



— *City of* —
Melville

**NOTES
OF THE
AGENDA BRIEFING FORUM
HELD ON
TUESDAY, 1 JULY 2008**

DISTRIBUTED: 4 JULY 2008



— City of —
Melville

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Notes of the Agenda Briefing Forum held in the Swan Room, Melville Civic Centre, 10 Almondbury Road, Booragoon on Tuesday, 1 July 2008 which commenced at 6.30pm.

FORUM NOTES

PRESENT

R A Aubrey

Mayor

Cr H Everett JP (Presiding Member)
Cr A Ceniviva, Cr D Macphail
Cr R Subramaniam, Cr C W Robartson
Cr Phelan; Cr C M Halton
Cr G Wieland
Cr L M Reynolds

Applecross/Mount Pleasant
City
Bill Creek/Leeming
Palmyra/Melville/Willagee
Bicton/Attadale
University

IN ATTENDANCE

Dr S Silcox
Mr M Tieleman
Mr C McClure
Mr J Cameron

Ms C Young

Mr D Vinicombe

Mr J Gonzalez
Mr B Taylor

Mr J Clark

Mr L Hitchcock
Ms L Reid

Mr S Smith
Ms L Croxford

Chief Executive Officer
Director Customer & Corporate Services
Director Strategic Urban Planning
A/Director Technical Development
Services
A/Director Strategic Community
Development
Manager Planning & Development
Services
Planning Services Coordinator
Manager Information, Technology &
Support
Governance & Compliance Program
Manager
Legal and Compliance Manager
A/Manager Cultural & Community
Development
A/Manager Organisation Development
Minute Secretary

There were 10 members of the public and 2 media representative present in the public gallery at the commencement of the Agenda Briefing Forum.

Mr Clark read aloud the 'Purpose of Agenda Briefing Forum' and the "Disclaimer Statement".

APOLOGIES

Cr N Pazolli
Cr M J Barton

Applecross/Mount Pleasant
Bicton/Attadale

LEAVE OF ABSENCE

Cr J Bennett University Ward
Agenda Briefing Forums & Ordinary Meetings of Council July to October 2008, inclusive.

DEPUTATIONS

- Item P08/3038 -

Mr Jamie Blanchard from Jackson McDonald Lawyers presented on behalf of the owners of 135 The Esplanade, Mount Pleasant

Ms Melanie Palmer from Lavan Legal presented on behalf of the applicant, owner of 133 The Esplanade, Mount Pleasant.

Ms Amanda Butterworth from Allering & Associates also presented on behalf of the applicant, owner of 133 The Esplanade, Mount Pleasant

Various questions were asked by Councillors and Officers during the Deputation presentations.

QUESTION TIME

All questions related to the following Items regarding Lot 2 (15) Tweeddale Road, Applecross.

P08/3042 – Proposed Four Storey Mixed Use Development (Three Multiple Dwellings & Four Offices) on Lot 2 (15) Tweeddale Road, Applecross

P08/3043 – Proposed Four Storey Residential Development with Five Multiple Dwellings & Undercroft Carparking on Lot 2 (15) Tweeddale Road, Applecross

Question 1

K S Matthews, Applecross

“Is Council aware that the R Codes do not allow for variations to plot ratio. The State Administrative Tribunal (SAT) has determined that variations to plot ratio can only be supported where there is no impact on the amenity of an area?”

The Chief Executive Officer responded to the question and advised that there is no Performance Criteria in the R Codes for plot ratio, however the Council has discretion under Clause 4.3 to vary any requirement of the R Codes. There is no impact, in our opinion, on the amenity of the residential area as 5 residential multiple dwellings are proposed with a Mixed Use Frame facing residential area.

Question 2

Hans Schutte, Applecross

"Is Council aware that the majority of residents/owners in Tweeddale Road and surrounding areas do not support this 'lesser impacts' approach and strongly object to the current residential proposal on the basis of the significant impact due to the extra width/bulk of the building due to the extra 400m² (plus) floor area and the inconsistency with the streetscape?"

The Chief Executive Officer responded to the question and advised that the Council is aware of 42 submissions (including 1 petition with 41 signatures) objecting to the Mixed Use Development and also a further 12 submissions, 8 objecting and 4 supporting (including 1 multi signature letter with 68 signatures) were received during the advertising of the Residential Development. The proposal is consistent with the streetscape and is in keeping with the character and scale of the residential area. Bulk is a question of design and built form and as such the application is considered in our opinion, not to create a massing or scale issue in the street.

Question 3

Courtney Williams, Applecross

"Is Council aware that the residents/owners in the area have offered to fund any appeal that may be lodged at SAT for a mixed use development?"

The Chief Executive Officer responded to the question and advised that Council is aware of this however it may not be appropriate for this to occur if an appeal was lodged.

Question 4

Hans Schutte, Applecross

"Is Council aware that the plot ratio significantly exceeds the plot ratio of 0.6 under the RDC which is vigorously opposed by local residents?"

The Chief Executive Officer responded to the question and advised that the exceeded plot ratio is very clearly stated in the Officer's Report. Also, Council is aware of this plot ratio bonus.

Question 5

Amanda Schutte, Applecross

“Is Council aware that independent town planning advice has been gained that appeals by the developer against refusal of both applications is likely to be unsuccessful?”

The Chief Executive Officer responded to the question and advised that City of Melville’s Solicitors have been contacted in relation to this matter in order to give Council advice prior to the Ordinary Meeting of Council.

Question 6

Mary St. Peters

“Is Council fully aware that over 50 residents/owners who strongly object to the proposed development consider it will have an adverse impact on the amenity of the area?, And as such cannot be supported.”

The Chief Executive Officer responded to the question and advised that the Council is aware of all submissions received during the advertising for the Mixed Use Development and Residential Development.

DISCLOSURES OF INTEREST

P08/3038	Cr H Everett
P08/3042 & P08/3043	Mr D Vinicombe Manager Planning & Development Services
C08/8007	Cr H Everett

BUSINESS

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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AGENDA ITEMS FOR PRESENTATION

P08/3038 - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942). (REC) (ATTACHMENT)

Disclosure of Interest

Item No.	P08/3038
Councillor	Cr H Everett
Type of Interest	Proximity Interest in Accordance with the Act (s. 5.60B)
Nature of Interest	Relative employed by applicant
Request	Leave
Decision of Council	Not Applicable

At 6.42pm Cr Everett having declared on interest in this item left the meeting. His Worship the Mayor took the chair and chaired the meeting during Cr Everett's absence.

At 6.43pm Mr Jamie Blanchard from Jackson McDonald Lawyers (Legal representative for the owner of 135 The Esplanade, Mount Pleasant) presented a deputation to Elected Members and Officers.

At 7.06pm Ms Melanie Palmer from Lavan Legal (Legal representative for the applicant) and Ms Amanda Butterworth (Planning representative for the applicant) presented a deputation to Elected Members and Officers.

Item Presented by	: Mr David Vinicombe A/Manager Planning & Development Services
Ward	: Applecross / Mount Pleasant
Category	: Planning / Building Development
Application Number	: DA-2006-1942/A
Property	: 133 The Esplanade, Mount Pleasant WA 6153
Proposal	: Amend application DA-1942 for Two Storey Single Dwelling
Applicant	: Beaumonde Homes
Owner	: Ms S F Russell
Disclosure of any Interest	: No officer involved in the preparation of this report has a declarable interest in this matter.
Responsible Officer	: David Vinicombe A/Manager Planning & Development Services
Previous Items	: DA-2006-1942 approved by DAU on 20 February 2007.

P08/3038 - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942) (REC) (ATTACHMENT)

AUTHORITY / DISCRETION

Definition

- | | | |
|-------------------------------------|----------------|---|
| <input type="checkbox"/> | Advocacy | <i>when 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 Council review decisions made by Officers.</i> |
| <input checked="" type="checkbox"/> | Quasi-Judicial | <i>when 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> |

KEY ISSUES / SUMMARY

- Application is to amend the two-storey single dwelling approved on 28 February 2007, involving replacement of approved obscure glass with clear glass to habitable (and non-habitable) rooms on the second storey, facing the southern boundary and changes to the southern balcony end on the second storey, from a full height wall to a 1.0 m high balustrade. Consequential setback modifications are also required.
- Three letters of objection have been received from the owners of the property to the south.
- The objections have been lodged by Lawyers on behalf of the adjoining owner. Due to the involvement of the adjoining owner's Lawyers, this report has been legally vetted by Council's solicitors.
- The applicants have lodged an appeal with the State Administrative Tribunal as the City had not determined the application within the statutory 60 day period. The appeal is due to be considered on 20 August 2008. The adjoining owner's solicitors have made a request for intervention in the appeal and the hearing date for this request is 30 June 2008.
- It is considered that the application suitably addresses the performance criteria under the 2008 Residential Design Codes relative to privacy.
- Recommended for approval subject to conditions.

P08/3038 - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942) (REC) (ATTACHMENT)**BACKGROUND**

Approval was issued for a two storey single residence on 28 February 2007 with three special conditions relating to tree removal plus several standard conditions. The building is being built in general accordance with the approved plans (subject to modifications detailed below).

Three windows from habitable rooms on the second storey facing the southern boundary were proposed and approved with obscure glass in accordance with Element 8 of the Residential Design Codes (2002). The southern end of the front balcony on the second storey was proposed and approved with a full height wall.

However the applicant now proposes to change the obscure glass of the above windows to clear glass and the balcony is proposed to have a standard balustrade with a height of 1.0 metre from the finished floor level (in lieu of the approved screen wall).

Scheme Provisions

MRS Zoning	:	Urban (Abuts Parks and Recreation Reserve Inclusive of The Esplanade road reserve)
CPS 5 Zoning	:	Living Area Precinct – River Foreshore
R-Code	:	R12.5
Use Type	:	Residential
Use Class	:	Permitted Use

Site Details

Lot Area	:	725 square metres
Retention of Existing Vegetation	:	No
Street Tree(s)	:	Jacaranda (Coogee Road) – Good Condition
Street Furniture (drainage pits etc)	:	Power Pole, 2 Street Signs (The Esplanade)
Site Details	:	(3038 Site Photo 2008) (3038 Plans 2008)

DETAIL

The windows of dining, kitchen and wet kitchen located on the second storey and facing the common southern boundary with 135 The Esplanade are proposed to be of fixed clear glass up to 1.65 metres in height and slide opening above. In addition, the southern end of the front balcony on the second storey, facing the common southern boundary, is proposed to have a balustrade with a height of 1.0 metres from the finished floor level.

The windows of the dining room and kitchen are setback 1.5 metres from the side boundary. The window of the wet kitchen is setback 2.0 metres from the side boundary.

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Development Requirements

Setbacks

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
Southern Side	5.3 metres	1.5/2.0 metres	Does Not Comply	MPDS	

(Note: Non compliance is emphasised in bold)

POLICY IMPLICATIONS

Not Applicable

PUBLIC CONSULTATION/COMMUNICATION

Advertising Required: Yes
 Neighbour's Comment Supplied: Yes
 Reason: Visual Privacy issues
 Support/Object: 1 Submission (5 letters received to date) objecting to proposal – see submission table attached [\(3038 Submissions 2008\)](#)

REFERRALS TO GOVERNMENT AGENCIES

Not Applicable

P08/3038 - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942) (REC) (ATTACHMENT)**STATUTORY AND LEGAL IMPLICATIONS**

This application was lodged on 11 November 2007. Following consultation and lodgement of a legal submission from the neighbouring objectors to Council in regard to the application, the applicant was requested to provide further comment in relation to satisfaction of the performance criteria of the Codes relative to privacy requirements or provide "Lumisty" (brand name) or similar screening to the subject windows. It was suggested that the performance criteria and legal challenge should be addressed by the Council's solicitor to provide the City of Melville with confidence in the assessment of the interpretation of the performance criteria relative to privacy. The applicant instead decided to have a planning consultant experienced in appeals provide the relative performance criteria and at the same time lodge an appeal with the State Administrative Tribunal (SAT) in accordance with Part 14 of the Planning and Development Act 2005. The appeal is currently awaiting determination of this application. If the application is approved, the appeal will be withdrawn. If refused, the matter will be considered by the SAT on 20 August, 2008. It is noted that the adjoining owner's solicitors have made a request for intervention in the appeal and the hearing date for this request is 30 June 2008.

FINANCIAL IMPLICATIONS

Defence of an appeal will be of significant cost to the City as experienced in recent appeal matters determined by the SAT. This will, to a certain extent, be dependant on the extent that Council's solicitors are involved. At this point the applicant has elected to have the appeal conducted without legal representation, however the matter of the request for intervention by the neighbour's solicitors will involve legal representation and this may set the pattern for the remainder of the appeal process. In addition, should the adjoining owner's solicitors be aggrieved by Council's favourable determination of this matter, defence of a prerogative writ in the Supreme Court will be of considerable expense if this eventuates.

Nevertheless, the risk of legal costs in itself cannot be taken into account as a factor in the planning assessment decision which Council needs to make. That is, if Council accepts that, on proper assessment of the planning issues, it has identified the correct and preferable decision is to approve, then Council should not be deflected from that decision by the risk of legal action. If Council considers that the correct and preferable decision is to refuse, then Council should not be deflected from that decision by the costs involved in defending an appeal.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Not Applicable

P08/3038 - Application to amend the SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A two-storey single dwelling on lot 25 (133) the esplanade, mount pleasant (da 2006-1942) (REC) (attachment)

COMMENT

The applicant proposes to change the approved obscure glass of the windows on the dining room, kitchen and wet kitchen located on the second storey and facing the common boundary with 133 The Esplanade to fixed clear glass up to 1.65 m in height above the finished floor level and slide opening above. Also, the approved full height brick wall on the southern end of the front balcony is proposed to be replaced by a balustrade 1.0 m in height.

The applicant sent a letter to the abutting affected owners advising them of the amended application being lodged with the City of Melville. The abutting owner's Lawyers have submitted 5 letters objecting the proposed changes on the grounds of loss of privacy due to overlooking from those windows and the balcony.

Visual Privacy

The Acceptable Development requirements (6.8.1 A1) of the 2008 Residential Design Codes indicate as follows:

“Major openings and unenclosed outdoor active habitable spaces (balconies, verandahs, terraces or other outdoor living areas) which have a floor area more than 0.5 m above natural ground level and which overlook any part of any other residential property behind its street setback line, to comply with the following:

- i Are setback, in direct line of sight within the cone of vision, from the boundary a minimum of:*
 - 4.5 m in the case of bedrooms and studies;*
 - 6 m in the case of habitable rooms other than bedrooms other than bedrooms and studies; and*
 - 7.5 min the case of unenclosed outdoor active habitable spaces; or*
- ii Are provided with permanent vertical screening to restrict views within the cone of vision from any major opening of an active habitable space; or*
- iii Are provided with permanent vertical screening or equivalent, preventing direct line of sight within the cone of vision to ground level of the adjoining property if closer than 25 m to the opening or equivalent.”*

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In this regard, the property boundary is located within the appurtenant cones of vision from the major openings and balcony and accordingly, performance criteria assessment under the Codes is required. In this regard, the Performance Criteria (6.8.1 P1) of the 2008 Residential Design Codes indicate as follows:

“Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscape, or remoteness.

Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscure glass.

Where these are used, they should be integrated with the building design and have minimal impact on residents’ or neighbours’ amenity.

Where opposite windows are offset from the edge of one window to the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows.”

