

**U13/0427 (HS) RECONSIDERATION OF PROPOSED TWO-STOREY SINGLE HOUSE AT LOT 1 (6A) SWEETMAN STREET, ARDROSS (CONFIDENTIAL REC) (CONFIDENTIAL ATTACHMENT)**

Ward : Applecross/Mt Pleasant  
 Category : Operational  
 Application Number : DA-2012-559 / DR298 of 2012  
 Property : Lot 1 (6A) Sweetman Street, Ardross  
 Proposal : Two Storey Single House  
 Applicant : Greg Rowe and Associates  
 Owner : Ms L H Tan  
 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 Planning and Development Services  
 Previous Items : N/A

**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 &amp; 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>

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**KEY ISSUES / SUMMARY**

- On 17 August 2012, the City refused an application for Planning Approval under delegated authority, for the construction of a two storey dwelling at 6A Sweetman Street, Ardross on the basis of overshadowing and non-compliant side setbacks.
- The Applicant subsequently applied to the State Administrative Tribunal (SAT) for a review of this decision.
- Mediation sessions facilitated by the SAT have since followed. These mediations have resulted in the preparation of a revised design proposal which is the subject of this report.
- The SAT has now ordered the City to reconsider its previous decision in accordance with Section 31 of the *State Administrative Tribunal Act 2004* on the basis of the revised design proposal.
- The amended plans are broadly similar to the initial proposal, however the primary change has been to reduce the length of the upper floor level which results in a reduction in the amount of overshadowing to the adjoining property.
- The amended proposal is now considered to satisfy the relevant Performance Criteria of the R-Codes and as such is recommended for conditional approval.



**U13/0427 (HS) RECONSIDERATION OF PROPOSED TWO-STOREY SINGLE HOUSE  
AT LOT 1 (6A) SWEETMAN STREET, ARDROSS (REC) (CONFIDENTIAL ITEM)****BACKGROUND**

On 17 August 2012, the City refused an application for Planning Approval under delegated authority, for the construction of a two storey dwelling at 6A Sweetman Street, Ardross for the following reasons:

1. Non-compliance with the Performance Criteria of Clause 6.3.1 (Building Setback from the Boundary) of the Residential Design Codes of WA on grounds of adverse overshadowing impact.
2. The proposal does not satisfy the Performance Criteria of Clause 6.9.1 (Solar Access for Adjoining Sites) of the Residential Design Codes of WA on grounds of adverse overshadowing impact.
3. By virtue of its overshadowing impact, the proposed development does not conform with the orderly and proper planning for the locality in accordance with the provisions of Clause 7.8 of the City of Melville Community Planning Scheme No. 5.

An appeal was subsequently lodged with the SAT and the matter proceeded to mediation in an attempt to address the various reasons for refusal. The mediation process has resulted in revisions to the proposal, and the submission of a revised planning application, the subject of this report.

**Scheme Provisions**

MRS Zoning	: Urban
CPS 5 Zoning	: Living Area
R-Code	: R20
Use Type	: Residential
Use Permissibility	: 'P' - Permitted

**Site Details**

Lot Area	: 383m <sup>2</sup>
Retention of Existing Vegetation	: Not Applicable
Street Tree(s)	: Not Applicable
Street Furniture (drainage pits etc)	: Not Applicable
Site Details	: Refer photo above

Confidential Attachment: U13\_0427\_January\_2013 A copy of the plans forms part of the attachments to the Agenda which were distributed to members of council on Friday 11 January 2013.

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**DETAIL**

**Development Requirements**

The proposal satisfies all of the relevant provisions within CPS5, the R-Codes and the applicable Council policies with the exception of those matters listed below.

Development Requirement	Required/ Allowed	Proposed	Comments	Delegation to approve variation	Plan Notation
Overshadowing	25%	40%	Does not comply	MPDS	

**Setbacks**

Wall	Required	Proposed	Comments	Delegation to approve Variation	Plan Notation
Side (north)					
GF - Garage	1.0m	0m	Does not comply	MPDS	
GF - Bed 2 / Robe / Bath	1.5m	1.0m	Does not comply	MPDS	
UF - Balc / Family / Dining	1.6m	1.27m	Does not comply	MPDS	
UF - Stairs	1.5m	3.0m	Does not comply	MPDS	
UF - Master Bed	1.2m	1.0m	Does not comply	MPDS	
Side (south)					
GF - Bed 3 / Bed 4	1.0m	0m	Does not comply	MPDS	
GF - Theatre	1.0m	0m	Does not comply	MPDS	
GF - Activity / Alfresco	1.5m	1.0m	Does not comply	MPDS	
UF - WC / Pantry / ENS	2.8m	1.8m	Does not comply	MPDS	
UF - Dining / Balc	2.8m	1.8m - 4m	Does not comply	MPDS	

(Note: GF – Ground Floor, FF – First Floor)

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Note: Commentary in this report will be restricted to consideration of the overshadowing and southern setback variations only, as these variations are the subject of appeal. Other variations listed above have been assessed and deemed to comply with the relevant Performance Criteria of the R-Codes, as concluded as part of the previous assessment undertaken.

