

## **REPORTS AND RECOMMENDATIONS**

**FOR THE**

**DEVELOPMENT ADVISORY UNIT**

**MEETING**

**HELD ON**

**6 AUGUST 2013**

1. This Meeting makes Recommendations to the Manager Statutory Planning.
2. Should any Elected Member wish to discuss the content of any item included as part of the attached agenda, please contact Peter Prendergast, Manager Statutory Planning. Contact should be established as soon as possible after the publication of the agenda to the City of Melville website. Contact details are as follows: [peter.prendergast@melville.wa.gov.au](mailto:peter.prendergast@melville.wa.gov.au) or Tel 9364 0626.
3. Should an Elected Member propose that an item on this agenda be referred to Council for determination, a request to that effect must be made to the Chief Executive Officer (CEO). This request must be received by the CEO by midday on the second Monday after the Friday publication of the Development Advisory Unit (DAU) minutes to the City of Melville website. In the event that the DAU minutes are not published to the City's website until the Monday after the DAU meeting, the deadline for call up requests will remain the following Monday.
4. Should any applicant or adjoining property owner object to any proposal included as part of this DAU agenda, then an opportunity exists to request that the application be determined by Council. All such requests are subject to the discretion of the CEO, and must be received by him no later than midday on the second Monday after the Friday publication of the DAU minutes to the City of Melville website. In the event that the DAU minutes are not published to the City's website until the Monday after the DAU meeting, the deadline for call up requests will remain the following Monday.
5. In the absence of any referral request, a decision on any application included as part of this DAU agenda can take place under delegated authority to the Manager Statutory Planning, after midday on the second Monday after the Friday publication of the minutes to the City's website. In the event that the DAU minutes are not published to the City's website until the Monday after the DAU meeting, a decision on the application can still take place the following Monday.

**DISTRIBUTED: 9 AUGUST 2013**



## **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 has 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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## TABLE OF CONTENTS

U13/0444 PROPOSED RETAINING WALLS AND SITE WORKS AT LOT 2 (1B) HALLIN COURT, ARDROSS (REC) (ATTACHMENT) .....	1
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**U13/0444 PROPOSED RETAINING WALLS AND SITE WORKS AT LOT 2 (1B) HALLIN COURT, ARDROSS (REC) (ATTACHMENT)**

Ward : Applecross/Mt Pleasant  
 Category : Operational  
 Application Number : DA-2013-663  
 Property : Lot 2 (1B) Hallin Court, Ardross  
 Proposal : Retaining walls and site works.  
 Applicant : Mr I Livk  
 Owner : Mr I Livk and Mrs A G Livk  
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.  
 Responsible Officer : Peter Prendergast  
 Manager Statutory Planning  
 Previous Items : N/A

**AUTHORITY / DISCRETION**

**DEFINITION**

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input checked="" type="checkbox"/>	<b>Quasi-Judicial</b>	<b><i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i></b>
<input type="checkbox"/>	Information	<i>For the Council to note.</i>

**U13/0444 PROPOSED RETAINING WALLS AND SITE WORKS AT LOT 2 (1B) HALLIN COURT, ARDROSS (REC) (ATTACHMENT)**

**KEY ISSUES / SUMMARY**

- Planning Approval is sought to undertake site works and to construct retaining walls to support these site works along the four boundaries of the site.
- The intent of the proposed works are to create a flat site on which to construct a future dwelling.
- The proposal has been assessed against the provisions of Community Planning Scheme No. 5 (CPS5) and the Residential Design Codes (R-Codes) and represents a departure from the Deemed to Comply provisions of the R-Codes in relation to the setback of retaining walls and site works occurring within 1m of a lot boundary.
- The application was advertised in accordance with the R-Codes and Council policy and one submission was received in opposition to the proposal on the grounds of the building bulk that will arise from a 1.8m fence on top of the proposed retaining wall. The submission also raised concerns relating to access to afternoon sun.
- Whilst the objection is acknowledged, the proposal is considered to satisfy the requirements of Clause 7.8 of CPS5 and the Design Principles of the R-Codes.
- It is recommended that the application be approved subject to conditions.