In addition to the above, Clause 3.6 (b) of the Codes states,

“Where a proposed major opening to an active habitable space is less distant from the nearest point of common boundary than the setbacks set out in design element 6.8, the following information shall be provided:

- (i) The position and dimensions of any balcony or major opening to any active habitable space in any wall of an adjoining building which is visible from the development site and is located within 6 m of a boundary of the development site.*
- (ii) The position and level of any accessible area (eg lawn, paving, decking, balcony or swimming pool) on any adjoining property within 6 m of a boundary of the development site.*
- (iii) Provision of additional marked-up plans and sections showing the cone of vision and critical lines of sight from those major openings as they relate to the adjoining property.*
- (iv) Details of screening or other measures proposed to be used to reduce overlooking.”*

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In this regard, it should be noted that the windows of the bedrooms, living and meal areas on the adjoining property are located more than 6.0 metres from the common boundary. It is also noted that the proposed clear glass windows and balcony may enable views towards to the openings of the bedrooms, living and meals areas of the adjoining dwelling, nevertheless these openings are clearly visible from the street (refer to attached photos).

In addition to the 2008 Residential Design Codes, Explanatory Guidelines relative to the privacy requirements prepared and presented as part of the Codes include the following extracts:

“A lesser need for privacy protection is usual in the case of front gardens and areas visible from the street.... The basis for this acceptance is that control of overlooking for areas visible from public areas would be largely ineffective in terms of privacy protection and also could limit outlook over, and surveillance of, the public places themselves.

The acceptable development provisions are limited to protection of areas of adjoining property behind its street setback line.

Acceptable point-to-point privacy distances can be calculated by aggregating the privacy setbacks of the acceptable development provisions.

In the case of active habitable spaces, including outdoor living areas and balconies, an effective separation distance would be in the order of 15 m or more. Clearly this is not realistically achievable. An acceptable compromise setback, where intervening screening is not provided, would perhaps be in the order of 7.5 m.

Assessment of applications which involve departures from the acceptable development provisions generally will require plotting the position of the adjacent dwelling, the location of any major openings to habitable rooms and any associated outdoor living areas. This will enable identification of areas and openings which fall in the cone of vision.

Evaluation of proposals should take into account only the potential impact of sight lines in those sectors in the plane of vision where separation distances do not meet the acceptable development provisions. With respect to those sectors of the plane of vision where separation distances accord with the acceptable development provisions, a higher standard of privacy protection would not be justified.

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Minimisation of overlooking should not be interpreted as an absolute prohibition on visual interaction. The objective for this element is to minimise the impact of development on the visual privacy of nearby residents. It is clear that complete protection of privacy is not realistically achievable. Limits to the protection of privacy are also borne out by reference to the general approach to separation as an alternative to the interruption of sight lines, to achieve what is referred to as an acceptable compromise.

With reference to the application of the performance criterion in circumstances where an applicant seeks a departure from the acceptable development provisions, the focus should be on what constitutes a reasonable level of privacy in the circumstances and what is realistically achievable. This may vary depending on the circumstances, with general higher levels of privacy achievable in low-density areas than is practical in the higher-density areas. Differing community expectations in different situations also should be kept in mind.....”

The key privacy consideration is therefore whether the application achieves a reasonable level of privacy taking into account appropriate levels of separation or “remoteness”. It is apparent that “remoteness” is considered to be that area of vision which extends beyond the defined cone of vision under the acceptable development requirements and beyond the first 6.0 m of the adjoining property. In addition, it is apparent that areas which are visible from public places, even though they may be behind the front setback line, should not be afforded the same levels of privacy as those sensitive private open space areas on the adjoining property (eg – rear open space areas or areas in front of the property hidden behind enclosed fencing).

The subject clear windows and 1.0 m high balustrading proposed in this application are already installed. The following observations are made:

1. The wet kitchen is located facing a two storey wall of the dwelling at 135 The Esplanade. The proposed clear glass window faces a fixed frosted glass window on the second storey of the abutting dwelling and two fixed frosted glass windows on the ground floor. No overlooking to the rear tennis court yard or any other sensitive area of the adjoining property is apparent. As the proposed windows are opposite fixed frosted glass windows, it is considered that there are no overlooking issues from the wet kitchen into any sensitive areas of the abutting property to the south.

Notwithstanding the above, it is noted that in accordance with the definitions under the 2008 Residential Design Codes, “Active habitable space” is any habitable room with an area greater than 10.0 square metres. The wet kitchen is only 9.0 square metres and therefore is not technically considered as an active habitable space and consequentially the visual privacy requirements of the Codes do not apply.

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2. The kitchen window is also located facing the above two storey wall. This clear glass window overlooks two fixed frosted glass windows on the second storey of the adjoining property, one appurtenant to a habitable room (sewing room on building plans) and the other located at the end of a balcony. A third fixed frosted glass window is overlooked on the ground floor which relates to the end of the balcony located above the undercroft garage. From the kitchen window, the cone of vision extends into a portion of the existing driveway which is not considered to be a sensitive area. It is considered that even with the proposed clear glass, visual privacy of the adjoining property is maintained. In addition, some river views are achieved from this kitchen window which will draw the attention away from the adjoining dwelling.

The dining room clear glass window is primarily facing the existing driveway of the adjoining dwelling. Its 6.0 m cone of vision intersects the balconies of the ground floor and upper floor of the adjoining property but does not intersect with the major openings (floor to ceiling windows) to the habitable room behind the balconies and facing the street. It should be noted that all these areas, balconies, windows and driveway of the adjoining property can be seen from The Esplanade and adjacent Canning River foreshore. The balconies have a metal balustrade that allows vision through to the major openings of the habitable rooms.

As above, it is considered that the visual privacy of the adjoining property is maintained relative to the dining room window. River views are also achieved from this dining room window, thereby drawing attention away from the adjoining dwelling.

3. The objectors have expressed special concerns relative to privacy for the bedroom, living and meals areas and have stated that although these areas face the street, only a small portion of these rooms are in fact visible from the street due to the elevation of the block and location of the bedrooms on the second storey. In response, it is noted that the attached photographs taken from The Esplanade and the Canning River foreshore indicate that the front of the adjoining property is clearly visible from the street. Notwithstanding, it is not considered appropriate to rely on this factor in this matter as the argument that these rooms are not fully visible from the street and privacy is protected to some degree within these rooms by virtue of the angle of view and balcony screening portion of the view has some merit. Accordingly, other aspects of privacy consideration within the Codes and Explanatory Guidelines should be taken into account.

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The design of the objectors' house contributes to the challenge of the privacy issue here. The objectors' house incorporates three separate front facades, stepped back from one another. The front-most facade is at the front setback line. The wall which represents the "stepping-back" between the forward-most front facade and the next front facade incorporates a balcony and bedroom window that is oriented towards the subject property, hence the comment that the design of the objectors' house contributes to the challenge of the privacy issue. In any event, regardless of that observation, the aggregated separation distances are adequate here in any case and result in a reasonable privacy outcome. The relevance of the reference to the objector's house design is solely that it should not be thought that the subject proposal involves a design that is unusual or un-neighbourly relative to the general run of applications.

4. It is significant to note that the separation distances between the main bedroom of the adjoining dwelling and the balcony and dining areas of the subject property are approximately 12 m and the aggregated point-to-point privacy distances (as referred to above) is 10.5 m between the bedroom and the dining room and 12 m between the bedroom and balcony. The development clearly achieves this standard in this instance, notwithstanding that the Explanatory Guidelines acknowledge that the acceptable compromise would be the greater of the two separation distances. In this regard it is noted that the point-to-point separation distance between the dining room window and the immediately adjacent habitable room on the adjoining property exceeds 6 m as detailed below. Whilst this does not achieve the aggregated distance of 10.5 m the above acknowledgment applies and the separation distance is considered acceptable.
5. The previously approved full height screen wall at the southern end of the front balcony has not been erected and a 1.0 m high clear glass balustrade is proposed. The balcony's 7.5 m cone of vision overlooks the existing driveway which is not considered as a sensitive area and which is also exposed to views from the street. The cone of vision does not intersect with the existing building and as indicated above, the distance from elements of the adjoining building such as the main bedroom are considered acceptable due to "remoteness".

With due regard to the above, it is considered that there is no "direct overlooking" into active habitable spaces on the adjoining dwelling due to the separation with the proposed amended windows and balcony. Accordingly, it is considered that the proposal complies with the Performance Criteria P1 of element 6.8 Visual Privacy of the 2008 Residential Design Codes.

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Side Setback

When the application was previously approved with obscure glass windows, the windows were not defined as major openings and accordingly the dwelling was assessed and approved with a compliant 1.5 m setback to the balcony, dining room and kitchen; and 2.0 m setback to the wet kitchen. The windows to the habitable rooms are now defined as major openings and a 5.3 m side setback applies. Accordingly, the 1.5 m side setback does not satisfy the acceptable development requirements of the Codes and assessment of the reduced setback is required under the performance criteria.

The 2008 Codes state the term 'up to the boundary' meaning either on the boundary or between the boundary and the setback provided by tables 1, 2a and 2b, figures 2a-2e, and figure 3. The result of this essentially requires the consideration of the Performance Criteria under 6.3.1 (Buildings setback from the boundary) and satisfaction of either the Acceptable Development requirements or Performance Criteria under 6.3.2 (Buildings on boundaries). In this instance it is noted that as the property is coded R12.5, that there are no acceptable development standards for boundary walls under the Codes. Accordingly, assessment of the technical boundary wall must be made under Performance Criteria 6.3.2 P2 (Buildings on boundary).

In terms of 6.3.1, the following Performance Criteria applies:

"Buildings setback from boundaries other than street boundaries so as to:

- *provide adequate direct sun and ventilation to the building;*
- *ensure adequate direct sun and ventilation being available to adjoining properties;*
- *provide direct sun to the building and appurtenant open spaces;*
- *assist with protection of access to direct sun for adjoining properties;*
- *assist in ameliorating the impacts of building bulk on adjoining properties; and*
- *assist in protecting privacy between adjoining properties."*

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It is noted that the bulk of the building is not going to change as a result of this application. In fact, the proposal is already in an advanced stage of construction and nearly completed. The proposed wall represents a minor intrusion into the required setback area. If it contained minor openings as initially approved, it would comply with the Acceptable Development Standards for building setback from the boundary. It is considered that the proposed wall satisfies the above Performance Criteria in that there is no further adverse impact on building bulk, does not impact further on access to sunlight or ventilation relative to the adjoining property. Furthermore, as determined above, there are no deemed privacy impacts. Accordingly, it is considered that the proposal complies with the Performance Criteria P1 of Clause 6.3.1 (Buildings setback from the boundary).

With regard to 6.3.2, the performance criteria for buildings on boundary indicate as follows.

“Buildings built up to boundaries other than the street boundary where it is desirable to do so in order to:

- make effective use of space; or
- enhance privacy; or
- otherwise enhance the amenity of the development;
- not have any significant adverse effect on the amenity of the adjoining property; and
- ensure that direct sunlight to major openings to habitable rooms and outdoor living areas of the adjoining properties is not restricted.

Again, it is noted that the building is not going to change as a result of this application. The reduced setback makes effective use of the development site and in accordance with the above privacy considerations, does not have a further impact on privacy or impact on the amenity of the adjoining property and does not place further restrictions on the adjoining property's direct access to sunlight from major openings of habitable rooms.

CONCLUSION

The proposal is considered to comply with the 2008 Residential Design Code requirements with regard to visual privacy, setbacks from the boundary and boundary walls as detailed above. Accordingly, the proposal is recommended for approval.

P08/3038 - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942) (REC) (ATTACHMENT)

OFFICER RECOMMENDATION (3038)

APPROVAL

THAT THE APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942), BE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS.

SPECIAL CONDITIONS

- 1. THIS APPROVAL EXPIRES ON 28 FEBRUARY 2009, BEING A PERIOD OF TWO YEARS FROM THE INITIAL APPROVAL DATE FOR PLANNING APPLICATION DA-2006-1942.**
- 2. THE EXISTING JACARANDA STREET TREE LOCATED WITHIN THE CENTRAL AVENUE ROAD VERGE OF 133 THE ESPLANADE, MOUNT PLEASANT, TO BE RELOCATED AT THE APPLICANTS/OWNERS FULL COST TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. THE STREET TREE IS TO BE RELOCATED MID-VERGE WITHIN THE AREA MARKED IN 'RED' ON THE APPROVED PLANS.**
- 3. THE APPLICANT/OWNER TO ENTER INTO A BOND AGREEMENT WITH THE CITY OF MELVILLE FOR THE STREET TREE RELOCATION. THE CASH AMOUNT APPLICABLE TO THE BOND AGREEMENT SHALL BE \$2,000 AND IS TO BE HELD BY THE CITY OF MELVILLE FOR A REPLACEMENT TREE SHOULD THE RE-PLANTING FAIL, FOR A PERIOD OF 12 MONTHS FROM PLANTING.**
- 4. THE APPLICANT/OWNER TO PROVIDE TO THE CITY OF MELVILLE, IN WRITING, CONFIRMATION OF THE INTENTION TO PROCEED WITH THE STREET TREE RELOCATION AND THE INTENTION TO ENTER IN THE BOND AGREEMENT WITH THE CITY OF MELVILLE WITHIN 21 DAYS OF THE DATE OF THIS APPROVAL.**

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STANDARD CONDITIONS

- 5. ALL STORMWATER AND DRAINAGE RUN OFF TO BE CONTAINED ON SITE. AN ONSITE STORMWATER DRAINAGE SYSTEM WITH A CAPACITY TO CONTAIN A 1:100 YEAR STORM OF A TWENTY-FOUR (24) HOUR DURATION IS TO BE PROVIDED PRIOR TO THE DEVELOPMENT FIRST BEING OCCUPIED AND THEREAFTER MAINTAINED TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. ALL DOWNPIPES TO BE CONNECTED TO SOAKWELLS. THE PROPOSED STORMWATER DRAINAGE SYSTEM IS REQUIRED TO BE SHOWN ON THE BUILDING LICENCE SUBMISSION FOR APPROVAL PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.**
- 6. THE DEVELOPMENT COMPLYING WITH ANY AMENDMENTS AND NOTATIONS MARKED IN 'RED' AS SHOWN ON THE APPROVED PLANS.**
- 7. ROOFING MATERIALS SHALL NOT BE HIGHLY REFLECTIVE (E.G. ZINC AND WHITE COLOUR METAL ROOFING MAY ONLY BE PERMITTED THROUGH SPECIAL PLANNING CONSENT).**
- 8. ALL CARPORTS AND GARAGES WHERE CONNECTED TO THE MAIN STRUCTURE AND/OR IN FRONT OF THE BUILDING SET BACK LINE TO BE OF THE SAME ROOFING MATERIAL AND FINISHES AS THE MAIN STRUCTURE.**
- 9. PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION THE COUNCIL REQUIRES THE PROVISION OF A SUITABLE RECEPTACLE FOR THE CONTAINMENT OF WINDBLOWN RUBBISH. THE RECEPTACLE (GENERALLY A WIRE MESH CAGE) SHOULD HAVE MAXIMUM OPENINGS OF 100MM; HAVE A BASE OF 4M² AND A HEIGHT OF 1M AND A HINGED LID. THE RECEPTACLE SHOULD NOT BE ALLOWED TO OVERFILL.**
- 10. ALL UNUSED CROSSOVER(S) ARE TO BE REMOVED AND THE KERBING AND ROAD VERGE ARE TO BE REINSTATED AT THE OWNERS FULL COST TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**
- 11. MAXIMUM VEHICLES ACCESS GRADIENT RATIO OF 1:5 BEING ACHIEVED.**
- 12. ALL NEW RESIDENTIAL DWELLINGS TO BE SERVICED BY A CONCRETE OR BRICK PAVED VEHICLE CROSSING OF NO GREATER WIDTH THAN THE LESSER OF 6M OR 40% OF THE WIDTH OF THE FRONTAGE OF THE LOT AND CONSTRUCTED IN ACCORDANCE WITH THE COUNCIL'S SPECIFICATION TO THE SATISFACTION OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**

P08/3038 - APPLICATION TO AMEND THE SECOND STOREY WINDOWS TO THE DINING ROOM, KITCHEN AND WET KITCHEN AREAS AND BALCONY SCREENING FOR A TWO-STOREY SINGLE DWELLING ON LOT 25 (133) THE ESPLANADE, MOUNT PLEASANT (DA 2006-1942) (REC) (ATTACHMENT)

