

REPORTS AND RECOMMENDATIONS

FOR THE

DEVELOPMENT ADVISORY UNIT

MEETING

HELD ON

TUESDAY, 21 APRIL 2020

1. This Meeting makes Recommendations to the Manager Statutory Planning.
2. Should any Elected Member wish to discuss the content of any item included as part of the attached agenda, please contact Peter Prendergast, Manager Statutory Planning. Contact should be established as soon as possible after the publication of the agenda to the City of Melville website. Contact details are as follows: peter.prendergast@melville.wa.gov.au or Tel 9364 0626.
3. Should an Elected Member propose that an item on this agenda be referred to Council for determination, a request to that effect must be made to the Chief Executive Officer (CEO). This request shall be made in accordance with the requirements set out by Clause 3.5.4 of Local Planning Policy LPP 1.1 'Planning Process and Decision Making'.
4. Should any applicant or adjoining property owner object to any proposal included as part of this DAU agenda, then an opportunity exists to request that the application be determined by Council. All such requests should be referred to an Elected Member of Council for the Ward within which the development application is located. An Elected Member may request that the application be determined by Council. Any call up request from an Elected Member shall be made in accordance with the requirements set out by Clause 3.5.4 of Local Planning Policy LPP 1.1 'Planning Process and Decision Making'.
5. In the absence of any referral request, a decision on any application included as part of this DAU agenda can take place under delegated authority to the Manager Statutory Planning, after midday on the second Monday after the Friday publication of the minutes to the City's website. In the event that the DAU minutes are not published to the City's website until the Monday after the DAU meeting, a decision on the application can still take place the following Monday.

DISTRIBUTED: FRIDAY, 24 APRIL 2020



**REPORTS AND RECOMMENDATIONS FROM THE DEVELOPMENT ADVISORY UNIT
MEETING HELD IN, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD,
BOORAGOON, COMMENCING AT 9:00 AM ON TUESDAY, 21 APRIL 2020**

PRESENT

P Prendergast
M Scarfone
G Russell
B Ashwood
T Cappellucci
M Flanagan

Manager Statutory Planning
Planning Services Coordinator
Manager Building Services
Senior Planning Officer
Senior Planning Officer
Planning Officer

DISCLOSURES OF INTEREST

**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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U20/0533 PROPOSED AMENDMENT TO DA-2018-538 - MIXED USE DEVELOPMENT - LOT 482 (6) FIFTH STREET, BICTON 6157 (DA-2020-276) (REC) (ATTACHMENT)

Ward : Bicton - Attadale - Alfred Cove Ward
 Category : Operational
 Application Number : DA-2020-276
 Property : Lot 482 (6) Fifth Street, Bicton
 Proposal : Amendment to DA-2018-538 - Mixed use development.
 Applicant : Frank Caputi
 Owner : Frank Caputi and V + D Ferreira
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Responsible Officer : Peter Prendergast
 Manager Statutory Planning
 Previous Items : N/A

AUTHORITY / DISCRETION

DEFINITION

| | | |
|-------------------------------------|----------------|---|
| <input type="checkbox"/> | Advocacy | <i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i> |
| <input type="checkbox"/> | Executive | <i>The substantial direction setting and oversight role of the Council. E.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i> |
| <input type="checkbox"/> | Legislative | <i>Includes adopting local laws, town planning schemes & policies.</i> |
| <input type="checkbox"/> | Review | <i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i> |
| <input checked="" type="checkbox"/> | Quasi-Judicial | <i>When the 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 (e.g. under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i> |
| <input type="checkbox"/> | Information | <i>For the Council to note.</i> |

U20/0533 PROPOSED AMENDMENT TO DA-2018-538 - MIXED USE DEVELOPMENT - LOT 482 (6) FIFTH STREET, BICTON 6157 (DA-2020-276) (REC) (ATTACHMENT)

KEY ISSUES/SUMMARY

- In July 2018, Development Approval was granted for a mixed use development at 6 & 8 Fifth Street, Bicton. The development has recently been completed and initial residential occupation has taken place.
- Condition 3 of the Development Approval required the installation of privacy screening to various windows on the western elevation of the building.
- The current application seeks to delete Condition 3 on the basis that post construction it is clear that there are no adverse impacts for visual privacy, and as such the amenity consideration that the condition of planning approval was designed to safeguard, no longer applies.
- The proposal to remove Condition 3 requires consideration having regard to State Planning Policy 7.3 Residential Design Codes Volume 2 (the R-Codes).
- The proposal was advertised to the adjoining landowner who lodged a written objection raising concerns that the development as constructed does result in an adverse impact on their residential amenity by virtue of overlooking. .
- Notwithstanding the objection received, it is considered that the development is acceptable when assessed against the relevant Element Objectives and Design Guidance provided by the R-Codes.
- It is recommended that approval be granted without conditions.