**U13/0444 PROPOSED RETAINING WALLS AND SITE WORKS AT LOT 2 (1B) HALLIN COURT, ARDROSS (REC) (ATTACHMENT)**

**BACKGROUND**

**Scheme Provisions**

MRS Zoning : Urban  
 CPS 5 Zoning : Living Area Precinct  
 R-Code : R25  
 Use Type : Residential  
 Use Class : P - Permitted

**Site Details**

Lot Area : 350sqm  
 Retention of Existing Vegetation : Not applicable  
 Street Tree(s) : One street tree affected by future crossover.  
 Comment provided below.  
 Street Furniture (drainage pits etc) : Not applicable  
 Site Details : Refer photo above

U13\_0444 August 2013 A copy of the plans forms part of the attachments to the Agenda which were distributed to members of council on Friday 9 August 2013.

**DETAIL**

The proposal has been assessed against all of the relevant provisions of CPS5, the Deemed-to-Comply provisions of the R-Codes and the applicable Council Policies. The proposal satisfies all of these requirements with the exception of those matters listed below:

**Development Requirements**

<b>Development Requirement</b>	<b>Required/ Allowed</b>	<b>Proposed</b>	<b>Comments</b>	<b>Delegation to approve variation</b>
Setback of retaining walls	Northern elevation – 1m	0m	Requires assessment using Design Principles	Manager Statutory Planning (MSP)
	Eastern elevation – 1m	0m	Requires assessment using Design Principles	MSP
Fill behind street setback line and within 1m of a common boundary.	<0.6m	Up to a maximum of 1.18m	Requires assessment using Design Principles	MSP

**U13/0444 PROPOSED RETAINING WALLS AND SITE WORKS AT LOT 2 (1B) HALLIN COURT, ARDROSS (REC) (ATTACHMENT)**

**PUBLIC CONSULTATION/COMMUNICATION**

Advertising Required: Yes  
 Neighbour's Comment Supplied: Yes  
 Reason: In accordance with R-Codes and Council Policy  
 Support/Object: One objection

<b>Submission Number</b>	<b>Summary of Submission</b>	<b>Support/Objection</b>	<b>Officer's Comment</b>	<b>Action (Condition/Uphold/Not Uphold)</b>
Submission 1	The retaining wall and dividing fence on top will result in a negative bulk impact given the level of the driveway on the submitter's property.	Object	The portion of the proposed retaining wall that is overheight is forward of the submitters front setback line. The overheight portion will abut the submitters front driveway which has been excavated below natural ground level.	Not uphold
	The increased level of the site will result in overlooking of living and recreational areas of the submitter's property and reduce the amenity of the submitter's property.	Object	The provision of a 1.8m high boundary fence above the height of the proposed retaining wall will ensure that amenity levels from overlooking are safeguarded..	Not uphold
	The proposal will adversely affect the value of the submitter's property.	Object	Not a material planning consideration.	Not uphold

**CONSULTATION WITH OTHER AGENCIES / CONSULTANTS**

No consultation with other agencies / consultants is required.



**U13/0444 PROPOSED RETAINING WALLS AND SITE WORKS AT LOT 2 (1B) HALLIN COURT, ARDROSS (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**

No financial implications result for the City as a consequence of this proposal.

**STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

No strategic, risk or environmental management implications result for the City as a consequence of this proposal.

**POLICY IMPLICATIONS**

The proposal satisfies all of the relevant provisions within the applicable Council policies.

**ALTERNATE OPTIONS & THEIR IMPLICATIONS**

This application is recommended to be approved under delegation through the Development Advisory Unit (DAU) process. Should Elected Members or interested third parties have an alternative view; the DAU 'call-up' procedures provide an opportunity to call this matter up for Council consideration.

**COMMENT**

Planning Approval is sought to undertake site works and to construct retaining walls to support these site works along the four boundaries of the site at 1B Hallin Court, Ardross.

The intent of the proposed works are to create a flat site on which to construct a future dwelling.

