

**PROPOSED AMENDMENTS AT
COMMITTEE OR COUNCIL MEETINGS
(CEO & Officers)**

Name of Officer:	Director Urban Planning
Date of Meeting:	19 July 2022
Meeting of the:	Ordinary Council Meeting
Item No.	UP22/3988 Proposed Two Storey Single House with Roof Terrace at Lot 90 (No. 23) Carron Road, Applecross
Title of Item:	Advice Note

PROPOSED OFFICER AMENDMENT:

That the Item be deferred to the 16 August 2022 Ordinary Council Meeting to enable assessment of the impact on views of significance of adjoining properties as per the SAT Case of Warden and Town of Mosman Park.

REASONS:

At the June 2022 Ordinary Council Meeting, in consideration of Late Item UP22/3988 Proposed Two Storey Single House with Roof Terrace at Lot 90 (No. 23) Carron Road, Applecross, 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 a two storey single house with roof terrace at 23 Carron 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 UP22/3988 includes assessment of the impact of the proposed development on the views of nearby properties considered to be most affected.

The legal advice suggests that the City should undertake assessment guided by applying the methodology used by SAT in the Warden case.

City officers have been unable to complete an assessment of the proposed development against the provisions set out in the SAT case of *Warden and Town of Mosman Park*. Additional information has been received on 19 July 2022 from more than one party which requires examination. Therefore, additional time is necessary in order for an assessment to be undertaken.

It is necessary for the City to be satisfied that the impact on views is acceptable. In this case it is not clear from the information available to the City that this is the case.

In these circumstances it is recommended that Item UP22/3988 be deferred to the next Council meeting to enable the City to finalise assessment of impact on views in relation to the R Codes design principle 5.1.6 height variation.

Pursuant to the the Planning and Development Deemed Provisions cl. 75(1)(a), the local government is required to determine an application for development approval within 90 days or a longer time as agreed with the applicant. In this case the 90 days has already expired without there being an agreement from the applicant to a longer time. The City has sought the consent of the applicant to an extension of time to consider the application.

The applicant has declined the request for extension. Legal advice is that Council can defer the application notwithstanding the Deemed Provision requirement that Council determine the application within 90 days.

The consequence that follows from non-compliance with the requirement to determine within 90 days, is that the local government is to be taken to have refused the application: Deemed Provision cl. 75(2). I.e. deemed refusal.