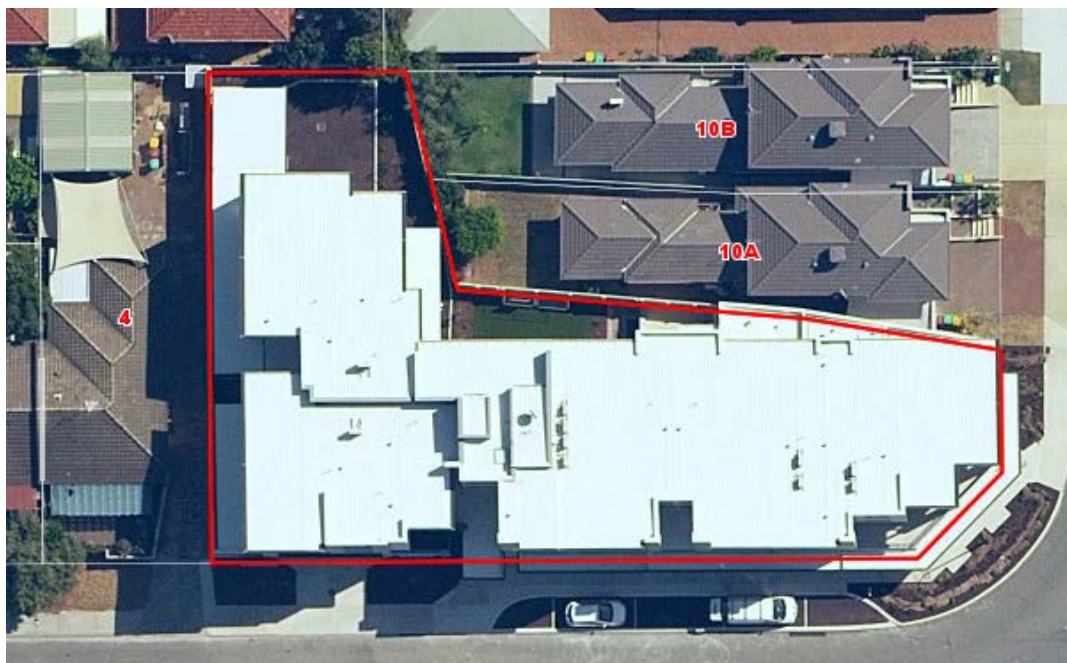


Figure 1 – Aerial Photography

U20/0533 PROPOSED AMENDMENT TO DA-2018-538 - MIXED USE DEVELOPMENT - LOT 482 (6) FIFTH STREET, BICTON 6157 (DA-2020-276) (REC) (ATTACHMENT)

BACKGROUND

Scheme Provisions

| | | |
|-------------|---|---------------|
| MRS Zoning | : | Urban |
| LPS6 Zoning | : | Mixed Use |
| R-Code | : | RAC-0 |
| Use Type | : | R50 Mixed Use |
| Use Class | : | Permitted |

Site Details

| | | |
|---|---|-------------------------------------|
| Lot Area | : | Subject lot - 1239.00m ² |
| Retention of Existing Vegetation | : | No |
| Street Tree(s) | : | Not applicable |
| Street Furniture (drainage, pits, etc.) | : | Not applicable |
| Site Details | : | Refer photo above – Figure 1 |

A copy of the plans forms part of the attachments to the Agenda which were distributed to Elected Members on Friday, 24 April 2020

DETAIL

In July 2018, development approval was granted for a three storey mixed use development (10 multiple dwellings & 4 commercial tenancies) at 6 & 8 Fifth Street, Bicton.

In December 2019 it was noted that the west facing windows on the first floor of the development are not constructed nor screened in accordance with the requirements of Condition 3 of the planning approval.

