, notices, orders or offences that may be prosecuted. (see question 14 A and 15A)</i></p>	<p>Response to Recommendation 7 –In Progress</p> <p>The City agrees that the development of a Construction Management Plan and Traffic Management Guidelines and related documents are required. The compliance issues and impact on the amenity for neighbouring properties needs to be clearer. This includes who has jurisdiction to resolve issues around dust, traffic, safety, noise etc.</p> <p>This will require an increased level of service in compliance activities to ensure more active management and enforcement (where appropriate) in regard to the impact of development throughout the City.</p> <p>Enforcement options currently available are powers available under Planning and Development Act to enforce conditions of planning approval, powers under Health Act and powers under Building Act. Local laws will be reviewed.</p>
<p>Recommendation 8</p> <p><i>The City should complete its review of all ramps that may be non-compliant due to the previous misinterpretation of the relevant Australian Standard by the City without delay. The City will also need to provide for any future maintenance plan, for example to ensure signage and footpath markings are maintained over the longer term. (see question 20A)</i></p>	<p>Response to Recommendation 8 –In Progress</p> <p>The City's traffic engineering staff inspected all sites to gather information on verge conditions, location of footpath, observation of access ramps and observation of truncations and sight distances. The City assessed compliance with AS 2890.1:2004, considered safety risks and formed recommendations for safety improvement. The City initiated contact with landowners where necessary. The City is undertaking some safety improvements in verge areas where considered appropriate to complement landowner actions. The City to continue to monitor effectiveness of recommended safety improvements implemented.</p> <p>The City will review action to date and finalise any further actions considered necessary.</p>

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<p>Recommendation 9</p> <p>The City should advise [redacted] of the outcome of his complaints regarding the following matters concerning [redacted]</p> <p>a) the unauthorised spa and lack of safety barrier around the spa (see question 15B);</p> <p>b) the stone deck around the pool constructed without a building permit (see question 16B)</p> <p>c) the non-complying ground levels and fence heights required under planning approvals issued by the City. (see question 12B);</p>	<p>Response to Recommendation 9 – In Progress</p> <p>The City will review past communications to [redacted] and will provide further responses as necessary to clarify the City’s requirements.</p>
<p>Recommendation 10</p> <p>The City should take steps to require the outer side of the screen fence at [redacted] to be finished to the extent necessary having regard to the proposed construction of a fence by [redacted] on [redacted] (which may remove the need for some or all of the [redacted] screen fence to be finished on the outer side facing [redacted]. This may require the City to insist on [redacted] and [redacted] availing themselves of the processes under the Dividing Fences Act or other legal processes to reach agreement on the way that the screen is to be finished. (see question 14B).</p>	<p>Response to Recommendation 10 - In Progress</p> <p>Council Resolution, dated 16 August 2022, related to this recommendation is being pursued currently by the CEO. An outcome of this process may involve addressing the fence finish.</p> <p>Both property owners have been advised by the City that they may wish to pursue as a civil matter through the WA Magistrate Court.</p>

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<p>Recommendation 11</p> <p><i>If Building and Energy amend its information sheet on works affecting adjoining property, the City should immediately change its practices and require BA20 consent or court order in any circumstances where building work 'may affect adjoining property'. This should include situations where:</i></p> <p>a) <i>half of a duplex is proposed to be demolished (see question 5C); and</i></p> <p>b) <i>excavations for basement construction are proposed close to boundaries (see question 22A).</i></p> <p><i>The City should err on the side of requiring BA20 consent so as to encourage transparency and cooperation between adjoining owners.</i></p>	<p>Response to Recommendation 11 – Complete</p> <p>Recommendation 11 items have been included in the Directorate procedure for Building Permit applications.</p>
<p>Recommendation 12</p> <p><i>Consistent with the advice of Building and Energy, the City should require owners that wish to demolish half of a duplex dwelling to apply for a building permit to demolish as well as a building permit in relation to the make good works. (see question 5C).</i></p>	<p>Response to Recommendation 12 – Completed</p> <p>Recommendation 12 has been included in the Directorate procedure for Building Permit applications.</p>

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<p>Recommendation 13</p> <p>The City should review its Compliance and Enforcement Policy to include:</p> <p>a) commentary on its approach to escalating enforcement action. This might include a policy for escalating the enforcement response where:</p> <p>i. the conduct of an alleged offender is repetitive or ongoing and giving rise to an unacceptable risk to public safety; and</p> <p>ii. the alleged offender has been educated, requested to comply, issued warnings or notices to comply and has failed to do so without reasonable excuse.</p> <p>b. a policy on its communication with complainants when enforcement action is taken and where there are appeals or proceedings relating to those actions. The intention is to provide complainants with an opportunity to attend or initiate their own actions if they choose to do so and to leave it up the relevant court or Tribunal to manage the actions of complainants. (see questions 2B, 3B, and 4B.</p> <p>c.</p>	<p>Response to Recommendation 13 – Completed</p> <p>Council Policy CP-114 Compliance and Enforcements Policy was reviewed and amended as per Recommendation 13 and adopted by the Council at the June 2022 Ordinary Meeting of Council.</p>
<p>Recommendation 14</p> <p>Where a person applies to the City for a BAC for retrospective approval of building work, and where it has been alleged or it is suspected that the subject work may be non-complaint, the City should undertake a substantive review of the application material and conduct its own inspection of the work to confirm the documentation is consistent with as-built conditions and the work appears to be compliant with applicable building standards. Where the City does not have the resources, it should engage an independent consultant to undertake the checks of the application material and/or conduct the inspection.</p>	<p>Response to Recommendation 14 – Completed</p> <p>Recommendation 14 has been addressed with additional notes and directions within the Directorate procedure for Building Permit applications.</p> <p>City Pool inspection (full pool and pool barrier inspection) has been completed and confirms pool compliance.</p> <p>Response/outcome has been provided to Building & Energy.</p>

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<p>Recommendation 15</p> <p>Where there is a failure to comply with a building permit or demolition permit or applicable building standards during construction and the owner is required to provide a new design or a CDC or CBC (new material), the City should undertake a substantive review of the new material and conduct its own inspections to confirm the non-compliance is remedied. Where the City does not have the resources, it should engage an independent consultant to undertake the checks of the new material and/or conduct the inspection.</p>	<p>Response to Recommendation 15 – Completed</p> <p>Points 4.5, 4.6, 4.7.1 and 4.7.2 have been included in the Building Application Directorate Procedure that addresses Recommendation 15</p>