- 13. THE PARKING BAY/S, DRIVEWAY/S AND POINTS OF INGRESS AND EGRESS TO BE DESIGNED IN ACCORDANCE WITH THE COUNCIL PLAN NOS 528A2-91E (BARRIER KERB CROSSOVER), 284A2/84E/7 (MINIMUM CLEARANCES) UNLESS OTHERWISE SPECIFIED BY THIS APPROVAL. WHERE ANY DAMAGE IS CAUSED TO A COUNCIL FACILITY, TREE OR STREET FURNITURE, OR WHERE ALTERATION TO A COUNCIL FACILITY IS REQUIRED, THE COST OF THE APPLICANT SHALL PAY FOR SUCH DAMAGE OR ALTERATION. A CONCRETE APRON HAVING WIDTH OF 0.75M MUST BE INSTALLED BETWEEN A BRICK PAVED CROSSING AND THE BITUMEN SURFACE OF A ROAD. THE COST OF DAMAGE TO A STREET TREE WILL BE DETERMINED IN ACCORDANCE WITH THE "TREE AMENITY VALUATION FORMULA" ADOPTED BY THE COUNCIL.**
- 14. A 1.8 METRE HIGH FENCE TO BE PROVIDED FROM THE HIGHEST RETAINED GROUND LEVEL. ALL FENCING TO BE PROVIDED IN ACCORDANCE WITH THE DIVIDING FENCES ACT. AND BE CONSTRUCTED AS A MINIMUM STANDARD OF FIBRE CEMENT.**
- 15. SPECIFIC APPROVAL MUST BE OBTAINED TO REMOVE A STREET TREE TO PERMIT THE CONSTRUCTION OF A VEHICLE CROSSOVER OTHERWISE IT SHOULD BE ASSUMED THAT STREET TREES ARE TO BE RETAINED. ANY WRITTEN APPROVAL FOR THE REMOVAL OF STREET TREES IS SUBJECT TO THE APPLICANT/OWNER PAYING ALL COSTS AND MAY ENTAIL REMOVAL AND RELOCATION COSTS; OR REMOVAL AND REPLACEMENT COSTS.**
- 16. THE CONSTRUCTION OF RETAINING WALLS NOT TO EXCEED THE HEIGHTS SPECIFIED ON THE APPROVED PLANS UNLESS OTHERWISE APPROVED BY COUNCIL. DETAILS, SIGNED BY A PRACTICING STRUCTURAL ENGINEER MUST BE SUBMITTED FOR APPROVAL AT THE TIME OF SUBMITTING A BUILDING LICENCE APPLICATION.**
- 17. THE DEVELOPMENT IS TO BE CONNECTED TO THE WATER CORPORATION'S RETICULATED SEWERAGE SYSTEM.**
- 18. GROUND LEVELS MAY NOT BE CHANGED OTHER THAN APPROVED AS PART OF THIS APPROVAL.**

General discussion took place regarding information presented during the deputations, the Officer's report and officer recommendation. During both deputations a number of photographs were distributed to Elected Members both in support of and against the application. During his presentation, the Manager Planning & Development Services, Mr David Vinicombe, also provided a number of photographs, site maps and plans in support of the application.

At 7.48pm Cr Everett returned to the meeting and resumed his position as Presiding Member.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

Disclosure of Interest

Item No.	P08/3042
Officer	Mr David Vinicombe
Type of Interest	Interest under Code of Conduct 8.2.8
Nature of Interest	Past Business Association
Request	Leave
Decision of Council	Not Applicable

At 7.50pm Manager Planning & Development Services, Mr David Vinicombe, having declared an interest in this item left the meeting.

At 7.50pm Cr Macphail left the meeting, and returned to the meeting at 7.52pm.

Item presented by	: Mr Julio Gonzalez Planning Services Coordinator
Ward	: Applecross / Mount Pleasant
Category	: Operational
Disclosure of any Interest	David Vinicombe Manager Planning & Development Services
Previous Items	P07/3010 – Mixed Use Development Residential and Commercial on Lot 1057 (15) Tweeddale Road, Applecross – 15 May 2007
Application Number	: DA-2007-1793
Property	: 15 Tweeddale Road, Applecross
Proposal	: Mixed Use Development (3 multiple dwelling and 4 offices)
Applicant	: Tuscom Subdivision Consultants Pty Ltd
Owner	: Daystar Asset Pty Ltd
Responsible Officer	: Julio Gonzalez Planning Services Coordinator
Previous Items	: P07/3010 – Mixed Use Development Residential and Commercial on Lot 1057 (15) Tweeddale Road, Applecross – 15 May 2007

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

AUTHORITY / DISCRETION

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when 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 Council review decisions made by Officers.</i>
<input checked="" type="checkbox"/> Quasi-Judicial	<i>when 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>

KEY ISSUES / SUMMARY

- Proposal is for a four storey mixed-use building with 4 offices and 3 multiple dwellings.
- Undercroft carparking for 15 vehicles and 1 disabled bay in front setback.
- Total plot ratio is 1.058: non-residential - 0.344 and residential - 0.714.
- Non-residential use of property inappropriate in this location due to impact on amenity of adjacent residential precinct, therefore no non-residential plot ratio may be applied.
- Development exceeds the maximum permitted plot ratio of 0.6 by 0.458 (462.56 sqm).
- Eastern and western setback variations are proposed to the balcony of the penthouse residential units; and rear setback variation to the non-residential component.
- Height limit variation is proposed for a small portion of the front roof.
- 42 submissions have been received (including a petition with 41 signatures) objecting the proposal.
- Recommended for refusal.

At 8.00pm Cr Reynolds left the meeting.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

BACKGROUND

The Council at its Ordinary Meeting on 15 May 2007 refused an application for a Four Storey Mixed Use Development (7 offices and 5 multiple dwellings) on the subject property for the following reasons:

1. *The proposed office component of the development is not considered appropriate within the surrounding residential environment.*
2. *The proposal significantly exceeds plot ratio requirements under both the Community Planning Scheme and Council Policy as the development site faces a living area precinct with an attractive residential streetscape.*
3. *Variation of Council Policy in this regard will create an undesirable precedent for future development within commercial centre frame precincts and potentially impact on residential streetscapes and amenity within adjacent living area precincts.*
4. *The proposal does not involve adequate provision for community benefit in order to satisfy the requirements of Council Policy 06–PL-029 – mixed use plot ratio bonus application.*
5. *An increase in residential plot ratio is not supported under the performance criteria of the Residential Design Codes 4.2.1 p1 as the proposal will result in a considerable increase in building bulk which will negatively impact on residential neighbourhood amenity and the streetscape.*
6. *The proposal if approved would be contrary to the orderly and proper planning of the locality and contrary to outcomes of the Council’s Melville Visions Project.*
7. *The proposed plot ratio and building bulk is contrary to the intent of the City of Melville Scheme Amendment 35 which proposes buildings of a reduced bulk.”*

Scheme Provisions

MRS Zoning	: Urban
CPS 5 Zoning	: CBF - Canning Bridge Frame
R-Code	: R50
Use Type	: Office / Residential
Use Class	: Office: “S” Use – Council discretion required following advertising. Residential: “D” Use – Council discretion required.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)**Site Details**

Lot Area	:	1010 sqm
Retention of Existing Vegetation	:	No
Street Tree(s)	:	Yes
Street Furniture (drainage pits etc)	:	No
Site Details	:	Property Map (3042 Property Map) (3042 Plans 2008)

DETAIL

The application proposes a four storey building for mixed use development with 4 offices on the ground floor, 3 multiple dwellings on the first, second and third floors.

A total of 16 carparking bays are proposed (including disabled bay) within the undercroft carparking.

A total plot ratio of 1.058 is proposed with 0.344 for the non-residential component and 0.714 for the residential component.

The rear setback requires a variation on the ground floor for the non-residential component of 5.276 metres in lieu of 6.0 required under the the City of Melville Community Planning Scheme No. 5.

The eastern side setback requires a variation on the second and third floor of 2.0 metres and in lieu of 2.4 metres and 3.5 metres respectively, required under the Residential Design Codes.

The proposal indicates a landscaping area of 10.7% (108.07 sqm) in lieu of 25% (252.5 sqm) required under the the City of Melville Community Planning Scheme No. 5 (144.43 sqm variation required). However, the plan indicates that there are additional areas that do not show landscaping and have the potential to be landscaped. These areas have the potential to bring the landscaping into compliance at 25.7%.

The proposal indicates a small portion of the front roof, which is 13.8 metres in height above the natural ground level which is marginally above the maximum height of 13.5 metres as provided by the Scheme.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

Development Requirements

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
Plot Ratio Non-Residential	0.6	0.344	Complies if non-residential use supported. As this is not the case; Does Not Comply	MPDS	
Plot Ratio Residential	0.6	0.714	Does not Comply	MPDS	
Total Plot Ratio	1.2	1.058	Does not Comply on basis that commercial use inappropriate on site, therefore mixed-use plot ratio not applicable	MPDS	
Landscaping	25%	10.7%	Does Not Comply	MPDS	
Building Height	10.0 metres to eaves				
	13.5 metres	13.8 metres	Does Not Comply	MPDS	
Carparking	17 bays	17 bays	Complies		

(Note: Non compliance is emphasised in bold)

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

Setbacks

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
Front GF 1 F 2 F 3 F	Nil Nil Nil Nil	Nil 7.51 metres 7.51 metres 7.51 metres	Complies		
Rear GF 1 F 2 F 3 F	Nil 1.2 metres 1.4 metres 1.8 metres	5.27 metres 8.88 metres 8.88 metres 8.88 metres	Complies		
East Side GF 1 2 F 3 F	2.0 metres 1.2/3.5 mts 1.5/5.0 mts 10.5/1.75 mts	2.0/2.0 metres 2.0/7.5 metres 2.0/7.5 metres 7.5/2.0 mts	Complies Complies Complies Does Comply	Not MPDS	
West Side GF 1 F 2 F 3 F	2.0 metres 1.2 metres 1.4 metres 8.75/1.7 mts	2.0 metres 2.0 metres 2.0 metres 7.5/2.0 mts	Complies Complies Complies Does Comply	Not MPDS	

(Note: Non-compliances are emphasised in bold)

PUBLIC CONSULTATION/COMMUNICATION

Advertising Required: Yes
 Neighbour's Comment Supplied: Yes
 Reason: "S" use (Office) – Council discretion required following advertising and "D" (Residential) use - Council discretion required
 Support/Object: 42 Submissions objecting (including a petition). See attached Submission Table
[\(3042 Submissions 2008\)](#)

REFERRALS TO GOVERNMENT AGENCIES

Nil

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)**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 in accordance with Part 14 of the Planning and Development Act 2005.

FINANCIAL IMPLICATIONS

Nil

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Nil

POLICY IMPLICATIONS

Policy No. 06-PL-024 Car Parking (Non-Residential) – compliant.

Policy No. 06-PL-036 Planning Process and Decision Making – process would normally require that this application be referred to a Portfolio Meeting, but not Council. In this instance, the development has not been presented to a Portfolio Meeting as one has not been scheduled recently. However the alternative of referring the matter through the Council Agenda Forum process provides a suitable option to provide Elected Members with information on the proposal.

ALTERNATE OPTIONS & THEIR IMPLICATIONS

The Council may approve the application should it be considered that the development does comply with the provision of the City of Melville Community Planning Scheme No. 5 and support the non-residential component of a mixed-use development fronting Tweeddale Road as the proposal does not exceed the maximum “as of right” 1.2 plot ratio (subject to discretionary consideration under Clause 7.8 of CPS No 5) requirements applicable for a Mixed-Use Development.

It is noted that an appeal at the State Administrative Tribunal (SAT) may be difficult to defend on the basis that a similar proposed mixed-use development at 4 Forbes Road has recently been supported on appeal to the SAT. This application was refused by Council in November 2007. This application was supported by Planning Services as the property was located on a busy section of Forbes Road (traffic counts in 2004 indicate 3184 vehicles per week) with diminished residential amenity attributes, notwithstanding that the property was located opposite a Living Area precinct. In relative terms, the average weekly traffic along Tweeddale Road between Forbes Road and Moreau Mews of 375 vehicles in 2004 results in a comparatively quieter street. Accordingly, support for Forbes Road should not be considered in the same context due to significantly differing amenity factors.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

Notwithstanding, although traffic volumes in Tweeddale Road are significantly less than those counts for Forbes Road, it is not expected that the proposed mixed-use development with 347 square metres of offices and 3 residential units will increase traffic volumes along Tweeddale Road.

The application could be conditioned to comply and in view of the zoning permitting, a mixed-use development within the Canning Bridge commercial precinct is approvable.

Council should also consider this application in relation to the companion application for the straight residential development for this property which is also contained on this agenda. It is important to note that the other application is preferable to this application as it is considered that the impact of that application on the residential streetscape and amenity will not be as significant as the other application does not involve any commercial development.

COMMENTS

The current proposal raises the following matters for consideration.

Streetscape

The original residential character and amenity of the streetscape which was predominantly characterized by single residential along that section of Tweeddale Road has been substantially modified with redevelopment of the area in recent years.

The nine (9) original properties on the southern side of Tweeddale Road, within the Canning Bridge Frame and R50 coding, have been redeveloped as follows:

- 4 properties have been redeveloped with a three (3) grouped dwellings of 2 storeys each. Two of these properties have a 2 storey dwelling plus undercroft garage fronting Tweeddale Road.
- 2 properties have been redeveloped with a 3 storey dwelling each.
- 1 property has been redeveloped with a 4 storey building plus undercroft garage, with seven (7) multiple dwellings.
- 1 property has 2 grouped dwellings of single storey and one of them with undercroft garage.
- 1 property is the subject of this application.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

The northern side of Tweeddale Road is zoned residential with R30 coding and its 10 properties have been redeveloped mainly with 2 storeys dwellings as follows:

- 3 properties have been redeveloped with 2 storey house each.
- 1 property has been redeveloped with three (3) grouped dwellings of 2 storeys each.
- 2 properties have been subdivided into five (5) green title lots and four (4) of them have been redeveloped with 2 storey houses each and one of them with additional undercroft garage.
- 1 property has been redeveloped with two (2) houses of 2 storey each plus undercroft garage.
- 1 property is of a single storey house.
- 1 property is of a single storey house plus undercroft garage.
- 1 property still vacant and has been subdivided into three (3) green title lots, two (2) of them facing Tweeddale Road.

It should be noted that this northern section of Tweeddale Road, under the previous City of Melville Town Planning Scheme No. 3 was coding R17.5.

At the present time, the southern side of Tweeddale Road (with original nine lots) has a total of 21 dwellings facing it (excluding the subject property of this application) and the northern side (with original 10 lots) has a total of 17 dwellings facing it, plus 3 vacant lots with potential to be developed in the near future.

It is therefore noted that this portion of Tweeddale Road has been substantially modified in recent years. Although the zoning remains residential, its architectural character and amenity has been significant modified over time.

Plot Ratio

Plot ratio requirements under CPS No. 5 and the R-Codes for this development depend on whether the use is supported as a mixed-use development. If the non-residential use is not supported on site, the maximum plot ratio is that afforded to residential development under the R-Codes and Special Majority discretion available under Clause 4.3 of the Scheme. It is noted that the Codes do not provide discretion to vary plot ratio for residential development (where not part of a Mixed-Use development) in its own right. It is also noted that Clause 7.8 of the Scheme provides for Council to take into account a number of amenity considerations in determining this application.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

In simple terms, plot ratio is the ratio of built area relative to the site area. The planning tool aims to provide some rational for the assessment of building bulk on a property. However, other considerations such as setback, parking and building height, together with the visual aesthetics of a development have equal or more significance when considering the bulk of a development.

The plot ratio requirements are complex and in many instances do not give a true representation of building bulk.

