

Submission in relation to M22/5895 - GME Motion 10

No confidence in the Planning, Building and Environmental Health function of the City of Melville

My recent interactions with the Department of Urban Planning at the City of Melville date from early 2017 when a neighbour advised me that a five storey development was planned next door at 8 Macrae Road, Applecross.

Over the last four years my confidence in the Department has continually been eroded by a series of mistakes and disfunction to the extent that I now believe the Department presents a physical danger to members of the community and has diminished the attraction of living in the City of Melville.

My physical health and that of the community has been endangered on numerous occasions by the Departments inability to manage the planning, building and environmental health functions in accordance with the Local Government Act and Building Act.

To detail all the issues is a long and complicated task, therefore I have summarised the key issues as an attachment so that the Council can better understand my rationale in moving a no confidence motion at the Annual General Meeting.

I believe the issues that I have highlighted raise questions that staff

have no appreciation of change management, particularly, in relation to major changes in the community and most importantly of cultural change from within is a change of mindset and is not process driven. They do not understand risk assessment and risk mitigation. In many areas they allowed increased risk to the community, not reduced it.

The Council has yet to consider the Weir Review into two residents issues. There has been a review of complaints by an independent legal practitioner and there is a structural review of Urban Planning in progress. The Council should consider these issues collectively and not in a piecemeal manner. None of these reviews address the most significant issue within the City, that of cultural change which is a change of mindset. Processes and structure may change, however, this will not change the dis-functional ingrained culture that exists within the City of Melville.

At this point in time I do not believe the issues within the Planning, Building and Environmental Health functions at the City of Melville are correctly defined. I therefore urge the Council not to accept the City Officers recommendation and seek additional performance information.

Dayle and Fay Kenny

Applecross

4 March 2022

Attachment in support of submission - M22/5895 - GME Motion 10

Issues raised in relation to the no confidence motion in the Planning, Building and Environmental Health function of the City of Melville:

1. Planning Application and Responsible Authority Report for 8 Macrae Road, Applecross:
 - a. Did not include a cut and fill plan showing changes in ground level and a plan showing retaining wall structures, as required by the application form, at the time.
The City's response was that I should have figured it out.
Despite requests to the City and the Builder I still have not seen plans for the retaining wall structures on my boundary.
 - b. The exit ramp contained serious safety issues; the crossfall on the footpath was 1 in 5 (1 in 40 maximum allowed), and there was no 6m of 1 in 20 gradient roadway approaching the exit. Both of which present a significant safety risk to the community.
The City's response at JDAP was that the exit had been checked by the Technical Department and was considered compliant.
 - c. The Traffic Report contained numerous errors, including overlooking the exit safety issues. The City accepted an erroneous, unacceptable report and stated it would not have made any difference to the planning approval.
 - d. A storey was incorrectly designated as a mezzanine allowing a five storey building in a four storey zone.
The City said they relied on previous legal advice, for interpretation of a Code of Practice in relation to the definition of a mezzanine. The City were not prepared to share the legal advice on that interpretation of the Code.
In her review Ms Bronwyn Weir agreed that the additional level was not a mezzanine. It was a storey.
2. The Construction Management Plan
 - a. The Planning Approval for 8 Macrae Road Applecross listed eleven areas to be addressed in the Construction Management Plan. Only two of these areas, hours of work and traffic management were included. However, I have not been able to view the traffic management plan under FOI.
The City claims all areas specified in the Planning Approval were addressed.
Ms Bronwyn Weir in her review also stated she had not seen a comprehensive CMP.
 - b. Following a Council resolution that CMPs must be available to residents, Fay attempted to view the 8 Macrae Road CMP and was told it was not possible.
The City later revised this and told her she could view the CMP at the Planning counter. The viewing time was limited, to 30 minutes; there was an ESH section, dated 19/03/2019, that was previously not available under FOI, and no traffic management plan was available.
 - c. The CMP and the City's control have been ineffective in protecting the local community whilst building at 8 Macrae Road is in progress, for example:
 - The TPZ was not installed until one month after construction commenced. Broken tree branches were left hanging over the footpath. A very dangerous situation.