Condition 3 states as follows:

Prior to the initial occupation of the development, the WESTERN elevation of Unit 1's Living, Meals and Balcony, and the WESTERN elevation of Unit 2's Meals and Kitchen (as marked in RED on the approved plans) shall have installed, fixed obscure screening to a minimum height of 1.6 metres above the finished floor level, or any other screening alternative that complies with the purpose and intent of C1.1 or C1.2 of Clause 6.4.1 of the Residential Design Codes. The screening measures must thereafter be retained in perpetuity to the ongoing satisfaction of the City.

In this case, the windows in question have been constructed with a sill height of 1.5 metres, with no other screening measures applied.

In March 2020, the current development application was submitted which seeks to remove Condition 3 from the approval on the basis that the development as constructed does not give rise to any overlooking or privacy concerns.

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The planning application to remove Condition 3 was advertised in accordance with the provisions of the R-Codes and the City's Local Planning Policy 1.1 Planning Process and Decision Making. In response to this, one submission was received from the owners of the adjoining property at No 4 Fifth Street who oppose the removal of the condition on the grounds that their home is overlooked by the development, and as such their residential amenity levels are adversely affected as their visual privacy is considered to be compromised.

As the setback between the mixed use development and the adjoining property does not meet the acceptable outcomes contained in Clause 3.5 of State Planning Policy 7.3 - Residential Design Codes Volume 2 Apartments (SPP7.3 – Volume 2), a performance assessment is required having regard to the element objectives. This is provided in the table below.

SPP7.3-Volume 2 Requirements

| Design Element | Acceptable Outcomes | As constructed | Comments | Delegation to approve variation |
|-----------------------------|---|---|--|--|
| Part 3.5: Visual Privacy | <p>Clause A3.5.1: Visual privacy setbacks of 6 metres are provided to the lot boundary for major openings to habitable rooms other than bedrooms and studies.</p> <p>Clause A3.5.4: Windows and balconies are sited, oriented, offset or articulated to restrict direct overlooking without excessive reliance on high sill levels or permanent screening</p> | <p>3.0 metre setback provided.</p> <p>Windows are offset from the windows on the adjoining property</p> | <p>Requires assessment against the Element Objectives of the R-Codes. Refer to details in report below.</p> <p>Meets this acceptable outcome as shown in Figure 3 below.</p> | Development Advisory Unit (DAU) |

Note: Commentary in this report relates only to the elements of the proposed development that are the subject of a submission.

U20/0533 PROPOSED AMENDMENT TO DA-2018-538 - MIXED USE DEVELOPMENT - LOT 482 (6) FIFTH STREET, BICTON 6157 (DA-2020-276) (REC) (ATTACHMENT)

STAKEHOLDER ENGAGEMENT

I. COMMUNITY

Advertising Required: Yes
 Neighbour's Comment Supplied: Yes
 Reason: Required pursuant to LPP 1.1 Planning Process and Decision Making Clause 1.7.7
 Support/Object: One objection received.

A summary of the content of the objection received and associated commentary is provided in the table below.

| Summary of Issues Raised | Comments | Action (Condition/ Uphold/ Not Uphold) |
|--|---|--|
| Overlooking occurs to major openings to habitable rooms. I privacy | Refer to the comments section of this report. | Not Uphold |

II. OTHER AGENCIES / CONSULTANTS

No consultation with other agencies/consultants is required.

STATUTORY AND LEGAL IMPLICATIONS

The applicant has the right to have the decision reviewed by the State Administrative Tribunal in accordance with Part 14 of the *Planning and Development Act 2005*.

FINANCIAL IMPLICATIONS

There are no financial implications for the City relating to this proposal.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

There is no strategic, risk, or environmental management implications with this application.

POLICY IMPLICATIONS

There are no Local Planning Policy or Council Policy implications in relation to this development. The proposed development requires a performance assessment having regard to the relevant Design Principles of the R-Codes.