In this regard, for residential development, the definition includes the area of walls and provides for a number of exclusions which still add to the bulk of a building. Exclusions for residential development include areas for lifts, stairs or landings for more than one dwelling, machinery, air conditioning and equipment rooms, non-habitable space that is wholly below natural ground level, areas used for parking at or below natural ground level, lobbies or amenity areas common to one or more dwellings, balconies or verandahs open on at least two sides.

Plot ratio exclusions for non-residential development were previously contained under the Uniform Building Bylaws (but are not included under the current Building Code of Australia). In practice, however, the former Uniform Building Bylaw requirements are generally applied and in this regard, plot ratio for commercial development also exclude walls of the commercial building and all floor areas for vehicle parking, whether at or below ground floor or above. In this regard, portion of the non-residential lobby and passage way between tenancy 1 and 2, and 1 and 3 on the ground floor has been included within the calculation of plot ratio.

The development proposes a non-residential plot ratio of 0.344 (347.4 square metres) which is 258.6 square metres less than the maximum 606 square metres in the Canning Bridge Frame. The residential component proposes a plot ratio of 0.714 (721.16 square metres), which is 115.16 square metres above the maximum 606 square metres permitted). The combined plot ratio equates to 1.058 (1608.56 square metres), which is 143.44 square metres less than the maximum 1212 square metres permitted “as per right” based on the Council’s legal interpretation of plot ratio for mixed-use development.

Although the proposal does not involve an overall increase in plot ratio for mixed-use development as described above, the proposed 4 offices at the ground floor level directly front a quiet residential area across Tweeddale Road, which is zoned residential R30 under the City of Melville Community Planning Scheme No. 5.

It should be noted that a proposal for a 5 level residential building and 3 storey offices building was approved by the Council on the adjoining property to the east (13 Tweeddale Road), however the approved non-residential component is facing Kintail Road (26 Kintail Road) and the surrounding properties are zoned Canning Bridge Frame (CBF). In addition, Council refused a previous application for mixed-use on this property for a number of reasons (as detailed above in the Background of this Report) inclusive of concerns that commercial uses fronting this residential street are inappropriate.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

It is considered that the proposal involving office uses within an attractive residential environment is undesirable. The local community has, through significant opposition to the proposal, expressed a view that Tweeddale Road is too narrow and busy for the intensification of the local land uses. Accordingly it is considered paramount that any proposal which will have a significant impact on the streetscape is not supported. As such, the proposal significantly exceeds the maximum residential plot ratio afforded to development in this locality as commercial use and therefore mixed-use is not supported.

Whereas discretion is available under Clause 4.3 of the Scheme to consider a variation to the maximum residential plot ratio of 0.6 under the R-Codes, it is considered that this would be inappropriate in the context of Clause 7.8 of the Scheme which takes into account such matters as the objectives of the Scheme, orderly and proper planning, existing and future amenity and any relevant submission received. In this regard, the proposal is considered to be inconsistent with the following:

- a) The Statement of Intent for the Canning Bridge Frame (CBF) which indicates that offices may be supported where privacy of neighbours is respected and the design has a residential character – in this context, the proposal is in context with the residential character of the adjoining development at 13 Tweeddale Road.
- b) Orderly and proper planning for the locality in that the development is considered to be consistent with the adjacent development and changing streetscape.
- c) Existing and future amenity of the locality in that the predominant land use of this portion of Tweeddale Road is residential. Commercial intrusion has been guarded in the past by the Mixed Use Bonus Policy which no longer applies in the context of legal advice relative to the cumulative residential and non-residential plot ratios. Notwithstanding, legal advice indicates that Council may consider the impacts of increased plot ratio and development under the Scheme and in this context, the impacts of commercial intrusion into the residential streetscape are considered of paramount concern.

It is noted that Amendment No 35 proposes to include the southern portion of Tweeddale Road between Forbes and Ogilvie Roads in the Applecross 3 Living Area Precinct with a density coding of R30 (Office Uses are not to be permitted) to provide for an improved integration of densities and development with the adjacent residential properties. It is noted however, that Amendment No. 35 is currently on hold (following consideration of submissions by Council in April 2007) pending the Department for Planning and Infrastructure (DPI), City of Melville and City of South Perth “Canning Bridge Study”.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

Whilst it may be premature to pre-empt the results of this Study, it is noted that the Study may require substantial modifications to Amendment No. 35 and readvertising or the preparation of a new Amendment. Notwithstanding, the subject area is on the perimeter of the Frame and located well beyond standard 400 and 800 metre “Pedshed” walking distances to the Canning Bridge railway station. Accordingly, it may be considered that the main emphasis of the Study is likely to relate to land in closer proximity to the railway station and this portion of the Study Area may not be impacted (allowing current Amendment No. 35 proposals to proceed without modification) and allow normal principles of creating a demarcation between zonings and densities at the rear of properties (rather than along the road frontage) to prevail. Should the Canning Bridge Transport Oriented Design Study result in modifications which would support an alternate view relative to the development of this section of Tweeddale Road, the developer will have the option of applying for mixed-use development on the property. Approval for a mixed-use development at this point may prejudice future outcomes of the Study and therefore should not be supported.

- d) Significant public objection to the proposal as detailed in the attached Schedule of Submissions.

Traffic

The average weekly traffic along Tweeddale Road between Forbes Road and Moreau Mews was 375 vehicles in 2004 (City of Melville).

Based on roads and Traffic Authority of NSW (VTPD), the total vehicular trips should be in the order of 5 vehicles trips per day (VTPD) per dwelling and 10 vehicle trips per day (VTPD) per 100 square metres of offices. The proposed 3 multiple dwellings will generate a total of 15 VTPD and the 309 square metres of offices will generate additional 30 VTPD. A total of 45 VTPD (vehicle trips per day) is considered no to have a further impact onto this section of Tweeddale Road as its increase is only 12%.

Setbacks

The reduced side setbacks of 7.5 metres to the penthouse balcony on each side of the proposal, do not comply with the Acceptable Development standards of the R-Codes, however are deemed to comply with the Performance Criteria relative to assessment of the effects of sun, shadow, ventilation, privacy and building bulk on both properties which are considered to be insignificant and therefore compliant.

It should be noted that the balcony side setbacks to the first and second floor are in compliance with the R-Codes.

The rear setback is in compliance as is abutting a mixed-use building.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)*Height of the Building*

The application proposes a maximum building height of 13.8 metres for a small portion at the front of the roof in lieu of 13.5 metres. This non-compliance is for the proposed roof on top of the balcony of the penthouse on the third floor. Council could require this portion of the roof to be removed or support a minor variation in consideration of the roof being classified as an architectural feature.

Car Parking

The carparking requirements for residential in accordance with the Residential Design Codes is 6 bays (2 bays per dwelling – as the proposal does not involve 4 dwellings or more, no visitor parking is required for the residential component) and in accordance with the City of Melville Policy No. 06-024 Car Parking (Non-Residential) 11 bays would be required for the non-residential component (offices). The total required is 17 bays. The development initially proposed 17 bays, however in order for the parking area to comply with Australian Parking standards relative to vehicle manoeuvring, one bay at the rear of the parking area is required to be converted to a reversing bay. Accordingly, the result is that 16 bays are available and this does not meet the required standard...

Landscaping

The landscaping is only 10.7% in lieu of 25% required under the the City of Melville Community Planning Scheme No. 5 but there is potential for this area to be increased to exceed 25%.

Submissions

42 Submissions have been received objecting the proposal, including a petition with 41 signatures. It is noted that 32 of the submission do not have grounds for the objection. The balance of 10 objections mainly address the loss of amenity along Tweeddale and surrounding residential adjoining properties, increase in traffic and lack of carparking.

Some of the submissions make comment in relation to the proposal involving R50 development which should not be permitted in an area with a R30 code. In this regard, it would appear that these respondents are of the view that the R30 proposal under Amendment No 35 has already been adopted. This is not the case as Amendment No. 35 is currently on hold and subject to further study and considerations by the Council and Department of Planning and Infrastructure.

P08/3042 - PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)**CONCLUSION**

The proposed non-residential component of the proposal will impact on adjacent neighbourhood amenity and the local streetscape and accordingly is considered undesirable within a residential environment. As the non-residential use is considered inappropriate in this context, the cumulative application of residential and non-residential plot ratios is not supported and it is recommended that the application be refused.

OFFICER RECOMMENDATION (3042)**REFUSAL**

THAT COUNCIL VARY POLICY 06-PL-036 RELATIVE TO THE DECISION MAKING PROCESS AND THAT THE APPLICATION FOR PROPOSED FOUR STOREY MIXED USE DEVELOPMENT (THREE MULTIPLE DWELLINGS AND FOUR OFFICES) ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS BE REFUSED FOR THE FOLLOWING REASONS:

- 1. THE PROPOSED OFFICE COMPONENT OF THE DEVELOPMENT IS NOT CONSIDERED APPROPRIATE WITHIN THE SURROUNDING RESIDENTIAL ENVIRONMENT.**
- 2. THE DEVELOPMENT IS ON THE INTERFACE BETWEEN THE LIVING AREA AND COMMERCIAL CENTRE FRAME AND THE INTRODUCTION OF OFFICE USES ON THIS INTERFACE IS CONSIDERED INAPPROPRIATE HAVING REGARD TO THE AMENITY OF THE AREA.**
- 3. THE PROPOSAL IF APPROVED WILL CREATE AN UNDESIRABLE PRECEDENT FOR FUTURE DEVELOPMENT WITHIN COMMERCIAL CENTRE FRAME PRECINCTS AND POTENTIALLY IMPACT ON RESIDENTIAL STREETSCAPES AND AMENITY WITHIN ADJACENT LIVING AREA PRECINCTS.**
- 4. THE PROPOSAL IF APPROVED WOULD BE CONTRARY TO REQUIREMENTS OF CLAUSES 4.3 AND 7.8 OF THE COMMUNITY PLANNING SCHEME NO 5 RELATIVE TO ITS INCONSISTENCIES WITH REGARD TO THE STATEMENT OF INTENT FOR THE CANNING BRIDGE FRAME PRECINCT, ORDERLY AND PROPER PLANNING IN THE LOCALITY, THE EXISTING AND FUTURE AMENITY OF THE LOCALITY AS DETAILED IN AMENDMENT NO 35 AND FURTHER STUDIES INTO CANNING BRIDGE PRECINCT AND IN CONSIDERATION OF SIGNIFICANT PUBLIC OPPOSITION TO THE PROPOSAL.**
- 5. THE PROPOSAL IF APPROVED MAY PREJUDICE THE OUTCOME OF THE CANNING BRIDGE STUDY.**
- 6. PARKING PROPOSED AS PART OF THIS DEVELOPMENT DOES NOT COMPLY WITH PARKING REQUIREMENTS UNDER THE RESIDENTIAL DESIGN CODES AND COUNCIL POLICY.**

General discussion regarding Item P08/3042 was delayed until Mr Gonzalez had presented Item P08/3043 as both reports referred to the same property, Lot 2 (15) Tweeddale Road, Applecross.

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)

Disclosure of Interest

Item No.	P08/3043
Officer	Mr David Vinicombe
Type of Interest	Interest under Code of Conduct 8.2.8
Nature of Interest	Past Business Association
Request	Leave
Decision of Council	Not Applicable

Item presented by	: Julio Gonzalez Planning Services Coordinator
Ward	: Applecross-Mount Pleasant
Category	: Operational
Disclosure of any Interest	David Vinicombe Manager Planning & Development Services
Application Number	: DA-2007-1793
Property	: 15 Tweeddale Road, Applecross.
Proposal	: Residential Development with 5 Multiple Dwellings and undercroft carparking.
Applicant	: Tuscom Subdivision consultants Pty Ltd
Owner	: Daystar Asset Pty Ltd
Responsible Officer	: Julio Gonzalez Planning Services Coordinator
Previous Items	: P07/3010 – Mixed Use Development Residential and Commercial on Lot 1057 (15) Tweeddale Road, Applecross – 15 May 2007

AUTHORITY / DISCRETION

Definition

- | | | |
|-------------------------------------|----------------|---|
| <input type="checkbox"/> | Advocacy | <i>when 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 Council review decisions made by Officers.</i> |
| <input checked="" type="checkbox"/> | Quasi-Judicial | <i>when 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> |

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)**KEY ISSUES / SUMMARY**

- Proposal is for a four storey residential building with 5 multiple dwellings.
- Undercroft carparking for 15 vehicles inclusive of 2 visitor bays in the front setback area.
- Total plot ratio is 1.027, in excess of the permitted 0.6 under R-Codes.
- Height limit variation is proposed for a small portion of the front roof.
- 13 submissions have been received 9 objecting and 4 supporting (including two petitions, one with 68 signatures supporting and another with 41 signatures objecting).
- Recommended for approval.

BACKGROUND

The Council at its Ordinary Meeting on 15 May 2007 refused an application for a four storey Mixed Use Development (7 offices and 5 multiple dwellings) with a proposed plot ratio of 0.863 (0.702 residential and 0.161 non-residential) for the following reasons:

1. *The proposed office component of the development is not considered appropriate within the surrounding residential environment.*
2. *The proposal significantly exceeds plot ratio requirements under both the Community Planning Scheme and Council Policy as the development site faces a living area precinct with an attractive residential streetscape.*
3. *Variation of Council Policy in this regard will create an undesirable precedent for future development within commercial centre frame precincts and potentially impact on residential streetscapes and amenity within adjacent living area precincts.*
4. *The proposal does not involve adequate provision for community benefit in order to satisfy the requirements of Council Policy 06–PL-029 – mixed use plot ratio bonus application.*
5. *An increase in residential plot ratio is not supported under the performance criteria of the Residential Design Codes 4.2.1 p1 as the proposal will result in a considerable increase in building bulk which will negatively impact on residential neighbourhood amenity and the streetscape.*
6. *The proposal if approved would be contrary to the orderly and proper planning of the locality and contrary to outcomes of the Council's Melville Visions Project.*
7. *The proposed plot ratio and building bulk is contrary to the intent of the City of Melville Scheme Amendment 35 which proposes buildings of a reduced bulk."*

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)

Scheme Provisions

MRS Zoning	: Urban
CPS 5 Zoning	: CBF - Canning Bridge Frame
R-Code	: R50
Use Type	: Residential
Use Class	: Residential: D Use – Council discretion required.

Site Details

Lot Area	: 1010 sqm
Retention of Existing Vegetation	: No
Street Tree(s)	: Yes
Street Furniture (drainage pits etc)	: No
Site Details	: (3043 Site Photo 2008) (3043 Plans 2008)

DETAIL

This current application proposes a four storey building for residential development with a total of 5 multiple dwellings, 2 multiple dwellings on the ground floor and 1 on the first, second and third floors.

A total of 13 carparking bays are proposed within the undercroft carparking plus 2 visitor bays in the front setback area.

A total plot ratio of 1.027 is proposed in lieu of 0.6 permitted under the 2008 Residential Design Codes.

The application proposes a small portion of the front roof, which is 13.8 metres in height above the natural ground level.

Development Requirements

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
Open Space	45%	53%	Complies		
Plot Ratio Residential	0.6	1.027	Does Not Comply	MPDS	
Landscaping	Scheme does not specify requirement	Yes	Complies		
Building Height	10.0 metres 13.5 metres	13.8 metres	Does Not Comply	MPDS	
Carparking	10 bays	15 bays	Complies		

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)

Setbacks

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
Front GF / 1 F / 2 F / 3 F	4.0	7.515	Complies		
Rear GF 1 F 2 F 3 F	Nil 2.5 metres 4.0 metres 5.75 metres	Nil 8.88 metres 8.88 metres 8.88 metres	Complies		
East Side GF 1 F 2 F 3 F	1.1/1.5 mts 1.2/3.5 mts 1.5/5.0 mts 10.5/1.75 mts	1.18/2.0 mts 2.0/7.5 mts 2.0/7.5 mts 7.5/2.0 mts	Complies Does Not Comply		
West Side GF 1 F 2 F 3 F	1.5/1.0 mts 1.2 metres 1.4 metres 8.75/1.7 mts	7.5/2.0 mts 2.0 metres 2.0 metres 7.5/2.0 mts	Complies Does Not Comply		

PUBLIC CONSULTATION/COMMUNICATION

Advertising Required: Yes
 Neighbour's Comment Supplied: Yes
 Reason: "D" use not permitted unless the Council exercises discretion
 Support/Object: 13 Submissions 9 objecting and 4 supporting (including two petitions). See attached Submission Table.
[\(3043 Submissions 2008\)](#)

REFERRALS TO GOVERNMENT AGENCIES

Not Applicable

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 in accordance with Part 14 of the Planning and Development Act 2005.