- Concrete trucks were washed down in the street, allowing concrete slurry to run down the footpath and down our driveway.
- Trucks and cranes dropped oil on the roadway that was not cleaned up.
- The footpath on the opposite side of the road was broken up by ineffective load distribution on crane and concrete pump truck out-riggers,
- Macrae Road was regularly blocked outside the notified hours, without traffic control. At times this was early morning, during the hours of darkness, with no warning lights and no traffic control. Vehicle and bicycles on Macrae Road used the opposite verge. It required seven emails over four months before the City responded to this significant safety issue.
- Our house has been sprayed with concrete, smashing a pergola roof. The Builder did replace the pergola roof.
- Numerous materials have been dropped on our property, including a 2m metal plank that impacted our house and garden path. We have also collected three 60L bags of rubbish that has fallen or been blown onto our property.
- The City issued the Builder with a permit to use 90m² of the verge for storage. We have complained to the City a number of times about the lack of sight lines when exiting our property, particularly when the Builder's vehicles are parked simultaneously on the verge and the roadway. This problem continues today. Currently the Builder is occupying 125m² of the verge, 40% above their permit allowance. This area includes the TPZ which is open and used for storage. This is specifically forbidden.
- Control of dust is a specific requirement of the planning approval. There is no reference to dust control in the CMP that was available to me under FOI.
- I first complained to the City in August and September 2020 when we were being inundated with dust. Again in March 2021 we approached three senior officers in the Environmental Health and Building Departments about dust. We were told it was not a City of Melville issue, even though dust control is a condition of the planning approval, and to contact WorkSafe. WorkSafe had previously advised us that it was a local government compliance responsibility.

We subsequently wrote to the CEO highlighting our dust issue including the chemical analysis showing the presence of copper chrome arsenate, a known carcinogen. There was no response to our email.

The Minister for Industrial Relations Mr Dawson, disagreed and wrote to us pointing out it was a local government compliance issue.

At the insistence of Mayor Gear two environmental health officers visited our property in November 2021, eight months after we first approached the City for help. The officers told us to call them when next it was dusty, so they could witness the dust. Unfortunately these two officers did not inspire confidence that they knew what was required to control the dust. Dust is not always visible.

We had collected 15kg of dust from our gutters over seven months from April 2020. The first 5kg was a mixture of saw dust and rock dust. The saw dust contained copper chrome arsenate. The remaining 10kg was from M-TEX render, the MSDS for which warns it can cause severe eye damage and skin and lung irritation and not to wear contaminated clothing home.

In this case the City did not accept its responsibility to protect residents. As a result we suffered months of needless dust exposure.

3. Eight Macrae Road Exit Ramp

- Following the planning approval for 8 Macrae Road, Applecross I met with the then Technical Director and two senior staff, during October 2017. They assured me the exit would comply with AS/NZS 2890.1 when the building permit was issued.
- In September 2019 the Builder showed me a plan where it was obvious to me that the exit ramp did not comply with the Australian Standard.
- I wrote to the CEO explaining my concern. No response.
- Wrote to the CEO again. He responded that the City would respond in ten days, then no response.
- Cr Pazolli organised a meeting with the Director of Planning and Manager of Building. They agreed to check plans for ramp design compliance and respond in ten days. (Incidentally I was not advised at this meeting that the non-compliant Building Approval had already been signed off.)
- The Director of Planning responded ten days later that the ramp was considered to be compliant and offered a meeting with technical staff.
- Meeting with technical staff was robust with technical staff trying to talk down my brother and me. There were two staff members at this meeting who were at my October 2017 meeting with the Technical Director and who did not have the courage to stand up and say the ramp was non-compliant and that it was to be sorted before the building permit was issued.
- My brother showed a dash-cam video from a vehicle leaving 164 Riseley Street, which has an existing non-compliant exit ramp. An adult on the footpath could only be seen from the chest up as the vehicle approached the exit.
- Construction work commenced at 8 Macrae Road on the 12 December 2019.
- Subsequently work ceased on the site for three months from the second week of January 2020 while the exit ramp was redesigned.
- In this whole ramp saga the City relied on incorrect advice from the Traffic Consultant, the Builder, an Architect and an Engineer all of whom were paid by the Developer. The City demonstrated they were unable to read AS/NZS 2890.1 for themselves, stand up to the Builder and Developer and make appropriate decisions to protect the residents with whose safety they are entrusted.

