

**REPORTS AND RECOMMENDATIONS**

**FOR THE**

**DEVELOPMENT ADVISORY UNIT**

**MEETING**

**HELD ON**

**TUESDAY, 14 JUNE 2022**

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](mailto: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, 17 JUNE 2022**



**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, 14 JUNE 2022**

**PRESENT**

P Prendergast  
M Scarfone  
P Hughes  
T Cappellucci  
M Flanagan

Manager Statutory Planning  
Planning Services Coordinator  
Manager Building Services  
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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**U22/0588 – TWO STOREY SINGLE HOUSE WITH ROOF TERRACE AT LOT 1 (NO. 7)  
CUNNINGHAM STREET, APPLECROSS WA 6153 (REC) (ATTACHMENT)**

Ward	:	Applecross - Mount Pleasant
Category	:	Operational
Application Number	:	DA-2022-308
Property	:	Lot (1) No.7 Cunningham Street, Applecross
Proposal	:	Two Storey House with Roof Terrace
Applicant	:	Dimitri Stamatis
Owner	:	Rachel Wong and Simon O'Connell
Disclosure of any Interest	:	No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	:	No Previous Items
Responsible Officer	:	Peter Prendergast Manager Statutory Planning

**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 &amp; 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	<b><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 (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i></b>
<input type="checkbox"/>	Information	<i>For the Council to note.</i>

**U22/0588 – TWO STOREY SINGLE HOUSE WITH ROOF TERRACE AT LOT 1 (NO. 7)  
CUNNINGHAM STREET, APPLECROSS WA 6153 (REC) (ATTACHMENT)****KEY ISSUES / SUMMARY**

- Development approval is sought for a two storey single house with roof terrace at Lot 1 (No. 7) Cunningham Street, Ardross.
- The details of the proposed development have been assessed against Local Planning Scheme No. 6 (LPS6), relevant local planning policies including Local Planning Policy 3.1 – Residential Development (LPP3.1) and Local Planning Policy 1.9 Height of Buildings, and the provisions of State Planning Policy 7.3 Residential Design Codes Volume 1 (R-Codes).
- The proposed development requires a performance assessment in relation to solar access to the adjoining southern property.
- The application was advertised in accordance with the provisions of the R-Codes and Local Planning Policy 1.1 Planning Process and Decision Making (LPP1.1). In response, one objection was received relating to the amenity impact from the level of shadow cast.
- Notwithstanding the objection received, it is considered that the development is acceptable when assessed against the relevant Design Principles of the R-Codes.
- It is recommended that approval be granted subject to conditions.



Figure 1: Aerial Photography

**U22/0588 – TWO STOREY SINGLE HOUSE WITH ROOF TERRACE AT LOT 1 (NO. 7)  
CUNNINGHAM STREET, APPLECROSS WA 6153 (REC) (ATTACHMENT)**

**BACKGROUND**

**Scheme Provisions**

MRS Zoning	: Urban
LPS Zoning	: Residential
R-Code	: R20
Use Type	: Single House
Use Class	: Permitted

**Site Details**

Lot Area	: 494m <sup>2</sup>
Retention of Existing Vegetation	: Not Applicable
Street Tree(s)	: Yes
Street Furniture (drainage pits etc)	: Yes – Footpath and Street Light
Site Details	: Refer to Figure 1 above

A copy of the plans forms part of the attachments to the Agenda which were distributed to Elected Members on Friday, 17 June 2022

**DETAIL**

In April 2022 a development application was lodged for a two storey single house with a roof terrace at Lot 1 (No.7) Cunningham Street, Applecross.

In response to concerns raised by the neighbour, revised plans were submitted in May 2022 which increased the southern boundary setback to a compliant distance. These amended plans are the subject of this report.

The application has been assessed against the provisions of LPS6, the R-Codes) and relevant local planning and council policies. A performance assessment is required in respect of the matters listed below.