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)**FINANCIAL IMPLICATIONS**

Not Applicable

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Not Applicable

POLICY IMPLICATIONS

Policy No. 06-PL-026 Height of the Building.

Policy No. 06-PL-036 Planning Process and Decision Making – as this application is major and involves a significant variation from the plot ratio standards for residential development, the process would normally require that this application be referred to an Elected Members Workshop and then Council. The application was referred to the Workshop on 24 June 2008.

ALTERNATE OPTIONS & THEIR IMPLICATIONS

The Council may refuse the application should it be considered that the development does not comply with the provision of the City of Melville Community Planning Scheme No. 5 as the proposal exceeds the maximum 0.6 plot ratio. However, it should also be considered that the proposal complies with the R50 coding, it is located within the Canning Bridge Frame and in general complies with the requirements of Community Planning Scheme No. 5, Council Policies and the 2008 Residential Design Codes with the exception of plot ratio. In addition, comparisons should be made with the companion application in terms of whether a straight residential development (the subject of this application) is more desirable than a mixed-use development (subject of the other application).

COMMENTS

Another application for Mixed-Use development, on the same property, is being considered by the Council as part of this Agenda. That proposal comprises 4 offices and 3 Multiple Dwellings within a four storey building with undercroft carparking.

The current proposal raises the following matters for consideration.

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)Submissions

13 Submissions have been received, 9 objecting to the proposal and 4 supporting the proposal (including two petitions, one multi-signature letter (in the form of a petition but not in correct format) with 68 signatures supporting the proposal and another petition with 41 signatures objecting to development above the R30 Code). The objections are mainly concerned with the loss of amenity along Tweeddale Road, eroded streetscape, increase in traffic and lack of carparking.

Some of the submissions make comment that the proposal being R50 coding shouldn't be permitted in an area with a R30 code. In this regard, it would appear that these respondents are of the view that the R30 proposal under Amendment No 35 has already been adopted. This is not the case as Amendment No. 35 is currently on hold and subject to further study and considerations by the Council and Department of Planning and Infrastructure in relation the "Canning Bridge Study".

The submissions in support include an unofficial petition containing 68 signatures. The submission does not refer to whether it relates to the straight residential development or the mixed-use development. However, one supporter made reference to supporting only the residential development. Therefore is assumed that the other supporters are generally supportive of the residential development as well as the mixed-use development.

It should be noted that two property owners across Tweeddale Road, facing the proposal, are in support of the residential use and the mixed use.

Height of the Building

The application proposes a maximum building height of 13.8 metres for a small portion at the front of the roof in lieu of 13.5 metres. This non-compliance is for the proposed roof on top of the balcony of the penthouse on the third floor. Council could require this portion of the roof to be removed or support a minor variation in consideration of the roof being classified as an architectural feature.

Car Parking

The total required carparking for residential in accordance with the Residential Design Codes (Variation 1) is 10 bays (2 bays per dwelling) including 1 bay for visitors. The application proposes 15 bays, including 2 visitor bays. It should be noted that the application initially included 16 bays, however bay 12 is required to provide a reversing bay at the end of the parking area in accordance with Australian Standards

Traffic

The average weekly traffic along Tweeddale Road between Forbes Road and Moreau Mews of 375 vehicles in 2004.

The total vehicular trips should be in the order of 5 vehicles trips per day (VTPD) per dwelling (Based on roads and Traffic Authority of NSW – VTPD) and the proposed 5 multiple dwellings will generate a total of 25 VTPD which is considered to have no further impact onto this section of Tweeddale Road.

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)

Engineering Services have advised as follows:

1. Whilst the development might only generate 26 vehicular movements per day, and will not appear to impact on the road network, a cumulative effect may arise in adjacent streets when the area is fully developed. These matters will need to be taken into consideration in the Canning Bridge Study or supplementary reports on the development of the area.
2. Details are required with regard to the slope of the access way and how they relate to the two (2) parking bays at the front of the property. In addition, it is noted that the crossover to the development will need to be relocated to provide appropriate clearance to an existing street tree. This may place further constraints on access to these bays and require the front setback area to be redesigned to accommodate the 2 bays with suitable access. An appropriate condition is to be applied in this regard.
3. All parking bays, inclusive of disabled parking bays and ramps for vehicles and pedestrian movement are to be provided in accordance with Australian Standards.
4. Signage advising residents to give way to pedestrians when egressing the basement parking area is recommended.
5. A dedicated bin collection area is to be provided on the verge and not to interfere with the use and operation of the footpath. This may require relocation of the footpath. A suitable condition is recommended in this regard.

Setbacks

The reduced side setbacks of 7.5 metres to the penthouse balcony on each side of the proposal, does not comply with the Acceptable Development standards of the R-Codes, however are deemed to comply with the Performance Criteria relative to assessment of the effects of sun, shadow, ventilation, privacy and building bulk on both properties which are considered to be insignificant and therefore compliant.

It should be noted that the balcony side setbacks to the first and second floor are in compliance with the R-Codes.

Streetscape

The original residential character and amenity of the streetscape which was predominantly characterized by single residential along that section of Tweeddale Road has been substantially modified with redevelopment of the area in recent years.

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)

The nine (9) original properties on the southern side of Tweeddale Road, within the Canning Bridge Frame and R50 coding, have been redeveloped as follows:

- 4 properties have been redeveloped with a three (3) grouped dwellings of 2 storeys each. Two of these properties have a 2 storey dwelling plus undercroft garage fronting Tweeddale Road.
- 2 properties have been redeveloped with a 3 storey dwelling each.
- 1 property has been redeveloped with a 4 storey building plus undercroft garage, with seven (7) multiple dwellings.
- 1 property has 2 grouped dwellings of single storey and one of them with undercroft garage.
- 1 property is the subject of this application.

The northern side of Tweeddale Road is zoned residential with R30 coding and its 10 properties have been redeveloped mainly with 2 storeys dwellings as follows:

- 3 properties have been redeveloped with 2 storey house each.
- 1 property has been redeveloped with three (3) grouped dwellings of 2 storeys each.
- 2 properties have been subdivided into five (5) green title lots and four (4) of them have been redeveloped with 2 storey houses each and one of them with additional undercroft garage.
- 1 property has been redeveloped with two (2) houses of 2 storey each plus undercroft garage.
- 1 property is of a single storey house.
- 1 property is of a single storey house plus undercroft garage.
- 1 property still vacant and has been subdivided into three (3) green title lots, two (2) of them facing Tweeddale Road.

It should be noted that this northern section of Tweeddale Road, under the previous City of Melville Town Planning Scheme No. 3 was coding R17.5.

At the present time, the southern side of Tweeddale Road (with original nine lots) has a total of 21 dwellings facing it (excluding the subject property of this application) and the northern side (with original 10 lots) has a total of 17 dwellings facing it, plus 3 vacant lots with potential to be developed in the near future.

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)

It is therefore noted that this portion of Tweeddale Road has been substantially modified in recent years. Although the zoning remains residential, its architectural character and amenity has been significantly modified over time.

Plot Ratio

The application proposes a plot ratio of 1.027 (1037.4 square metres) in lieu of 0.6 (606 square metres) required under the 2008 Residential Design Codes. It should be noted that this plot ratio has been increased by additional areas relative to the foyer area of 28.75 square metres on first and second floor due to that foyer being used for the exclusive use of the residents of that particular floor. Similar situations exist for the penthouse located on the third floor, which includes the foyer, lift and stairs, as these areas are to be used exclusively by the residents of the penthouse. Consequently a total of 109.22 square metres are added to the total plot ratio of 1037.4 square metres for these exclusive areas.

The proposed plot ratio is 431.1 square metres above the maximum permitted plot ratio of 0.6 (606 square metres), however the proposal is in accordance with the coding R50 as the subject site has a potential for 5 multiple dwellings and 5 dwellings are proposed.

Clause 4.3 of Community Planning Scheme No 5 provides for Council to consider variation of any standard or requirement of Part 4 (with exception to the density of development) through a Special Majority decision. The Precinct requirements under Part 4 for the Canning Bridge Frame provide for R Code standards in accordance with Clauses 5.1 and 5.2 of the Scheme. These provisions indicate that development is to accord with the applicable Residential Development standards of the Codes and accordingly, Council has discretion to vary the plot ratio standards of the Codes under the Scheme. This is consistent with legal advice on plot ratios applicable for mixed use development which was provided last year by Council's solicitors.

It is noted that Clause 4.3 of the Scheme does not specify any criteria for consideration of variation to the development standards. Notwithstanding, any application for development must be considered in the context of Clause 7.8 of the Scheme and in this regard, the following matters are considered appurtenant to this application:

1. Objectives and provisions of the Scheme – In this regard, it is noted that the Statement of Intent for the Canning Bridge Frame (CBF) states, *“Primarily residential but may include offices and medical practitioners where privacy of neighbours is respected and design has a residential character.”* It is considered that the proposal is consistent with the Statement of Intent. The design is in keeping with the existing 4 storey building (with undercroft garage) next door on 13 Tweeddale Road and with the other residential dwellings of 3 and 2 storeys along Tweeddale Road.
2. Orderly and proper planning of land in the area – as indicated above, the proposal is consistent with development which has recently established within this portion of Tweeddale Road.

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)

3. Existing and likely future amenity of the area – as indicated above, the proposal is consistent with existing recent development in this section of Tweeddale Road. The density of development would not be consistent with the proposed R30 residential density under Amendment No 35 if gazetted in accordance with the advertised documents in 2006 and now awaiting possible review dependant on the outcomes of the “Canning Bridge Study.” It is noted that if the Amendment had been gazetted with the current advertised proposals in place, Amendment No 35 would provide for 3 multiple dwellings in lieu of the proposed 5, and be limited to a maximum height of 10.5 metres in lieu of the current 13.5 metres. Notwithstanding, an application for variation in height to accommodate 3 dwellings could be made and would need to be considered under similar criteria as this application. In addition, it is too early to identify what the final outcomes of the Canning Bridge Study will be and accordingly, it is difficult to categorically state that the proposal will be out of keeping with future development standards in the area.
4. Nature of development proposed or existing on adjoining land – as indicated above, the proposal is consistent with adjoining development.
5. Design and external appearance and impact on amenity of the surrounding area – the proposal has a high quality finish, consistent with adjoining development.
6. Relevant submissions – these are dealt with in this report.
7. Any other relevant planning considerations – the companion application for a mixed-use development on the subject property would have significantly more impacts on the residential amenity of this section of Tweeddale Road than a straight residential development. In addition, it is noted that the application could have a plot ratio which is consistent with the base 0.6 requirements under the Codes, but maintain the same height within a reduced foot print moved forward on the property so as to maintain the same building bulk when viewed from the street or from properties to the rear. Finally, it should be noted that this increase in plot ratio would have an estimated value of approximately \$1.2m.

CONCLUSION

The proposed residential use will not have any further impact on neighbourhood amenity and the streetscape and it is considered appropriate within a residential environment. Accordingly the application is recommended for approval.

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (SMREC) (ATTACHMENT)

OFFICER RECOMMENDATION (3043)

SPECIAL MAJORITY APPROVAL

THAT THE APPLICATION FOR A PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH FIVE MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS BE APPROVED BY SPECIAL MAJORITY OF THE COUNCIL, SUBJECT TO THE FOLLOWING CONDITIONS:

SPECIAL CONDITIONS

- 1. A DETAILED LANDSCAPING AND RETICULATION PLAN BEING SUBMITTED AND APPROVED FOR THE SUBJECT SITE AND ROAD VERGE ADJACENT TO THE SITE. THE APPROVED LANDSCAPING PLAN SHALL BE FULLY IMPLEMENTED PRIOR TO OCCUPANCY OF THE DEVELOPMENT AND MAINTAINED THEREAFTER TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES**
- 2. THE EXISTING STREET TREE MARKED ON THE DEVELOPMENT PLANS IS TO BE RETAINED AND THE DRIVEWAY AND CROSSOVER TO BE MODIFIED ACCORDINGLY.**
- 3. THE PROVISION OF 1 STREET TREE (100L CONTAINER) IN THE VERGE AREA OF THE SUBJECT PROPERTY AT THE APPLICANTS / OWNERS FULL COST TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. DETAILS OF THE PROPOSED STREET TREES AND LOCATION TO BE INCLUDED IN THE LANDSCAPING AND RETICULATION PLAN STATED IN SPECIAL CONDITION 1 ABOVE.**
- 4. DURING EXCAVATIONS, ALL NECESSARY PRECAUTIONS TO BE TAKEN TO PREVENT DAMAGE OR COLLAPSE OF ANY ADJACENT STREETS OR ADJOINING PROPERTIES. IT IS THE RESPONSIBILITY OF THE BUILDER TO LIAISE WITH ADJOINING AND ADJACENT PROPERTY OWNERS PRIOR TO CARRYING OUT WORK.**
- 5. PRIOR TO THE ISSUE OF A BUILDING LICENCE, THE APPLICANT TO SUBMIT A DILAPIDATION REPORT TO THE APPROVAL OF THE PRINCIPAL BUILDING SURVEYOR.**
- 6. ALL SECURITY ALARM DEVICES TO BE “SILENT MONITORED” SYSTEMS TO ADDRESS POTENTIAL IMPACTS ON SURROUNDING RESIDENTIAL AMENITY TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**
- 7. THE FAÇADE OF THE BUILDING AND WALLS TO BE TREATED WITH AN ANTI-GRAFFITI AGENT TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

8. THE ROOF OF THE BUILDING NOT TO BE ZINCALUME OR WHITE METAL (E.G. COLORBOND SURFMIST) OR ANY OTHER MATERIAL / COLOUR CONSIDERED TO BE HIGHLY REFLECTIVE UNLESS OTHERWISE APPROVED BY THE MANAGER PLANNING AND DEVELOPMENT SERVICES. DETAILS OF THE PROPOSED ROOF MATERIAL AND COLOUR ARE TO BE SHOWN ON THE DEVELOPMENT PLANS PRIOR TO THE ISSUE OF A BUILDING LICENCE.
9. THE DIMENSIONS OF ALL CAR PARKING BAYS, AISLE WIDTHS AND CIRCULATION AREAS, TOGETHER WITH ACCESS RAMPS FOR VEHICLES AND PEDESTRIANS COMPLYING WITH AUSTRALIAN STANDARDS.
10. SUBMISSION OF A GLARE REFLECTIVITY STUDY BY A SUITABLY QUALIFIED PROFESSIONAL AND ANY GLARE ISSUES TO BE ADDRESSED PRIOR TO THE ISSUE OF A BUILDING LICENCE.
11. THE SUBMISSION OF A COLOUR SCHEDULE BOARD DETAILING THE USE OF MATERIALS, FINISHES AND COLOURS FOR THE MIXED USE BUILDING TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES PRIOR TO THE ISSUE OF A BUILDING LICENCE.
12. EQUIPMENT SUCH AS AIR CONDITIONERS OR EXHAUST VENTS, BUT NOT INCLUDING ANY SOLAR PANEL, WHICH ARE LIKELY TO DETRACT FROM THE VISUAL APPEARANCE OF THE BUILDING SHALL NOT BE LOCATED ON THE ROOF OR OTHERWISE EXPOSED TO PUBLIC VIEW.
13. PROVISION OF A NOISE MANAGEMENT PLAN FOR THE DEVELOPMENT INDICATING HOW THE NOISE FROM THE CARPARKING, AIR CONDITIONING AND OTHER MECHANICAL EQUIPMENT WILL IMPACT ON THE NEIGHBOURING PROPERTIES AND RECOMMENDATIONS FOR REDUCING ANY POTENTIAL NOISE IMPACT TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. THE RECOMMENDATIONS SHALL BE INCORPORATED IN THE PLANS SUBMITTED FOR A BUILDING LICENCE.
14. LIGHTING TO BE PROVIDED TO ALL CARPARKING AREAS AND THE EXTERIOR ENTRANCES TO ALL BUILDINGS IN ACCORDANCE WITH AUSTRALIAN STANDARD AS 1158.3.1 (CAT. P). ALL EXTERNAL LIGHTING TO BE HOODED AND ORIENTED SO THAT THE LIGHT SOURCE IS NOT DIRECTLY VISIBLE TO THE TRAVELLING PUBLIC OR ABUTTING RESIDENCES.