4. BA20s for 8 Macrae Road, Applecross construction

- Only one BA20 was issued for the construction at 8 Macrae Road which was in relation to the City of Melville's property along the front verge. No consideration was given to the other eight adjoining residents.
- In September 2019 the Builder wrote to the City stating "**the Act states that a adjoining land owners consent (BA20 form) is required when the proposed design indicates that the building, when completed, will either undermine adjacent land, damage adjacent buildings or change adjacent site drainage.**" Obtained under FOI.
- The Building Act makes no such statement and yet the City adhered to the Builder's request.
- The City's response to the Builder was not available under FOI.
- Subsequently, no consents were required from adjoining residents and they are still being kept in the dark about the change of ground levels and the retaining walls.
- How did the City get this so wrong? They relied on a Building Commission pamphlet that tried to summarise obligations when **work affected other land**, however, it also contained a disclaimer that "**it should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions**".

- There are no other known instances where the City has relied on this pamphlet in preference to the Building Act.
- In an appeal to the Supreme Court in Del Borrello and the City of Vincent, Mr Del Borrello was fined for not obtaining consent from neighbours in relation to a building. The Court did take into account that Mr Del Borrello had or would make good any damage caused and upheld the fines.
- The geotechnical report used by the Building Surveyor for the Design Compliance Certificate warned there was likely to be disruption to paving in our property. This alone warranted a BA20. (I will say more about this geotechnical report later.)
- In February 2020, four months after the Building Permit was issued, the Builder wrote to me with a sketch asking for permission to inject concrete grout under the foundations of our house. There was no BA20 form attached. We rejected this request.
- I have requested information from the City and the Builder regarding the structures to be built on our boundary. I have not been able to view plans and no other information has been forthcoming.
- I also have a concern that the Builder is constructing a dam between my boundary and the 8 Macrae Road basement, that will raise the water table 600mm above my property. This dam is bounded by sheet piling on both ends, the basement wall and cement stabilised sand topped with footings and a retaining wall. The base has been sealed with concrete. This proposed garden area will fill to the surface with water and potentially overflow and seep through the retaining wall into my property.
- Again the City deferred to a request from a Building in preference to protecting adjoining residents, but, did require a BA20 for their property.

5. Basement Excavation – 8 Macrae Road, Applecross

- The basement is 1.5m from my boundary and required an excavation 3m deep.
- In September 2019 I asked the Builder how they intended to stabilise the basement excavation along my boundary.
- The Builder advised that they would use chemical injection (fine cement grout) along the boundary prior to excavating.
- In late December 2019 I returned from leave to find the excavation almost completed.
- When the Builder returned to work in January 2020 I asked what stabilisation work had been completed.
- They advised that no stabilisation had been done.
- This concerned me greatly;
 - A 3m high, near vertical, unretained sand wall 1.3m from our boundary posed a very high risk of collapse endangering our personal safety and our property,
 - It also posed a very high risk to personnel working in the vicinity of the wall,
 - The wall had been left in an extremely dangerous condition for three weeks over the Christmas break,
 - I asked the Builder to backfill against the wall to create a 1 to 1.5 vertical to horizontal slope that would be stable,
 - The Builder did so immediately, without question, which suggests to me they were well aware of the danger associated with the excavation and had done nothing to mitigate the risk.