State Planning Policy 7.3 - Residential Design Codes Volume 1

Design Element	Deemed to Comply standard	Proposed	Comments	Delegation to approve variation
5.3.2 C2.2 Landscaping for Single House, Grouped and Multiple Dwellings	Landscaping in street setback area <50% impervious surfaces	<u>Helen Street</u> 58%  <u>Truncation</u> 70%  <u>Cunningham Street</u> 64%	Requires a performance assessment against the Design Principles of the R-Codes.	Manager Statutory Planning (MSU)



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Design Element (cont.)	Deemed to Comply standard	Proposed	Comments	Delegation to approve variation
5.4.2 C2.2 Solar Access	10.54% of the site area of 7A Cunningham Street	16.4%	Requires a performance assessment against the Design Principles of the R-Codes.	Development Advisory Unit (DAU)
5.3.5 C5.1 Vehicular Access	Access to on-site parking from the primary street where no secondary street, right-of-way or communal street exists	Subject site is located on a corner and access is proposed from the Primary Street (Helen Street) in lieu of the Secondary Street (Cunningham Street)	Requires a performance assessment against the Design Principles of the R-Codes.	MSU

Local Planning Policy 3.1 Residential Development

Design Element	Deemed to Comply standard	Proposed	Comments	Delegation to approve variation
Clause 1 Street Setback  C2.1(iii) Primary Street Setback	Minimum metres 3 Average metres 6	<u>Helen Street</u>  <i>Ground Floor</i> Minimum metres 1.6  <i>First Floor</i> Minimum metres 1.6 Average metres 4.63	Requires a performance assessment against the Design Principles of the R-Codes.	MSU
Clause 1 Street Setback  C2.2 (ii) Developments on Corner sites	Minimum metres 1.5 Average metres 3	<u>Corner Truncation</u>  <i>First Floor</i> Minimum metres 1.1	Requires a performance assessment against the Design Principles of the R-Codes.	MSU



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Design Element (cont.)	Deemed to Comply standard	Proposed	Comments	Delegation to approve variation
Clause 2 Setback of Garages and Carports  C1.2 Carport Setbacks	Minimum 3 metres	Carport 1.8 metres	Requires assessment against the Design Principles of the R-Codes.	MSU
Clause 3 Fences and Street Walls  C4.1 Front Fences within Primary Street Setback Areas, C4.2 Fencing within Secondary Street Setback Areas & C4.3 Maximum Fence Height	Front fences are to be visually permeable above 1.2 metres to a infill height of 1.8 metres Fencing within the secondary street setback area may be solid only where it abuts the primary outdoor living area.	A small portion of the fence fronting Helen Street reaches a solid height of 1.3 metres and an overall infill height of 2.1 metres  Small portion of the secondary street fence fronting Cunningham Street that doesn't abut the primary outdoor living area is solid to 1.8 metres in height	Requires a performance assessment against the Design Principles of the R-Codes.	MSU

The officer comment below is limited to solar access as this was the subject of the objection received. The proposed elements in relation to landscaping, vehicular access, street setbacks, carport setback and fencing are considered to meet the relevant design principles and are supported on that basis.

## 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 1.7.6
Support/Object:	One objection received

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A summary of the content of the objection received and an officer's response is provided in the table below.

Summary of Issues Raised	Officer's Comment	Action (Condition/ Uphold/ Not Uphold)
The level of shadow exceeds the requirements of the R-Codes	Refer to the comments section of this report.	Not Uphold
Massing of the development caused by reduced setbacks	Since initial consultation the plans have been amended to ensure that the setbacks to the southern boundary meet the deemed-to-comply standards of the R-Codes.	Not Uphold
Bulk impact of the boundary wall	The height of the proposed boundary wall meets the deemed-to-comply requirements of LPP3.1.	Not Uphold
The additional height of any future shade structure will add to the scale of the development	The application does not propose shading structures on the roof. Any future shading structure will be assessed against the relevant provisions should an application be lodged.	Not Uphold

## II. OTHER AGENCIES / CONSULTANTS

No consultation with other agencies/consultants is required.

## STATUTORY AND LEGAL IMPLICATIONS

Should the City of Melville refuse the application for planning approval, the Applicant will have 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 are no strategic, risk or environmental management implications with this application.

## POLICY IMPLICATIONS

There are no policy implications in relation to this proposal.

**U22/0588 – TWO STOREY SINGLE HOUSE WITH ROOF TERRACE AT LOT 1 (NO. 7)  
CUNNINGHAM STREET, APPLECROSS WA 6153 (REC) (ATTACHMENT)****COMMENT**Solar Access