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

15. **PRIOR TO THE ISSUE OF THE BUILDING LICENCE, THE APPLICANT/OWNER IS REQUIRED TO SUBMIT A CONSTRUCTION MANAGEMENT PLAN FOR THE PROPOSAL, TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES, DETAILING HOW IT IS PROPOSED TO MANAGE:**
 - **THE DELIVERY OF MATERIALS AND EQUIPMENT TO THE SITE;**
 - **THE STORAGE OF MATERIALS AND EQUIPMENT ON THE SITE;**
 - **THE PARKING ARRANGEMENTS FOR CONTRACTORS AND SUBCONTRACTORS;**
 - **IMPACT ON TRAFFIC MOVEMENT AND;**
 - **OTHER MATTERS LIKELY TO IMPACT ON THE SURROUNDING RESIDENTS.**

16. **ON COMPLETION OF CONSTRUCTION, ALL EXCESS ARTICLES, EQUIPMENT, RUBBISH OR MATERIALS AND TEMPORARY FACILITIES ARE TO BE REMOVED AND THE SITE AND SURROUNDING AREA USED DURING THE DEVELOPMENT IS TO BE MADE GOOD AND LEFT IN AN ORDERLY AND TIDY CONDITION TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**

17. **DETAILS ARE REQUIRED WITH REGARD TO THE SLOPE OF THE ACCESS WAY AND HOW THEY RELATE TO THE 2 PARKING BAYS AT THE FRONT OF THE PROPERTY. SHOULD THE RELOCATED CROSSOVER REQUIRED BY CONDITION 2 OR THE DESIGN OF THE BAYS RELATIVE TO THE SLOPE OF THE DRIVEWAY RESULT IN CONSTRAINED ACCESS TO THE FRONT VISITOR PARKING BAYS AND NOT BE TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES, THE FRONT SETBACK AREA IS TO BE REDESIGNED TO ACCOMMODATE THE 2 BAYS WITH SUITABLE ACCESS TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**

18. **SIGNAGE ADVISING RESIDENTS TO GIVE WAY TO PEDESTRIANS WHEN EGRESSING THE BASEMENT PARKING AREA IS TO BE PROVIDED TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES.**

19. **A DEDICATED BIN COLLECTION AREA IS TO BE PROVIDED ON THE VERGE AND NOT TO INTERFERE WITH THE USE AND OPERATION OF THE FOOTPATH TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. THIS MAY REQUIRE RELOCATION OF THE FOOTPATH.**

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

STANDARD CONDITIONS

20. A 1.8 METRE HIGH FENCE TO BE PROVIDED FROM THE HIGHEST RETAINED GROUND LEVEL. ALL FENCING TO BE PROVIDED IN ACCORDANCE WITH THE DIVIDING FENCES ACT AND AS A MINIMUM STANDARD BE CONSTRUCTED, OF FIBRE CEMENT.
21. THE CONSTRUCTION OF RETAINING WALLS NOT TO EXCEED THE HEIGHTS SPECIFIED ON THE APPROVED PLANS UNLESS OTHERWISE APPROVED BY COUNCIL. DETAILS, SIGNED BY A PRACTICING STRUCTURAL ENGINEER MUST BE SUBMITTED FOR APPROVAL AT THE TIME OF SUBMITTING A BUILDING LICENCE APPLICATION.
22. THE DEVELOPMENT IS TO BE CONNECTED TO THE WATER CORPORATION'S RETICULATED SEWERAGE SYSTEM.
23. GROUND LEVELS MAY NOT BE CHANGED OTHER THAN APPROVED AS PART OF THIS APPROVAL.
24. ALL SEWERAGE WASTES AND WATER PIPES ARE TO BE CONCEALED WITHIN THE BUILDING.
25. PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION THE COUNCIL REQUIRES THE PROVISION OF A SUITABLE RECEPTACLE FOR THE CONTAINMENT OF WINDBLOWN RUBBISH. THE RECEPTACLE (GENERALLY A WIRE MESH CAGE) SHOULD HAVE MAXIMUM OPENINGS OF 100 MM; HAVE A BASE OF 4.0 SQM AND A HEIGHT OF 1.0 M AND A HINGED LID. THE RECEPTACLE SHOULD NOT BE ALLOWED TO OVERFILL.
26. DURING CONSTRUCTION ACCESS TO THE LOT TO BE VIA THE STREET FRONTAGE ONLY AND THAT NO BUILDING RUBBLE BE PERMITTED TO OVERSPILL THE SITE.
27. ELECTRICAL INSTALLATION TO BE CONSTRUCTED AND MAINTAINED TO THE SATISFACTION OF WESTERN POWER IN ACCORDANCE WITH THE SAA WIRING RULES NO.CC1, PART 1, 1961.

P08/3043 - PROPOSED FOUR STOREY RESIDENTIAL DEVELOPMENT WITH 5 MULTIPLE DWELLINGS AND UNDERCROFT CARPARKING ON LOT 2 (15) TWEEDDALE ROAD, APPLECROSS (REC) (ATTACHMENT)

- 28. ALL STORMWATER AND DRAINAGE RUN OFF TO BE CONTAINED ON SITE. AN ONSITE STORMWATER DRAINAGE SYSTEM WITH A CAPACITY TO CONTAIN A 1:100 YEAR STORM OF A TWENTY-FOUR (24) HOUR DURATION IS TO BE PROVIDED PRIOR TO THE DEVELOPMENT FIRST BEING OCCUPIED AND THEREAFTER MAINTAINED TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES. ALL DOWNPIPES TO BE CONNECTED TO SOAKWELLS. THE PROPOSED STORMWATER DRAINAGE SYSTEM IS REQUIRED TO BE SHOWN ON THE BUILDING LICENCE SUBMISSION FOR APPROVAL PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. THE LODGING OF DETAILED LANDSCAPE AND RETICULATION PLANS, TO THE APPROVAL OF THE MANAGER PLANNING AND DEVELOPMENT SERVICES FOR THE DEVELOPMENT OF THE SITE AND THE ADJOINING ROAD VERGE(S) AT THE TIME OF SUBMITTING A BUILDING LICENCE APPLICATION.**

FOOTNOTE 1

IT IS NOTED THAT THE INCREASE IN PLOT RATIO, THE SUBJECT OF THE APPLICATION HAS BEEN ESTIMATED TO HAVE A VALUE OF APPROXIMATELY \$1,200,000.

FOOTNOTE 2

IT IS NOTED THAT PETITIONERS AND THOSE WHO MADE SUBMISSIONS WILL BE ADVISED OF THE ABOVE.

At 8.21pm Cr Halton left the meeting.

At 8.24pm Cr Reynolds and Cr Halton returned to the meeting.

General discussion on Items P08/3042 and P08/3043 took place regarding the reports and officers recommendations.

The Chief Executive Officer, Dr Shayne Silcox, distributed a 'Confidential Report' to Elected Members and Officers with reference to Town Planning issues. Legal counsel will be sought regarding a possible appeal from the applicant should this item be refused, which will be made available to Elected Members.

Referring to both reports, the Chief Executive Officer, Dr Shayne Silcox, stated that Councillors need to ensure that they are fully aware of the grounds on which they would make a decision in this instance and stated that if necessary, Legal counsel will be made available to Elected Members immediately prior to the July Ordinary Meeting of Council.

At 8.26pm David Vinicombe returned to the meeting.

C08/ 8007 – WIRELESS HILL CENTENARY 2012 (REC) (ATTACHMENT)

Disclosure of Interest

Item No.	C08/8007
Councillor	Cr H Everett
Type of Interest	Proximity Interest in Accordance with the Act (s 5.60B)
Nature of Interest	Resides over the road from Wireless Hill
Request	Stay and discuss
Decision of Council	Not Applicable

At 8.25pm Cr H Everett having declared on interest in this item left the meeting. As the Agenda Briefing Forum is not a 'decision making' forum, Cr Everett returned to the meeting at 8.26pm as he had requested to stay and discuss. His Worship the Mayor chaired the meeting for this Report.

Item presented by	: Leeann Reid A/Manager Community Development
Ward	: Applecross/Mt Pleasant
Category	: Strategic
Subject Index	: Wireless Hill Precinct Coordination
Customer Index	: City of Melville
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Not Applicable
Works Programme	: Not Applicable
Funding	: Existing Operational Funding Amount: \$120,000 Additional Funding Amount: \$30,000
Responsible Officer	: Leeann Reid A/Manager Community Development

AUTHORITY / DISCRETION

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" 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 Council review decisions made by Officers.</i>
<input type="checkbox"/> Quasi-Judicial	<i>when 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>

C08/ 8007 – WIRELESS HILL CENTENARY 2012 (REC) (ATTACHMENT)**KEY ISSUES / SUMMARY**

- In 2012 Wireless Hill will celebrate the official centenary of the opening of the Applecross Wireless Station in 1912.
- The City of Melville will work with a group of interested stakeholders to plan for the celebration of this significant event.
- City of Melville funding of \$150,000 (2012) will provide branding and advertising of the centenary year as well as an event, sculpture walk and staff resource for coordinating the celebration.
- Support from other agencies and interested stakeholders will be sourced by the Centenary Working Group and by request of His Worship the Mayor of the City of Melville.
- This item provides the Council with the opportunity to approve who will be the participants in the working group and the amount of funding committed to the centenary project.

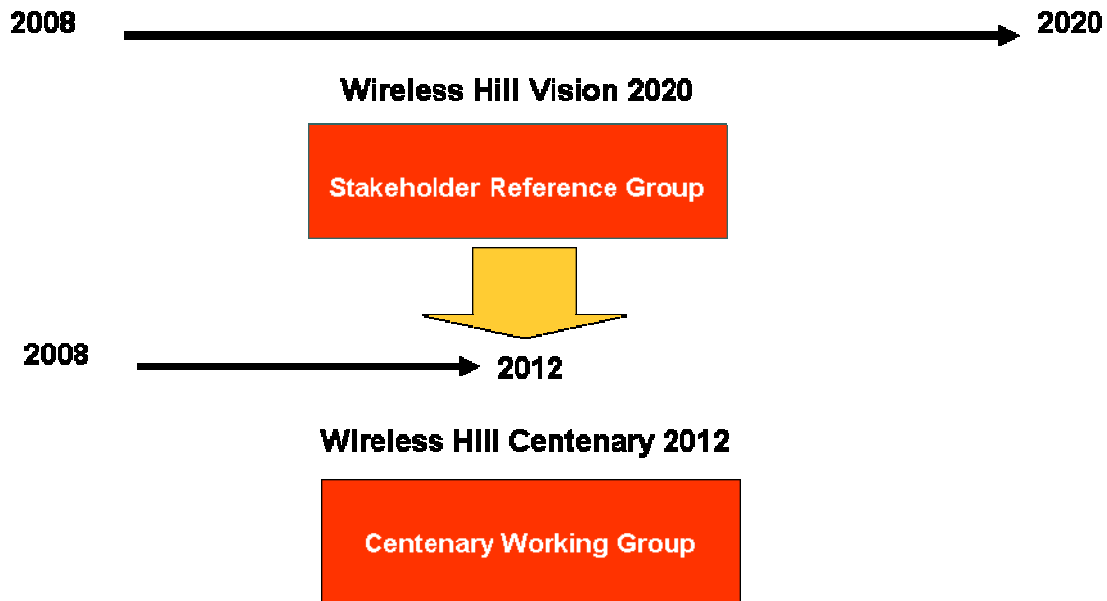
BACKGROUND

In 2012 Wireless Hill will celebrate the official centenary of the opening of the Applecross Wireless Station in 1912. To commemorate this significant milestone, members of the Wireless Hill Vision 2020 Stakeholder Reference Group and the Museums and Local History Advisory Committee were invited to nominate for a Centenary Working Group. The Centenary Working Group would develop, plan and facilitate support for the Centenary Celebration.

The Centenary Celebration Project will work in-line with the '*Wireless Hill Vision 2020*' process. These two parallel projects will have common outcomes with the vision document being the overarching framework for planning the Centenary Celebration.

C08/ 8007 – WIRELESS HILL CENTENARY 2012 (REC) (ATTACHMENT)

The following diagram below demonstrates the parallel projects.



The purpose of the Wireless Hill centenary project is to plan for the commemoration of the Centenary of Wireless Hill. The celebration will raise awareness, educate people about the historical significance of the site and increase community participation.

C08/ 8007 – WIRELESS HILL CENTENARY 2012 (REC) (ATTACHMENT)**DETAIL**

Nominations for the Centenary Working Group include representation from community groups, local residents and other interested stakeholders. We believe the group provides diverse representation. The recommended nominee's (or representatives) for the working group include:

Community

- Thomas Berg (or representative): WA VHF Group Representative
- Christopher Stone: Park User/ Local Resident
- Yolanda Cool : Local Resident/ Teacher
- Edward Miller (or representative): Melville History Society Representative
- Margaret Matthews (or representative): Friends of Wireless Hill Representative
- Paul Redman (or representative) : Capital Community Radio Inc Representative
- Clive Woodward: Local Resident/ Museum Technician
- Bruce James: Member of the Heritage Council
- Richard Rennie (or representative): Vintage Wireless & Gramophone Club of WA
- Trevor Currie (or representative): Vintage Wireless & Gramophone Club of WA
- Unknown Youth Advisory Committee Representative
- Cr Everett: Deputy Mayor/ Councillor
- Cr Halton: Councillor

Staff

- Soula Veyradier: Curator/ Cultural Development Officer
- Leeann Reid: Acting Manager Community Development
- Dee Skuza: Community Development Officer – Festivals
- Katheryn Jones Marketing Officer

The working group will be guided by the 'Vision for Wireless Hill 2020' document and the funding contribution from the City of Melville. The group will be provided with a list of re-allocated funding, a staff resource to coordinate the celebration and additional funds for branding and promoting the centenary.

The funding will include existing operational expenditure of \$120,000 plus \$30,000 additional funds. The group will be encouraged to source further support thorough grants, sponsorship and other in-kind support to develop the celebration accordingly.

[\(8007 CWG Terms of Reference\)](#)

C08/ 8007 – WIRELESS HILL CENTENARY 2012 (REC) (ATTACHMENT)

Funding Details:

- Year Long Branding including logo and promotions : (additional funding of \$20,000)
- Festivals & Events Funding : (existing operational funding of \$10,000* for the Point Walter Concert reallocated to the Centenary for an event at Wireless Hill)
- City of Melville Festival & Events Grants : (existing operational funding of \$10,000* for grants to run festivals or events in Melville be given a telecommunications theme)
- Public Art /Sculpture Walk Budget : (existing operational funding of \$100,000* relocated to Wireless Hill for an art work and sculpture walk)
- Staff Resource for Coordinating the Celebration : (additional funding of \$10,000)
- Seek Support/ Sponsorship
 - Grant Funding
 - Working Group Fund Raising
 - Sponsorship

City of Melville Cost =	Existing Operational Expenditure re-allocated \$120,000*
	New Funds : Branding/ Advertising \$20,000
	New Funds : Coordinating Resource \$10,000
Total =	\$150,000

'Wireless Hill Vision 2020' outcomes and actions will be scheduled on a time line to ascertain key developments in the visioning plan that could be finalised, opened or celebrated as a milestone to coincide with the Centenary Celebration in 2012.