The proposal has been assessed against the provisions of CPS5 and the R-Codes. The proposal represents a departure from the Deemed to Comply provisions of the R-Codes in relation to the setback of retaining walls and also site works occurring within 1m of a lot boundary along the northern and eastern boundaries.

Commentary in this report will be restricted to the consideration of the retaining wall and fill along the eastern boundary only, as only this aspect of the proposal is the subject of the objection. The proposed retaining and fill in relation to the northern boundary have been assessed against the relevant Design Principles and are considered to comply.

**U13/0444 PROPOSED RETAINING WALLS AND SITE WORKS AT LOT 2 (1B) HALLIN COURT, ARDROSS (REC) (ATTACHMENT)**

The Design Principles relating to site works and retaining walls require that finished ground levels respect the natural ground level at the lot boundary and as viewed from the street and should not have an adverse amenity impact in respect of occupiers of adjoining properties.

The proposal is considered to satisfy the Design Principles for the following reasons:

- The site is characterised by a drop of 2.37m from the south-west corner of the site to the north-east corner. The proposed sand pad level is set to reflect the average ground level across the site. As a result of this, there is an equal amount of cut and fill across the site which will deliver an outcome that respects the natural ground level of the site as viewed from the street.
- The proposed sand pad level is similar to the finished ground floor level of the existing dwelling located on the adjoining eastern lot.
- The proposed retaining wall is less than 0.6m in height where it abuts the dwelling to the east. This portion of the proposed retaining wall is therefore permitted as of right.
- The highest point of the proposed retaining wall abuts an existing driveway which leads to an undercroft garage on the adjoining property. No habitable areas abut the retaining wall where it is greater than 0.6m.
- No major openings, nor the primary outdoor living area of the adjoining property to the east will be impacted by the proposal.
- The impact of the proposed retaining wall is less than that of an 'as-of-right' boundary wall which could be constructed in this location.

#### *Street Tree*

The proposed retaining wall along the western boundary essentially results in the driveway to the future dwelling having to be located in the south-western corner of the property which will necessitate the removal of an existing street tree.

The proposal has been considered by the City's Parks Services who have no objection to the removal of the subject street tree subject to the Applicant complying with Council's CP-029: Street Tree policy. This condition will be recommended on any future development approval for the construction of a dwelling on the subject site.

#### *Amenity*

The proposed development has been assessed in accordance with the amenity provisions outlined in Clause 7.8 of CPS5 and Council Policy CP-067: Amenity. It is concluded that the details of the proposal are acceptable in this context, notwithstanding the variations sought.

## **CONCLUSION**

The application is considered to satisfy the provisions of CPS5, the R-Codes and Council Policy. It is recommended that the proposal be conditionally approved.

**U13/0444 PROPOSED RETAINING WALLS AND SITE WORKS AT LOT 2 (1B) HALLIN COURT, ARDROSS (REC) (ATTACHMENT)****OFFICER RECOMMENDATION****APPROVAL**

**A) That the application for retaining walls and associated site works be approved subject to the following conditions:**

- 1. All stormwater generated on site is to be retained on site.**
- 2. Prior to the commencement of the development, the street tree proposed for retention within the verge to the front of the property shall be protected in accordance with Australian Standard AS4970-2009: Protection of trees on development sites.**

**Advice Note**

- 1 In order to satisfy Condition (2), the following measures (at a minimum) are required:**
  - A Tree Protection Zone (TPZ), in the form of a mesh fence (or similar material) is to be installed around each street tree prior to the commencement of works on site, and retained in place until the completion of the development.**
  - The TPZ is to have a radius of no less than 1.2m from the outside of the trunk of the street tree.**
  - Once established, no persons, vehicles or machinery are to enter the TPZ.**
  - No stockpiling of building materials, debris or soil is to occur within the TPZ.**
  - No fuel, oil dumps or chemicals are allowed or stored within the TPZ.**
  - No signage or other fixtures are to be attached to the tree.**
  - The natural ground level of the verge is not to be altered.**
  - All possible care is to be taken whilst works are occurring on site to ensure that no damage is caused to the tree/s including its trunk, roots and structural branches during construction.**

**B) That the resident who made a submission on the proposal be notified of A) above.**