

## ADVICE NOTE

<b>Presented to</b>	July 2022 Ordinary Council Meeting
<b>Related to Item</b>	UP22/3994
<b>Submitted by</b>	Acting Manager Statutory Planning
<b>Attachments</b>	<a href="#"><u>Four Step Assessment – 4 Fraser Road, Applecross</u></a>

At the June 2022 Ordinary Council Meeting, in consideration of Late Item UP22/3988, an application for a proposed two storey single house with roof terrace, Council resolved to defer the item to the July Ordinary Council Meeting and that legal advice be obtained in part in relation to whether views of significance are material considerations in respect to the subject DA.

The legal advice obtained was circulated to Elected Members in the EMB on 15 July 2022.

In summary the legal advice is that the relevance of impact of a proposed development on views is not confined to the impact on views of adjoining properties and extends to the impact on views of nearby properties.

Where a development application is required to be assessed under the design principles of the R Codes in relation to building height, views from properties other than adjoining properties can be relevant.

The legal advice refers to a SAT case [2019] WASAT 88 Warden which contains a detailed approach as to how to apply the design principles relating to building height in so far as it requires assessment of impact on views.

The development application for three storey single house with roof terrace at 4 Fraser Road seeks assessment under the R Codes design principle 5.1.6 for building height and LPP 1.9. It is noted that the report at Item UP22/3994 includes assessment of the impact of the proposed development on the views of nearby properties considered to be most affected.

This Advice Notes provides further comment on the assessment of the impact of the proposed development on views of significance by reference to the approach outlined by SAT in the Warden case so as to demonstrate that these matters have been properly considered. A copy of this assessment is attached.

### Consequences

The assessment of the proposed development at 4 Fraser Road, Applecross having regard to the Warden cases indicates that the development has appropriate regard to access to views of significance for surrounding neighbours. As such the officer recommendation in this matter remains unchanged.

At the ABF on 12 July 2022 a number of questions regarding the development at 4 Fraser Road were taken on notice. Those questions and the answers provided to Elected Members in the EMB on 15 July are summarised below:

**Clarification on the comment that the rear of the property will be approximately 14metres above natural ground level which is not permitted under the R-Codes in a R12.5 zone.**

Under LPP1.9 'Height of Buildings' and Clause 5.1.6 'Building Height' of the R-Codes, the maximum building height permitted for an R12.5 zoned site is 10.5m at the top of the highest element of the building measured from natural ground level. An application that does exceed the 10.5m maximum building height above natural ground level requires an assessment against the Design Principles of the R-Codes, as is contained within the Council Report for this item under Building Height within the comments section.

The maximum height proposed by the development is 12.3m directly above natural ground level. This occurs at the top of the balustrading of the roof terrace in lieu of the maximum height permitted of 10.5m as per LPP1.9 – Building Height. The maximum height at the rear of the proposed development is 11.9m directly above natural ground level.

**Advice with regard to at what point in the fall of the block the 10.5m roof height is achieved and whether the roof top space continued back from that point – is there a point at which the roof top terrace continues at a height it would not ordinarily be permitted to continue if it followed the natural ground contour.**

The height of roof terrace (including its balustrading) is above 10.5m in height directly above natural ground level for its entire length. The height of the roof terrace (including balustrading) ranges from 10.8m to 12.3m directly above natural ground level.

**Are there any on-site trees on the property?**

This question was in regard to Condition 7 of the officer's recommendation which is as follows:

*'The on-site tree/s to be retained (as marked in red on the approved plans) shall be maintained in perpetuity, to the ongoing satisfaction of the City.'*

This condition is imposed when existing trees on-site are being retained. However, with this development application no trees are being retained on-site and instead a 2m x 2m tree planting area is proposed in the front setback area of the site. Therefore, the following condition should' have been imposed:

*'Prior to the initial occupation of the development, the on-site tree (as marked in red on the approved plans) shall be planted and maintained thereafter in perpetuity, to the ongoing satisfaction of the City.'*

An officer amendment to condition 7 of the officer's recommendation has been circulated.

**The interpretation that the significant height restriction is at the front of the building facing Fraser Road, does this height have to be stepped down to the natural ground level throughout the entire structure?**

The interpretation regarding the significant height restriction is at the front of site facing Fraser Road is due to the design principle P6 within Clause 5.1.6 'Building Height' of the R-Codes relating to ensuring building height proposed maintains 'access to views of significance' of adjoining properties. There is a significant slope from south to north on the subject site whereby there is a fall of some 7 to 8 metres across the site. The height of the proposed single house increases progressively northward into the site, and while it is still necessary that this be considered and assessed against the relevant deemed to comply Building Height requirements, does not have an impact on the views of significance of adjoining properties from its eastern and western elevations in comparison to the front whereby due to the natural topography in this location, the height at the front of the development is the location whereby access to views of significance of properties to the south of Fraser Road may be effected. As outlined within the Council Report, the access to views of significance from Nos. 1, 3 & 5A Fraser Road is maintained. Therefore, the height of the dwelling does not need to be stepped down as the height proposed has been assessed to satisfy the relevant design principles of the R-Codes in relation to building height.

In addition to the questions at the ABF, there have been a number of questions raised regarding unauthorised fill on the subject site. In 2015, the City commenced compliance action with regard to fill which had been placed on site at 4 Fraser Road without approval. In January 2016, a development application was received (DA-2016-1). In response to correspondence from the City which indicated that it was unlikely to support the fill in its current form, the owner engaged a contractor to remove some of the soil and reduce the height. These modifications ensured the fill met the deemed to comply provisions of Community Planning Scheme No.5 and the R-Codes and on 4 May 2016, the City wrote to the landowners to state the DA had been withdrawn on this basis.

As indicated in the unauthorised fill section of the report to Council at Item UP22/3994, the current application has been assessed based on the natural ground levels which existed prior to the fill being placed on site. This assessment includes Water Corporation mapping and a cross check with a site plan from a 2003 subdivision application.

A review of the file indicates the City sent the complainants a letter in March 2016 acknowledging their concerns and confirming the applicants had been advised to cease any work until relevant approvals were obtained.

**Copies of the submissions**

Copies of each of the submissions received in relation to the proposed development are available to the Elected Members via the portal - [Submissions 4 Fraser Road, Applecross](#).