**PUBLIC CONSULTATION/COMMUNICATION**

Public consultation was conducted in accordance with Clause 7.5 of CPS5 and the R-Codes as part of the original application. One objection was received outlining concerns relating to boundary setbacks and overshadowing.

SAT mediation proceedings are confidential and interested 3<sup>rd</sup> parties are not invited to attend, unless otherwise directed by the SAT member.

Notwithstanding the above, the adjoining neighbour who objected to the original proposal has, with the endorsement of the SAT, been consulted by Council officers with respect to the amended plans. The amended plans have been developed as a result of both the issues raised by the objector and an assessment undertaken against the Performance Criteria of the R-Codes.

**STATUTORY AND LEGAL IMPLICATIONS**

As stated the application is currently under review by the SAT and the City has been ordered to reconsider its previous decision.

**FINANCIAL IMPLICATIONS**

There are no financial implications relating to this proposal.

**STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

There are no anticipated strategic, risk or environmental management implications.

**POLICY IMPLICATIONS**

There are no policy implications relevant to this application.

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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 opportunity to call this matter up for Council consideration.

**COMMENT**

As outlined above, the revised proposal involves side setback and overshadowing variations and therefore requires assessment against the relevant Performance Criteria of the R-Codes.

**Side Setbacks - South**

The design of the proposed dwelling, including the setbacks from the boundary and the boundary walls along the southern boundary have been modified to reduce the overshadowing impact upon the adjoining property. The amended plans are now considered to satisfy the relevant Performance Criteria of the R-Codes for the following reasons:

- The boundary wall associated with Bed 3 and 4 has been reduced in length by 2.45m which has had a cumulative effect of reduced overshadowing and building bulk. In addition, adequate ventilation is maintained to the neighbouring property whose nearest opening is setback approximately 2.0m from the subject wall. Privacy is not affected on the basis that the subject boundary wall contains no major openings.
- The remainder of the ground floor level remains predominantly unchanged from the original plans, however the overshadowing impact of the setback variations is negligible as they only equate to approximately 7% of additional shadow when compared to the shadow cast by a standard dividing fence. In addition, the proposal does not result in an adverse building bulk impact as the elevation is well articulated through the use of varying setbacks and openings. Privacy will also be safeguarded between neighbours by a standard dividing fence.
- The upper floor level has been reduced in length by over 4m to reduce the overshadowing impact to the family and alfresco area of the adjoining property to the south. The extent of shadow on to the neighbouring property is now limited to the bottom half of a sliding door and on to solid walls. Building bulk is mitigated as the walls are well articulated; whilst privacy is safeguarded given the walls contain no major openings.

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As detailed above, the various modifications undertaken to the upper floor have resulted in a reduction in the extent of overshadowing cast on to the adjoining property. In modifying the proposed plans, reducing the level of overshadowing to the adjoining property's outdoor living area and family/dining room was the primary objective, as these were identified as the most sensitive areas on that site.

The amended proposal now results in a satisfactory outcome in terms of access to direct sun for that adjoining property, and is supported on that basis.

**Amenity**

The proposed development has been assessed against the amenity provisions outlined by Clause 7.8 of CPS5, and the provisions of Council Policy CP-067 "Amenity", and is considered to satisfactorily meet those objectives. The detailed development proposal is therefore supported on that basis, notwithstanding the development variations sought.

**CONCLUSION**

It is considered that the development as now proposed represents a more acceptable design solution for the re-development of the site than was proposed previously.

On that basis, it is recommended that the development inclusive of its variations sought be conditionally approved.

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**OFFICER RECOMMENDATION**

**APPROVAL**

**A) That the proposed development on Lot 1 (6A) Sweetman Street, Ardross be approved subject to the following conditions:**

**STANDARD CONDITIONS:**

- 1. Roofing materials must not be highly reflective. The use of highly reflective materials (zinc or white coloured or coated metal roofing) may only be permitted through the grant of a separate planning approval.**
- 2. All stormwater generated on site is to be retained on site.**
- 3. Prior to the initial occupation of the development, the surface finish of the boundary wall shall be to the satisfaction of the adjoining neighbour. In the event of a dispute, the surface finish shall be to the satisfaction of the Manager Statutory Planning.**

**ADVICE NOTES:**

- 1. During excavations all necessary precautions shall be taken to prevent damage or collapse of any adjoining properties (driveways, garden beds, walls, etc), streets or right-of-ways. It is the responsibility of the builder/owner to liaise with adjoining and adjacent property owners prior to carrying out work.**