**U20/0533 PROPOSED AMENDMENT TO DA-2018-538 - MIXED USE DEVELOPMENT -
LOT 482 (6) FIFTH STREET, BICTON 6157 (DA-2020-276) (REC) (ATTACHMENT)**

COMMENT

Visual Privacy

The proposed development seeks to delete Condition 3 of DA-2018-538 which requires the installation of screening to the west facing first floor windows of the approved mixed use development. The subject windows are not setback 6.0 metres from the side boundary as required by the acceptable development standards and therefore require a performance assessment having regard to the relevant element objectives of SPP 7.3 – Volume 2. The proposal is considered to meet the element objectives for the following reasons:

- The subject windows are offset from the neighbours kitchen and dining room and as such satisfy Acceptable Outcome 3.5.2 contained within Clause 3.5 *Visual Privacy* (see Figure 3). The offset nature of these windows ensures that any view is oblique rather than direct reducing the visibility into the kitchen and dining room of the adjacent property.
- The subject windows do not directly overlook the outdoor living area of the adjacent property which is located within the front setback area. The outdoor living area is offset from the closest window and the roof covering reduces the ability for people to look downwards into this space.
- The subject windows are located in the kitchen and dining room of Unit 5 (the northern unit) and the dining and living area of Unit 6 (the southern unit). As seen from Figure 4 the kitchen bench provides a physical separation between the window and a person standing at the bench. As such, the opportunity to look into the neighbour's kitchen and dining room is minimised. Regarding the dining room of Unit 5, the windows are at such a height that one would have to stand directly at them and look down at quite a steep, oblique angle to be afforded any view. These principles also apply to the windows of Unit 6 (see Figures 4 -7).
- The element objectives and acceptable outcomes contained in Clause 3.5 seek to strike a balance between protecting the privacy of adjoining landowners and maintaining high levels of amenity for occupiers of apartments. As demonstrated by the illustrations and photographs below, the windows allow for occupiers of the apartments to gain a view towards the west without adversely affecting the amenity levels of occupiers of the adjoining properties.

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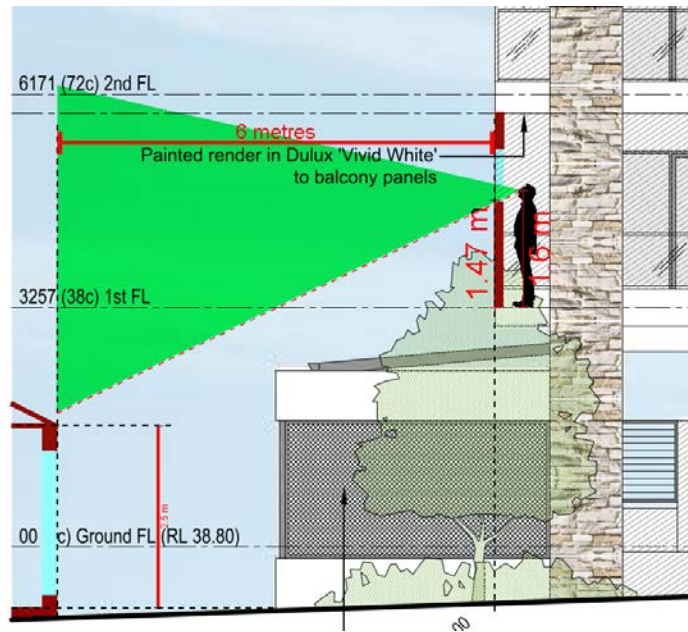


Figure 2: Line of Sight diagram illustrating the steep angle between the subject windows and the neighbour's property.

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Figure 3: The subject 1st floor windows in the western side elevation of the development has oblique rather than direct views of the adjoining neighbour's windows. (The windows are highlighted yellow, the blue box represents the neighbour's kitchen and the green box represents the neighbour's dining room).

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Figure 4: View from Unit 5's kitchen of the neighbour's property. The kitchen bench has the effect of limiting overlooking.



Figure 5: View from Unit 5's dining room of the neighbouring property. Note that this view is towards the roof, not the ground floor eastern side kitchen and dining room windows.

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Figure 6: The living room window of Unit 6.



Figure 7: The dining room window of Unit 6

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ALTERNATE OPTIONS AND THEIR IMPLICATIONS

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

Should Elected Members have an alternative view, the DAU 'call-up' procedures provide an opportunity to call this matter up for formal Council consideration.

CONCLUSION

Given the performance assessment that has been applied in this case concludes that the development as designed is acceptable in principle, it is recommended that approval for the removal of Condition 3 of DA-2018-538 be granted.

OFFICER RECOMMENDATION

APPROVAL

- 1. That Condition 3 of DA-2018-538 be deleted.**

Advice Note:

With the exception of Condition 3, the development shall comply with DA-2018-538 and the associated approved plans at all times unless otherwise approved in writing by the City.