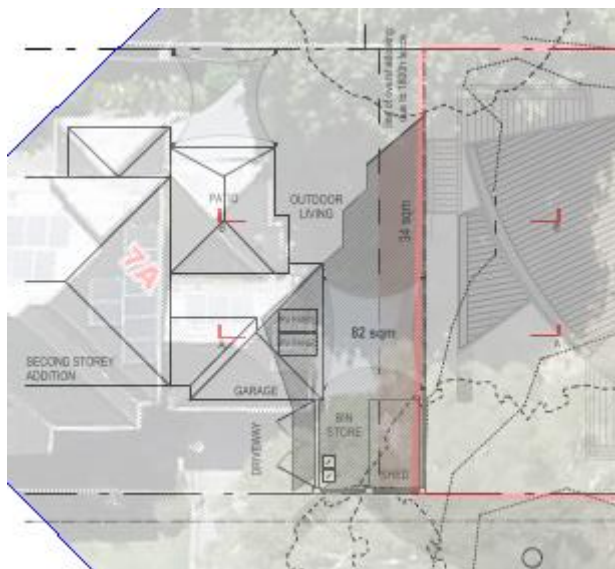
The subject development site at No.7 Cunningham Street shares its southern boundary with No.7A Cunningham Street which in turn is bounded to the north by three properties as shown in Figure 1 above.

As per C2.2 of Clause 5.4.2 Solar Access of the R-Codes, the limit of shading allowed from the development site is proportionate to the percentage of the affected southern lots northern boundary that the development site abuts. The subject development site at No.7 Cunningham Street proposes to shadow 16.4% of 7A Cunningham Street in lieu of the deemed-to-comply requirement of 10.54%. As such, it requires a performance assessment in relation to solar access.

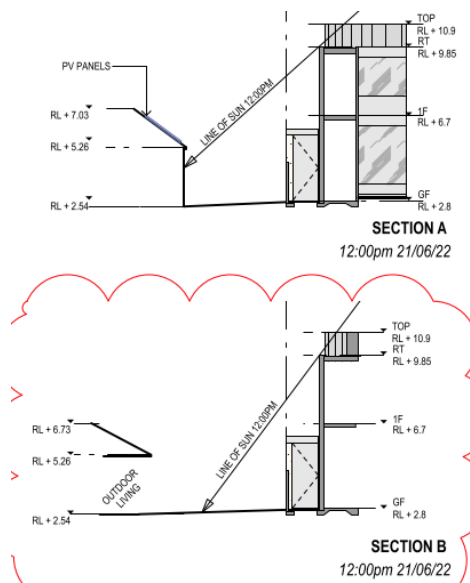
The design principles contained in Clause 5.4.2 of the R-Codes seek to ensure sufficient solar access for the development site and the protection of outdoor living areas, major openings and solar collectors on adjoining properties. The shadow cast is considered to meet the design principles for the following reasons:

- The design elements contained within the Explanatory Guidelines of the R-Codes state that areas most vulnerable to overshadowing are east-west orientated sites on the south side of a development site. In such cases, even a relatively low building may cast a mid-winter shadow over a greater proportion of a site than allowed under the deemed-to-comply provisions of the R-Codes;
- The overshadowing impact, is exacerbated in this case as the southern neighbours outdoor living area and back yard are located on its northern side boundary, with solar collectors also facing north (see Figures 2 & 3 below). An outdoor living area and associated garden area in this location is more susceptible to shadow encroachment from developments to the north than it would be if it was located towards the rear of the dwelling. In this case, the primary shadowing impact from the development will fall onto a shed, garage wall and utility space of the southern neighbour's property (see Figures 4 & 5 below);
- As detailed in the cross sections within Figure 3, the solar panels on the roof of the garage will be unaffected by overshadowing at midday, 21 June which is when shadow cast from a proposed development is required to be determined. In addition, the primary outdoor living area of the southern adjoining lot will also be unaffected (See Figure 6 below). Whilst a portion of the garden associated with the outdoor living area will be impacted, part of which is already covered by a shade sail, the adjoining landowners will retain access to outdoor areas which will be unaffected during the winter months; and
- The curved nature of the proposed development ensures for optimal northern sunlight exposure to the living areas of the subject site whilst also minimising the bulk and shadowing impact to neighbouring residences.

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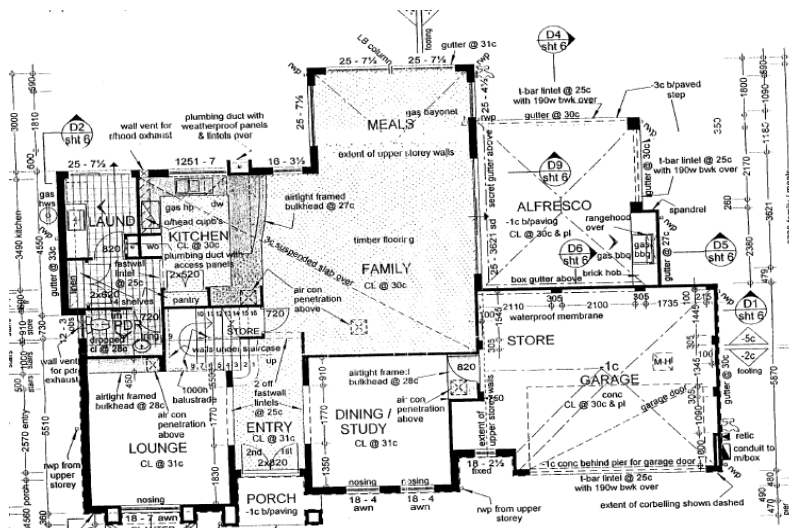
**Figure 2: 2D shadow plan of the development in relation to the neighbouring property**