PUBLIC CONSULTATION/COMMUNICATION

The level of communication in accordance with Stakeholder Consultation 01-PL-005 in relation to this item is to “involve” the community. In this regard, we have conducted various methods of consultation and involvement.

The first step in this process was seeking nominations from the Wireless Hill Vision 2020 Stakeholder Reference Group and the Museums and Local History Advisory Committee. These original groups had been formed through public invite followed by nomination.

The recommended representatives for the working group are listed above and will meet regularly leading up to the centenary celebration in 2012. We believe this group has a diverse representation of the community, experts and interested stakeholders.

C08/ 8007 – WIRELESS HILL CENTENARY 2012 (REC) (ATTACHMENT)

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Consultation will take place with other agencies as the working group plans the celebration and seeks further support through grants, fund raising and in-kind support. His Worship the Mayor of the City of Melville will correspond with state and federal agencies and organisations seeking support for the centenary celebration.

STATUTORY AND LEGAL IMPLICATIONS

Wireless Hill site is an A Class Reserve owned by the State of Western Australia. The site contains heritage listed buildings for which the City of Melville has management responsibility.

FINANCIAL IMPLICATIONS

1. Additional funding to the total of \$30,000 will be provided across the 2011/2012 and 2012/2013 budgets to fund the advertising/branding and a staff resource to coordinate the centenary celebration.
2. Existing operational funding of \$120,000 would be re-allocated to the Centenary Celebration in the 2011/2012 budget.

Where possible any planned future capital works and improvements at Wireless Hill identified in the Vision document and capital works program will be coordinated to coincide with 2012 Wireless Hill Centenary Celebrations.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Risk Statement	Level of Risk*	Risk Mitigation Strategy
Risk of community criticism if no action is taken to commemorate the Centenary of Wireless Hill.	Minor consequences which are possible, resulting in a Medium level of risk.	Approval by Councillors to plan centenary celebrations with a commitment to proposed funding.

POLICY IMPLICATIONS

Not Applicable

C08/ 8007 – WIRELESS HILL CENTENARY 2012 (REC) (ATTACHMENT)**ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

The alternative options include a scale of funding from \$20,000 which includes branding and advertising of the centenary year through to a budget of \$290,000 which would include additional events and educational tours. The centenary working group will be encouraged to seek further funding to add value to the centenary celebration.

More detailed options can be seen on the presentation attached ([8007 Wireless Hill Centenary 2012](#))

CONCLUSION

The purpose of this item is to ensure that the centenary of the opening of the Applecross Wireless Hill Station is commemorated appropriately in 2012. The celebration of this significant milestone will raise awareness, educate people about the historical significance of the site and increase community participation.

To ensure the success of the centenary commemoration the Centenary Working Group and the proposed funding requires endorsement by the City of Melville.

OFFICER RECOMMENDATION (8007)**APPROVAL**

- 1. THAT THE COUNCIL APPROVE THE LIST OF NOMINATED REPRESENTATIVES TO FORM THE CENTENARY WORKING GROUP.**
- 2. THAT THE COUNCIL APPROVES A HIGH PRIORITY FUNDING SUBMISSION OF \$150,000 (\$120,000 ALLOCATION OF EXISTING OPERATIONAL FUNDS DURING THE 2011/2012 BUDGET AND A TOTAL OF \$30,000 ADDITIONAL FUNDS DURING 2011/2012 AND 2012/2013 BUDGETS) TO PLAN AND IMPLEMENT A COMMEMORATIVE EVENT AND OTHER RELATED ACTIVITIES FOR THE WIRELESS HILL CENTENARY.**
- 3. THAT HIS WORSHIP THE MAYOR OF THE CITY OF MELVILLE CORRESPOND WITH APPROPRIATE STATE, FEDERAL AND OTHER RELEVANT AGENCIES AND ORGANISATIONS SEEKING SUPPORT FOR THE WIRELESS HILL 2012 CENTENARY COMMEMORATIVE EVENT.**
- 4. THAT THE COUNCIL WHERE POSSIBLE COORDINATE ANY PLANNED FUTURE CAPITAL WORKS AND IMPROVEMENTS AT WIRELESS HILL TO COINCIDE WITH 2012 WIRELESS HILL CENTENARY CELEBRATIONS.**

General discussion took place regarding the report and officer recommendation.

C08/5015 - REVIEW OF CITY OF MELVILLE DELEGATION NO: 06-DA-007 FUNCTION OF BUILDING SURVEYOR, BUILDING & DEMOLITION LICENCES AND CERTIFICATES OF OCCUPANCY (AMREC) (ATTACHMENT)

Item presented by	: Jeff Clark Governance & Compliance Program Manager
Ward	: All
Category	: Strategic
Subject Index	: Delegated Authority
Customer Index	: City of Melville
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: Review of City of Melville Delegated Authority Manual (Previous Item 5014)
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Jeff Clark Governance & Compliance Program Manager

AUTHORITY / DISCRETION

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<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>
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KEY ISSUES / SUMMARY

- This report seeks Council's consideration in reviewing and adopting a delegation that requires amendment as a consequence of changes to the relevant Acts and Regulations which were gazetted on 6 June 2008 and have taken effect on 1 July 2008.

C08/5015 - REVIEW OF CITY OF MELVILLE DELEGATION NO: 06-DA-007 FUNCTION OF BUILDING SURVEYOR, BUILDING & DEMOLITION LICENCES AND CERTIFICATES OF OCCUPANCY (AMREC) (ATTACHMENT)**BACKGROUND**

The Local Government Act 1995 (The Act) provides for the delegation of certain powers and duties to certain Committees (Sections 5.16 & 5.17) and the Chief Executive Officer (Sections 5.42 & 5.43). The Chief Executive Officer may, unless prohibited by Councils instrument of delegation, further on-delegate powers and duties to employees (Section 5.44).

In some instances such as in this matter, the delegation is from Council directly to specific officers.

DETAIL

The State Government has gazetted the Local Government (Miscellaneous Provisions) Amendment Act 2007, the Building Amendment Regulations (No 3) 2008 and the Local Government (Building Surveyors) Regulations 2008 which will take effect on 1 July 2008. The amendments provide a new regulation 11A for the approval of unauthorised building work. The effect of this amendment requires an additional delegation in the existing Delegation No: 06-DA-007 Function of Building Surveyor, Building & Demolition Licences and Certificates of Occupancy to provide authority to the Principal Building Surveyor and Building Services Coordinator to issue approval certificates when an application for building approval in relation to unauthorised building work is made to the City.

The amended regulations permit unauthorised work to be given approval under specific conditions detailed in Regulation 11A (1) to (10).

PUBLIC CONSULTATION/COMMUNICATION

No external public consultation has been carried out as the amendment of a delegation is considered to be an internal matter requiring only the Councils consideration.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Should delegations to officers not be granted, customers would experience increased delay in obtaining approvals and authorisations.

STATUTORY AND LEGAL IMPLICATIONS

The following are the key issues under the Act affecting delegated authority:

Delegations (to Committees and the Chief Executive Officer) must be made by an absolute majority decision [s.5.16(1) and s.5.42(1)].

- Delegations (whether to Committees or the Chief Executive Officer) must be in writing, and may be general or as otherwise provided in the instrument of delegation [s.5.16(2), s.5.42(2) and s.5.44(2)].
- All Delegations will have effect for the period of time specified in the delegation, or if not specified, indefinitely. Any decision to amend or revoke a delegation must be by absolute majority [s.5.16(3)].

C08/5015 - REVIEW OF CITY OF MELVILLE DELEGATION NO: 06-DA-007 FUNCTION OF BUILDING SURVEYOR, BUILDING & DEMOLITION LICENCES AND CERTIFICATES OF OCCUPANCY (AMREC) (ATTACHMENT)

- Any of the Council powers or duties under the Act can be delegated to a Committee comprising Council members only, EXCEPT any power or duty requiring absolute or special majority decisions; or any other power or duty as prescribed [s.5.17(1)(a)].
- Delegations CANNOT be made to Committees comprised of “other persons” only [s.5.9(2)(f)] (ie with no council members or employees). Following from this, delegations cannot be made to a committee comprised of employees only [such a committee cannot exist by virtue of s.5.9(2)].
- A Local Government may delegate to the Chief Executive Officer, by absolute majority, any of its powers or duties under the Act [s.5.42(1)], EXCEPT those identified in s.5.43 as listed below:
 - (a) any power or duty that requires an absolute or special majority decision or seventy five percent (75%) majority of the Local Government;
 - (b) accepting a tender which exceeds an amount determined by the Local Government;
 - (c) appointing of an auditor;
 - (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government;
 - (e) any powers under s.5.98 (fees for Council Members), s.5.99 (annual fee for Council Members in lieu of fees for attending meetings), or s.5.100 (payments for certain Committee Members);
 - (f) borrowing money on behalf of the local government;
 - (g) hearing or determining an objection of a kind referred to in s.5.95;
 - (h) any power or duty requiring the approval of the Minister or the Governor;
 - (i) such other powers or duties as may be prescribed.
 - Any powers or duties which can be delegated to the Chief Executive Officer in accordance with s.5.42 and s.5.43, can be delegated to a Committee comprising Council members and employees [s.5.17(1)(b)]. Further, the Chief Executive Officer may delegate to any employee any of these powers or duties (other than the power of delegation) [s.5.44(1)]
 - Any powers or duties that are necessary or convenient for the proper management of the City of Melville’s property or related to an event in which the City of Melville is involved, can be delegated to the following types of Committee:
 - (i) comprised of council members, employees and other persons
 - (ii) comprised of council members and other persons
 - (iii) comprised of employees and other persons [s.5.17(1)(c)]
- Registers must be kept of all Delegations made to Committees, the Chief Executive Officer and employees, and such Delegations are to be reviewed at least once every financial year. [s.5.18, s.5.46(1) & (2)]

C08/5015 - REVIEW OF CITY OF MELVILLE DELEGATION NO: 06-DA-007 FUNCTION OF BUILDING SURVEYOR, BUILDING & DEMOLITION LICENCES AND CERTIFICATES OF OCCUPANCY (AMREC) (ATTACHMENT)

- The Chief Executive Officer and any other employee who has been delegated a power or duty under the Act is required to keep a written record of:
 - (i) how and when the power was exercised or the duty discharged
 - (ii) the persons or classes of persons directly affected (other than Council or Committee members, or employees) by the use of the delegation [s.5.46(3) and Reg. 19].

FINANCIAL IMPLICATIONS

Should a Council choose not to delegate authority to its officers, additional financial cost will be incurred in the extra administrative resources that would need to be applied in order to prepare reports seeking authorisation for individual actions from Council.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Risk Statement	Level of Risk*	Risk Mitigation Strategy
An issue arises that requires attention of officers to approve unauthorised building work on a building that is subject to sale conditions within a short time.	Negligible consequences which are possible, resulting in a Low level of risk.	Implementation of delegation of power to authorise officers to issue an approval certificate upon satisfactory completion of an application form by the application.

* As derived from using the Risk Assessment Matrix

POLICY IMPLICATIONS

A number of Council policies adopted by Council have enabling delegations to the Chief Executive Officer who in-turn may on delegate to other appointed officers.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

All delegations are subject to the discretion of Council and can be removed at any time. Council may choose to remove delegations which in-turn will then require formal Council consideration of relevant matters or items at the next available meeting of Council.

CONCLUSION

It is important to note that major decisions or actions made under delegation are as a matter of procedure referred onto Elected Members for their information. In addition whilst many decisions may be procedural, circumstances may make a decision contentious and therefore may be referred onto Council for formal decision despite the enabling delegation.

C08/5015 - REVIEW OF CITY OF MELVILLE DELEGATION NO: 06-DA-007 FUNCTION OF BUILDING SURVEYOR, BUILDING & DEMOLITION LICENCES AND CERTIFICATES OF OCCUPANCY (AMREC) (ATTACHMENT)

OFFICER RECOMMENDATION (5015)

ABSOLUTE MAJORITY APPROVAL

THAT BY ABSOLUTE MAJORITY DECISION, THE CITY OF MELVILLE DELEGATION NO: 06-DA-007 FUNCTION OF BUILDING SURVEYOR, BUILDING & DEMOLITION LICENCES AND CERTIFICATES OF OCCUPANCY ([5015 July 2008](#)) AS AMENDED BE ADOPTED.

General discussion took place regarding the report and officer recommendation.

C08/6013 – SCHEDULE OF FEES AND CHARGES – AMENDMENT TO STATUTORY PLANNING FEES AND CHARGES (AMREC) (ATTACHMENT)

Item presented by	: Jeff Clark Governance & Compliance Program Manager
Ward	: All
Category	: Operational
Subject Index	: Fees & Charges
Customer Index	: City of Melville
Disclosure of any Interest	: No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	: C08-5006 & P07-1008
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Jeff Clark Governance & Compliance Program Manager

AUTHORITY / DISCRETION

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" 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 Council review decisions made by Officers.</i>
<input type="checkbox"/> Quasi-Judicial	<i>when 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>

KEY ISSUES / SUMMARY

- This report presents amendments the 2008/2009 Fees and Charges Manual that relate to changes to 14 Planning Fees under State Law, 2 deletions and 1 correction in the Fees & Charges Schedule that was adopted by the Council at the May 2008 Ordinary Meeting of Council.

C08/6013 – SCHEDULE OF FEES AND CHARGES – AMENDMENT TO STATUTORY PLANNING FEES AND CHARGES (AMREC) (ATTACHMENT)

BACKGROUND

The Annual Review of the Schedule of Fees and Charges were adopted by the Council on 20 May 2008. Subsequently it has been discovered that 17 fees in the Planning Schedule were not correctly advised and this report seeks to correct the matter.

DETAIL

The Schedule of Fees and Charges adopted by Council in April 2007 was subsequently amended in August 2007 as a result of changes to State Law. The Planning and Development (Local Government Planning Fees) Regulations 2000 were amended and this amendment was gazetted on 8 June 2007. When the preparation for the Schedule of Fees and Charges for 2008 was undertaken, 14 of the amended Statutory fees were inadvertently overlooked and the previous fees that were provided in the Schedule were presented to Council in May 2008. This report seeks to correct the figures previously provided.

An attachment identifies the proposed amendments, deletions and one correction. The Statutory fees have not changed and are the same as those adopted by Council in August 2007.

The proposed exclusions relate to:

- 1 Major amendment to existing approval which should be made as new applications and;
- 2 Where proposals involve a Special Majority decision of the Council which is an excessive fee relative to the other applications which may also be reported to Council for consideration;

The correction relates to a mis-reading of hourly fees relative to meetings of the Architectural and Urban Design Advisory Panel to accurately reflect the professional fees which are absorbed by Council and should be paid by applicants.

PUBLIC CONSULTATION/COMMUNICATION

Changes to the Fees and Charges Schedule is required to be advertised when fees and charges are adopted at a time different to the adoption of the Budget.

The Statutory charges imposed under The Planning and Development (Local Government Planning Fees) Regulations 2000 are the maximum fees that enable local government to charge less or not at all.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Not applicable.

C08/6013 – SCHEDULE OF FEES AND CHARGES – AMENDMENT TO STATUTORY PLANNING FEES AND CHARGES (AMREC) (ATTACHMENT)

STATUTORY AND LEGAL IMPLICATIONS

Local Government may amend fees and charges after the adoption of the annual budget but is required to give local public notice of its intention and a date from which the fees or charges will be imposed.

Local Government Act 1995:

6.19. Local government to give notice of fees and charges

If a local government wishes to impose any fees or charges under this Subdivision after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of —

(a) its intention to do so; and

(b) the date from which it is proposed the fees or charges will be imposed.