- The Builder did send me a copy of the geotechnical report used for Design Compliance, which was in error in that it showed the basement 4m from our boundary and a very different excavation.
- I have verified the Builder was in possession of the correct geotechnical report prior to Design Compliance but chose not to use it or follow the correct excavating directions.
- In my view the Builder either knowingly disregarded the correct geotechnical report, the Design Compliance and NCC directions for excavating in unretained sand or is grossly incompetent.
- I did send scale drawings showing the sequence of events during excavation and subsequent stabilisation to the City. There was no response.
- The Building Permit was subsequently revised, but, not the Design Compliance.
- I did ask the City for a walk through on the revised stabilisation plans. There was nobody available who was competent to do so. Well, who signed off the revised Building Permit?
- I did ask the Builder for a completion report on the revised stabilisation work. This was refused.
- I believe the City should have insisted on a revised Design Compliance Certificate with the correct geotechnical analysis and a BA20 consent, especially since the Builder had misled the Building Surveyor, the City and us.
- No action was taken against this Builder by the City.
- Again the City has not taken effective action to protect residents.

6. Non-compliant driveway exits

- Standards for vehicle exits from multi-dwelling developments specify sight lines and roadway gradients in the R-Codes and/or AS/NZS2890.1.
- Unfortunately there are a number of buildings, including recently completed buildings in the City of Melville that do not comply with these standards and are a safety risk to the community.
- This issue was first raised with the City at a SME in 2018.
- In 2020 the City undertook to complete a risk assessment of these non-compliant exits.
- Of the thirteen properties identified, two have had convex mirrors fitted, well above a driver's eye line and one has a very indistinct warning painted on the footpath. Another property has had increased pedestrian traffic, across the exit, that increases the risk to the community.
- The City has been aware of this issue for four years. To date the so called risk mitigation measures are ineffective and in the case of Cirque the public risk has increased.
- This calls into question the City's competence, firstly in approving buildings that did not comply with accepted safety standards and secondly in not effectively rectifying their mistakes when confronted with public concern.

7. Short term accommodation

- The Developer at 8 Macrae Road and 21 Kishorn Road, Applecross applied to the City to have the whole of each building approved for short term accommodation.
- The Developer was advised by the City that approval was not required.
- Council and adjoining residents were also similarly advised by the City.
- Regardless the Council went ahead with a LPP requiring approval for such short term stay.
- This was clarified at JDAP when a WAPC legal officer advised the meeting that short term stay was a significant change of land use and therefore did require planning approval.

- Again the City incorrectly advised the Council which created a lot of confusion and unnecessary Council work and is further evidence of the City acting in the interests of the Developer in preference to residents.

8. Canning Bridge Activity Centre Plan

- There is a significant disconnect between the community's expectation and the City's view of the CBACP.
- As the City represents the community there is an expectation that the City would endeavour to move towards the community view. This is not the case.
- Officers are careless in their explanations to JDAP:
 - Twice I have heard officers mislead the Panel regarding the compliance of carpark exits (8 Macrae Road and 20-22 Kintail Road),
 - Insisting that 15 and 10 storeys were the minimum for the M15 and M10,
 - Short stay accommodation was not a change of land use.
- Responsible Authority Reports are not thorough in scrutinising Developer's submissions, particularly in relation to amenity.
- There have been a number of times where the City has gone against the Council at JDAP.
- The City have not supported the Council and Community in this very significant change.

9. Building Compliance

- The City informed the Mayor and Council that they did not have any responsibilities for building compliance other than approvals.
- The Building Commission clarified that the Council and therefore the City were responsible for building compliance,
- Another example of the City getting it wrong.

10. Crane Trespassing – 21 Kishorn Road, Applecross

- The residents next door to 21 Kishorn Road were extremely concerned by a tower crane over passing their property and particularly by the concrete counterweight being above their bedroom at night.
- They approached the City and were told there was nothing the City could do.
- At considerable expense the residents obtained their own legal advice:
 - It is well established in common law that a crane passing over an adjoining property without consent is considered to be trespass.
 - The adjoining residents had not given their consent, therefore no part of the crane could pass over their property.
 - The Building Act is unclear on this issue.
- The City was unaware of and was unable to discover this well established principle that is well known and understood in the building industry.
- After intervention by the Mayor the City did eventually request the crane be removed, under the Building Act, after causing much stress and cost to the residents.
- Yet another example of the City getting it wrong.