**Figure 3: Cross-section diagram showing the effect to the neighbouring property in regards to shadowing of the garage and outdoor living area**



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**Figure 4: Ground floor plan of 7A Cunningham Street with subject site being to right of the above image**



**Figure 5: Primary area to be impacted at 7A Cunningham Street**



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**Figure 6: 7A Cunningham Street's primary outdoor living area which will be unaffected from the shadow cast by the proposed development**

### **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 opportunity to call this matter up for formal Council consideration.

### **CONCLUSION**

The application is considered to satisfy the provisions of LPS6, the Design Principles of the Residential Design Codes, and Local Planning Policy. On this basis, it is recommended that the proposal be approved subject to conditions.

### **OFFICER RECOMMENDATION**

### **APPROVAL**

- 1. The development the subject of this approval must comply with the approved plans at all times unless otherwise approved in writing by the City.**
- 2. All stormwater generated on site is to be retained on site in accordance with the City's stormwater design guidelines.**
- 3. Prior to commencement of construction a crossover application shall be submitted to and approved in writing by the City's Technical Services department. The crossover shall be designed to be;**
  - a. a maximum width of 3m;**
  - b. located a minimum of 2m away from the outside of the trunk of any street tree; and**
  - c. a minimum of 1m from any existing street infrastructure.**

**The approved crossover is to be constructed prior to the initial occupation of the development to the satisfaction of the City.**

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4. Where a driveway meets the street, walls or fencing within sight line areas (as marked in green on the approved plans) are to meet the requirements contained under clause 5 of Local Planning Policy *LPP3.1 Residential Development*, to the satisfaction of the City.
5. The street walls and fencing marked in red on the approved plans are required to comply with the definition of 'Visually Permeable' found in *State Planning Policy 7.3 Residential Design Codes Volume 1*, to the satisfaction of the City.
6. Prior to the initial occupation of the development, the boundary wall/s shall, as a minimum, be finished to a clean face brick standard, to the satisfaction of the City.
7. Prior to the initial occupation of the development, the external surface of the retaining wall/s which are visible from the adjoining properties shall, as a minimum, be finished to a clean face brick standard, to the satisfaction of the City.
8. 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.
9. Temporary structures, such as prefabricated or demountable offices, portable toilets and skip bins necessary to facilitate storage, sales, administration and construction activities are permitted to be installed within the property boundaries of the subject site(s) for the duration of the construction period. These structures are to be located so not to obstruct vehicle sight lines of the subject site, the adjacent road network or of adjoining properties to the satisfaction of the City and are to be removed prior to initial occupation of the development
10. Unless otherwise approved in writing by the City, all trees located on the verge adjacent to the land on which the development is to take place shall be protected throughout construction of the development via the installation of a Tree Protection Zone (TPZ). Each TPZ shall be installed prior to commencement of development, in accordance with the following criteria:
  - a. A free-standing mesh fence erected around each street tree with a minimum height of 1.8m and a 2m minimum radius measured from the outside of the trunk of each tree.
  - b. If an approved crossover, front fence, footpath, road or similar is located within the 2m radius of the TPZ, the TPZ fencing shall be located the minimum distance from the approved works that is required to complete the works.
  - c. Fixed signs are to be provided on all visible sides of the TPZ fencing clearly stating 'Tree Protection Zone – No Entry'.
  - d. The following actions shall not be undertaken within any TPZ:
  - e. Storage of materials, equipment, fuel, oil dumps or chemicals;





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- f. Servicing or refuelling of equipment or vehicles;**
- g. Attachment of any device to any tree (including signage, temporary service wires, nails, screws, winches or any other fixing device);**
- h. Open-cut trenching or excavation works (whether or not for laying of services);**
- i. Changes to the natural ground level of the verge;**
- j. Location of any temporary buildings including portable toilets; or**
- k. The parking of vehicles or machinery.**