FINANCIAL IMPLICATIONS

Income estimates have been included in the 2008/2009 Budget.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Risk Statement	Level of Risk	Risk Mitigation Strategy
The fee structure is less than Statutory fees enacted by regulation and reduces income that could be received by Council and may impact on the provision of cost effective planning services.	Low.	Likelihood that Council will fall short in Budget estimates if amended fees are not supported.

POLICY IMPLICATIONS

Policy No: 06-PL-031. The Architectural and Urban Design Advisory Panel Policy sets a professional fee of \$50 and \$75 per hour. The hourly rate is unable to attract membership of the panel and accordingly the Policy is to be reviewed later this year.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable.

C08/6013 – SCHEDULE OF FEES AND CHARGES – AMENDMENT TO STATUTORY PLANNING FEES AND CHARGES (AMREC) (ATTACHMENT)

CONCLUSION

The proposed amended Planning fees and charges will correct the 17 items to the Statutory requirements.

OFFICER RECOMMENDATION (6013)

ABSOLUTE MAJORITY APPROVAL

THAT BY ABSOLUTE MAJORITY DECISION OF THE COUNCIL THE PROPOSED AMENDED PLANNING FEES & CHARGES SCHEDULE FOR 2008/2009 AS DOCUMENTED IN THE ATTACHMENT (6013 July 2008) BE ADOPTED FOR IMPLEMENTATION FROM 16 JULY 2008.

General discussion took place regarding the report and officer recommendation.

**C08/5013 - ADOPTION OF CITY OF MELVILLE CORPORATE PLAN (REC)
(ATTACHMENT)**

Item presented by	:	Stephen Smith A/Manager Organisation Development
Ward	:	All
Category	:	Strategic
Subject Index	:	Strategic Planning
Customer Index	:	Not Applicable
Disclosure of any Interest	:	No Officer involved in the preparation of this report has a declarable interest in this matter.
Previous Items	:	Not Applicable
Works Programme	:	Not Applicable
Funding	:	Not Applicable
Responsible Officer	:	Kylie Johnson Manager Organisational Development

AUTHORITY / DISCRETION

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" 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 Council review decisions made by Officers.</i>
<input type="checkbox"/> Quasi-Judicial	<i>when 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>

**C08/5013 - ADOPTION OF CITY OF MELVILLE CORPORATE PLAN (REC)
(ATTACHMENT)****KEY ISSUES / SUMMARY**

- The Corporate Plan has been reviewed to link to the Community Plan.
- Council is requested to endorse the strategies, actions and measures of success contained within the Corporate Plan by adopting the document.

BACKGROUND

The Corporate Plan has been reviewed following extensive dialogue with City of Melville residents and stakeholders during 2005 and the development of a Community Plan in 2006. The plan replaces the former strategic plan and spans a four year period.

The objective of the Plan is to set the corporate direction for the City of Melville and serve as Councils “Plan for the Future” as required by the Local Government Act 1995.

Reviewed annually with a major review occurring every four years, the Corporate Plan will drive the City of Melville’s operations.

DETAIL

The draft Corporate Plan ([5013 July 2008](#)) was presented to the Elected Members at a workshop on 27 May 2008. It has been structured according to the three areas identified in the Community Plan:

- Social and Cultural Wellbeing
- Economic Wellbeing
- Environmental Wellbeing

A fourth area “Governance” has been included to focus on continuous improvement within the organisation so that goals and strategies in the previously identified areas are achieved.

The Corporate Plan comprises:

- An outcome for each area
- A set of identified goals and strategies to achieve those outcome
- High level actions that will occur to implement each strategy
- Directorate responsible for ensuring that the listed actions are completed.
- Long and short term measures of success for each the actions

The Corporate Plan also articulates the organisational visions and values, as well as provides an overview of services and key corporate performance measures.

**C08/5013 - ADOPTION OF CITY OF MELVILLE CORPORATE PLAN (REC)
(ATTACHMENT)**

PUBLIC CONSULTATION/COMMUNICATION

An extensive dialogue process with the community occurred in 2005, the result of which was the first iteration of the Community Plan. The priorities identified in the Community Plan form an integral part of the Corporate Plan.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Not applicable.

STATUTORY AND LEGAL IMPLICATIONS

Outline requirements for a “Plan for the Future”

FINANCIAL IMPLICATIONS

Nil.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

Implementation of the revised Corporate Plan will impact positively and significantly on the City of Melville in the long term. In particular,

1. It is outcome based and clearly linked to community aspirations
2. Alignment of Service Area 2008-09 business plans to the Corporate Plan will ensure enhanced performance management and reporting against agreed goals and strategies
3. It facilitates more thoroughly cross-team responsibility and involvement in the achievement of outcomes
4. It demonstrates the City of Melville’s awareness of providing programmes and services that meet the needs of its community.

Risk Statement	Level of Risk*	Risk Mitigation Strategy
Cultural change required in the way the document is structured.	Moderate consequences which are unlikely, resulting in a LOW level of risk.	Educating all staff and Council so that they are aware of that.

**C08/5013 - ADOPTION OF CITY OF MELVILLE CORPORATE PLAN (REC)
(ATTACHMENT)**

POLICY IMPLICATIONS

Nil.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

Not applicable.

CONCLUSION

Elected Members are requested to endorse the content of the Corporate Plan which outlines organisational values and high level corporate actions listed against 4 Key results Areas. Other aspects of the Corporate Plan such as format, colour and layout will be finalised by professional proof readers and graphic designers once the content has been adopted.

OFFICER RECOMMENDATION (5013)

APPROVAL

THAT THE CITY OF MELVILLE CORPORATE PLAN (5013 JULY 2008) FOR THE PERIOD 1 JULY 2008 TO 30 JUNE 2012 BE ADOPTED.

General discussion took place regarding the report and officer recommendation.

The Chief Executive Officer, Dr Shayne Silcox, advised that hard copies of the Corporate Plan document will be provided to Elected Members' in the distribution on Friday 4 July 2008.

C08/5016 - DISTRIBUTION OF COMMUNITY NEWSPAPER – MELVILLE TIMES (REC)

Item presented by	: Stephen Smith A/Manager Organisation Development
Ward	: All
Category	: Operational
Subject Index	: Waste Management - Litter
Customer Index	: Community Newspaper Group
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
Works Programme	: Not Applicable
Funding	: Not Applicable
Responsible Officer	: Ryan Sturman Communications Officer

AUTHORITY / DISCRETION

	<u>Definition</u>
<input type="checkbox"/> Advocacy	<i>when Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
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KEY ISSUES / SUMMARY

- To consider a proposal by Community Newspaper Group to change the distribution method of the Melville Times community newspaper from letterbox delivery to plastic wrapped delivery to properties in some areas of the City of Melville.

C08/5016 - DISTRIBUTION OF COMMUNITY NEWSPAPER – MELVILLE TIMES (REC)**BACKGROUND**

The City along with several other Council's has been approached by Community Newspaper Group seeking approval for a change in the method of distribution of their local Community Newspaper (Melville Times). The group's General Manager has written to the City of Melville and has also met with Mayor Russell Aubrey and Chief Executive Officer Dr Shayne Silcox regarding the matter.

The proposal is for Community Newspaper Group to introduce a new delivery method, which involves wrapping the newspaper in plastic and throwing the Melville Times onto residents' front verges from a motor vehicle/motorbike (similar to the West Australian and Sunday Times) in areas where they cannot find anybody to deliver the newspaper directly to letterboxes. Their preference is still letterbox delivery wherever possible and the "wrap and throw" method would be used only in areas where they can't find walkers on a regular basis.

Community Newspaper Group initially raised the issue with Environment Minister David Templeman as the proposal to throw newspapers on private land or Council verges could be deemed an offence under the Litter Act 1979. The Environment Minister has advised the Community Newspaper Group in writing that the Keep Australia Beautiful Council (KABC), which administers the Act, would allow the proposed delivery method subject to the following conditions:

- The local council agrees in writing to Community Newspaper Group's proposal
- Community Newspaper Group and local councils agree to widely publicise the proposed new delivery method
- The local council commits to responding to any residents' complaints that may arise from the proposed delivery method
- Community Newspaper Group provides a dedicated contact number for residents wishing to register a complaint and/or that they do not wish to receive the newspaper.

The new delivery method and Minister's conditions had already been approved by Cambridge, Kalamunda, Kwinana, Rockingham and Vincent councils.

DETAIL

Community Newspaper Group has agreed to comply with the Minister's conditions, including advertising the proposed delivery method changes in their paper as well as publicising it on the group's "inmycommunity" website, and setting up a dedicated hotline for residents to call if they have a complaint or query.

It is suggested that a prominent notice be placed on the Council's website advising of the proposed change and advising residents of the action they may take should they not wish to participate or wish to express any concerns about the proposal.

C08/5016 - DISTRIBUTION OF COMMUNITY NEWSPAPER – MELVILLE TIMES (REC)

The Minister's condition that "The local council commits to responding to any residents' complaints that may arise from the proposed delivery method" should not place any onerous demands on the Council's staff. Any enquiries, complaints or comments received by the Council will be forwarded directly to the newspaper for action. One concern is that the Council may not be aware of the level of general acceptance of the proposal if complaints are made directly to the Community Newspaper Group.

If Council gives its approval, Community Newspaper Group has stated, before commencing the new method, that it will survey all properties in areas where they want to use the new delivery method to determine which residents do and don't want to have the Melville Times delivered through the "wrap and throw" method.

The Group's distribution policy is to deal with multi-residential dwellings separately. Those properties with multiple (>12) dwellings are identified and newspapers are either placed individually in letterboxes/paper receptacles or delivered in bulk in a basket and placed in a pre-arranged location, for example in the lobby of an apartment complex.

Provided that the plastic-wrapped newspapers reach their intended recipients, there would appear to be some advantage to the new delivery method. The City of Melville regularly place advertisements and notices in the Melville Times and, therefore, improved distribution would ensure the City's messages reach a greater number of people. Additionally, wrapping a paper in plastic reduces the likelihood of inserted leaflets escaping from the paper and creating litter.

There is the potential for the newspapers themselves to become litter when thrown onto residential verges, however, the extent to which this may be a problem cannot be determined until when or if the new delivery method is trialled.

From a sustainability point of view, the plastic used to wrap the papers is recycled and can be disposed of through Council's recycling service.

It is suggested that the request made by the Community Newspaper Group could be trialled for 6 months to determine resident reaction and other issues such as impact on levels of littering. The trial would be reviewed to assess community satisfaction, and subject to satisfactory performance levels and resolution of any concerns/complaints which may arise, the "rolled and wrapped" method of distribution would be permitted to continue.

PUBLIC CONSULTATION/COMMUNICATION

No external consultation has been carried out. It is expected that public consultation will be undertaken before and during the trial by the Community Newspaper Group and through advertisements on the Council's website.

CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Consultation has been undertaken with representatives from Community Newspaper Group who, in turn, have had discussions with Environment Minister David Templeman.

C08/5016 - DISTRIBUTION OF COMMUNITY NEWSPAPER – MELVILLE TIMES (REC)**STATUTORY AND LEGAL IMPLICATIONS**

Newspapers are not exempt from anti-littering legislation in Western Australia and therefore the proposal to throw them on private land or Council verges could be deemed an offence under the Litter Act 1979. However the Keep Australia Beautiful Council (KABC), which administers the Act, holds the view that a community newspaper is a service to the community that most people are happy to receive and to date has not taken any action against publishers or distributors.

Authorised Officers may issue infringement notices for littering in accordance with the provisions of Section 30(1) of the Litter Act 1979.

No legal advice or opinion has been received in relation to the item.

FINANCIAL IMPLICATIONS

There are no Financial Implications related to the report.

STRATEGIC AND RISK MANAGEMENT IMPLICATIONS

By allowing Community Newspaper Group to use this alternative delivery method and improve their distribution, it should ensure there would be a greater market penetration of the City's messages and promotions through the regular advertisements and notices the City places in the paper. In turn, this would help to improve the City's communication with its residents and improve the City's public image.

The suggested change in distribution method may result in an increase in complaints from residents unhappy about receiving a paper in such a way, however, Community Newspaper Group has shown it is willing to respond to these complaints directly and stop distribution to any unhappy residents.

An assessment of risk related this proposal has been undertaken and no high or extreme level risks have been identified.

POLICY IMPLICATIONS

Nil.

ALTERNATE OPTIONS AND THEIR IMPLICATIONS

The City could choose not to allow Community Newspaper Group to use the "wrap and throw" delivery method of distributing the Melville Times. This would result in the continuing poor distribution of the Melville Times in certain areas of the City of Melville and mean the City of Melville does not get the best result from the advertising and notices it places in the paper. However, it would mean that there would be no confusion or complaints from residents unhappy about the new delivery method and perceptions that the thrown wrapped papers are "litter".

C08/5016 - DISTRIBUTION OF COMMUNITY NEWSPAPER – MELVILLE TIMES (REC)

CONCLUSION

Due to the assurances Community Newspaper Group has given to put the measures in place to deal with any resident complaints regarding the proposed “wrap and throw” delivery method, along with the Environment Minister’s comments that the proposed delivery method will not be considered littering as long as it is approved by the local council, it is recommended that Community Newspaper Group be allowed to trial its “wrap and throw” delivery method for a period of 6 months to determine resident reaction and other issues such as impact on levels of littering.

Following the trial, the Chief Executive Officer will decide whether to allow Community Newspaper Group to continue or cease its new delivery method depending on the community’s response.

OFFICER RECOMMENDATION (5016)

(APPROVAL)

THAT THE DISTRIBUTION OF THE MELVILLE TIMES NEWSPAPER IN THE CITY OF MELVILLE USING THE "WRAP AND THROW" METHOD OF DISTRIBUTION AS REQUIRED BE APPROVED FOR A 6 MONTH TRIAL PERIOD SUBJECT TO THE FOLLOWING CONDITIONS;

- 1. PRIOR TO INTRODUCTION OF THE PROPOSED DISTRIBUTION METHOD, THE COMMUNITY NEWSPAPER GROUP SURVEY RESIDENTS IN AFFECTED AREAS TO DETERMINE WHICH RESIDENTS DO AND DON'T WANT THE MELVILLE TIMES DELIVERY THROUGH THE “WRAP AND THROW” METHOD;**
- 2. THE NEW DELIVERY METHOD BE WIDELY ADVERTISED BY THE COMMUNITY NEWSPAPER GROUP AND RESIDENTS IN THE AFFECTED AREAS NOT WISHING TO PARTICIPATE BE INVITED TO REGISTER WITH THE COMMUNITY NEWSPAPER GROUP;**
- 3. AS PROPOSED, THE COMMUNITY NEWSPAPER GROUP PROVIDE A DEDICATED CONTACT NUMBER AND E-MAIL ADDRESS FOR RESIDENTS WISHING TO REGISTER A COMPLAINT AND/OR ADVISE THAT THEY DO NOT WISH TO RECEIVE THE NEWSPAPER;**
- 4. FOLLOWING THE 6 MONTH TRIAL, THE CHIEF EXECUTIVE OFFICER TO DETERMINE WHETHER OR NOT COMMUNITY NEWSPAPER GROUP CAN CONTINUE ITS NEW DELIVERY METHOD DEPENDING ON COMMUNITY REACTION TO THE TRIAL;**
- 5. SHOULD THE CHIEF EXECUTIVE OFFICER AT ANY TIME REQUEST THE DISCONTINUATION OF THE “WRAP AND THROW” DELIVERY METHOD, COMMUNITY NEWSPAPER BE REQUESTED TO REVERT TO LETTERBOX DELIVERIES ONLY AND BE GIVEN A REASONABLE TIME TO REVERT BACK TO THIS METHOD.**

C08/5016 - DISTRIBUTION OF COMMUNITY NEWSPAPER – MELVILLE TIMES (REC)

General discussion took place regarding the report and officer recommendations.

9. CLOSURE

There being no further business, the Presiding Member declared the forum closed at 9.10pm.