

## **REPORTS AND RECOMMENDATIONS**

**FOR THE**

**DEVELOPMENT ADVISORY UNIT**

**MEETING**

**HELD ON**

**TUESDAY, 26 JULY 2016**

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: FRIDAY, 29 JULY 2016**

**REPORTS AND RECOMMENDATIONS FROM THE DEVELOPMENT ADVISORY UNIT  
MEETING HELD IN, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD,  
BOORAGOON, COMMENCING AT 9:00 AM ON TUESDAY, 26 JULY 2016**

**PRESENT**

P Prendergast  
M Scarfone  
T Capobianco  
M Cosson  
J Wardell-Johnson  
Ben Ashwood

Manager Statutory Planning  
Planning Services Coordinator  
Manager Building Services  
Senior Planning Officer  
Senior Planning Officer  
Planning Officer

**APOLOGIES**

**IN ATTENDANCE**

**OBSERVERS**

**DISCLOSURES OF INTEREST**

## **DISCLOSURE OF FINANCIAL INTERESTS LOCAL GOVERNMENT ACT 1995**

### **Members' interests in matters to be discussed at meetings to be disclosed**

S.5.65 (1) A member who 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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**U16/476 PROPOSED DELETION OF PLANNING CONDITION – 5 FLANAGAN STREET,  
APPLECROSS (REC) (ATTACHMENT)**

Ward : Applecross/Mt Pleasant  
 Category : Operational  
 Application Number : DA-2013-416/A  
 Property : 5 Flanagan Street, Applecross  
 Proposal : Proposed Deletion of Planning Condition  
 Applicant : John Colliere  
 Owner : Peter Baker  
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.  
 Previous Items : Nil  
 Responsible Officer : Peter Prendergast  
 Manager Statutory Planning

**AUTHORITY / DISCRETION**

**DEFINITION**

|                                     |                       |  |
|-------------------------------------|-----------------------|--|
| <input type="checkbox"/>            | Advocacy              | <i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>  |
| <input type="checkbox"/>            | Executive             | <i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>  |
| <input type="checkbox"/>            | Legislative           | <i>Includes adopting local laws, town planning schemes &amp; policies.</i>   |
| <input type="checkbox"/>            | Review                | <i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>  |
| <input checked="" type="checkbox"/> | <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>  |

**U16/476 PROPOSED DELETION OF PLANNING CONDITION – 5 FLANAGAN STREET,  
APPLECROSS (REC) (ATTACHMENT)**

**KEY ISSUES / SUMMARY**

- Construction of the two storey single house at 5 Flanagan Street, Applecross has recently been completed.
- Condition 6 of the planning approval for the subject house (DA-2013-416) required the installation of privacy screening to the upper floor lounge room prior to the initial occupation of the development.
- The owner/applicant has applied for the deletion of condition 6 as they consider the completed single house meets the Design Principles contained in clause Cl. 5.4.1 of the Residential Design Codes.
- The proposed development was advertised to the affected neighbour, in accordance with the R-Codes and Council policy and an objection was received.
- It is considered that the development as constructed meets the relevant design principles and as such it is recommended that approval for the deletion of the condition of planning approval be granted.



Figure 1: Aerial photo of subject site

**U16/476 PROPOSED DELETION OF PLANNING CONDITION – 5 FLANAGAN STREET,  
APPLECROSS (REC) (ATTACHMENT)**

**BACKGROUND**

**Scheme Provisions**

MRS Zoning : Urban  
 CPS 5 Zoning : Residential  
 R-Code : R12.5  
 Use Type : Residential  
 Use Class : Permitted

**Site Details**

Lot Area : 1015sqm  
 Retention of Existing Vegetation : N/A  
 Street Tree(s) : N/A  
 Street Furniture (drainage pits etc) : N/A  
 Site Details : See Photo Above

There are no attachments for this item.

**DETAIL**

**R-Code Requirements**

| <b>Development Requirement</b> | <b>Deemed to Comply</b> | <b>Proposed</b> | <b>Comments</b>                                | <b>Delegation to approve variation</b> |
|--------------------------------|-------------------------|-----------------|--|--|
| Privacy Setback- Living Room   | 6m setback              | 2.5m            | Requires assessment using Performance Criteria | Development Advisory Unit (DAU)        |

**U16/476 PROPOSED DELETION OF PLANNING CONDITION – 5 FLANAGAN STREET, APPLECROSS (REC) (ATTACHMENT)**

**COMMENTS**

Conditional approval for a two storey single house at 5 Flanagan Street, Applecross, was approved on the 24<sup>th</sup> May 2013. Condition No. 6 requires the installation of screening on the upper floor lounge window and store room (see Figure 2)

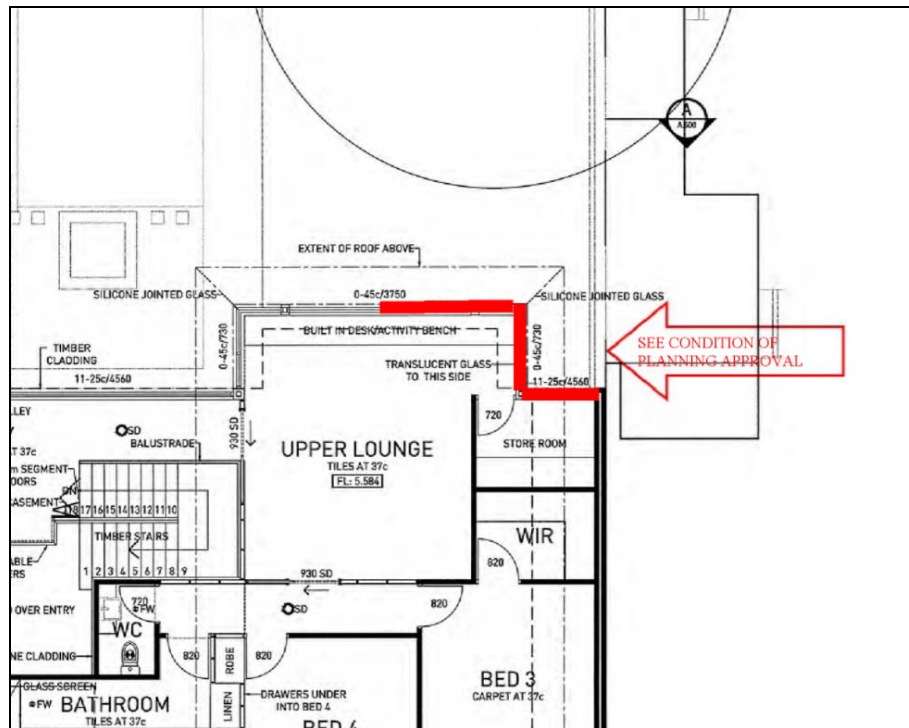


Figure 2: Conditional screening required as part of DA-2013-416

Condition 6 was applied because the upper floor lounge room was not setback in accordance with the Deemed-to-Comply requirements of the Residential Design Codes Cl.6.8.1 A1 (2010) and there was therefore potential for visual privacy to be compromised.



**U16/476 PROPOSED DELETION OF PLANNING CONDITION – 5 FLANAGAN STREET,  
APPLECROSS (REC) (ATTACHMENT)**

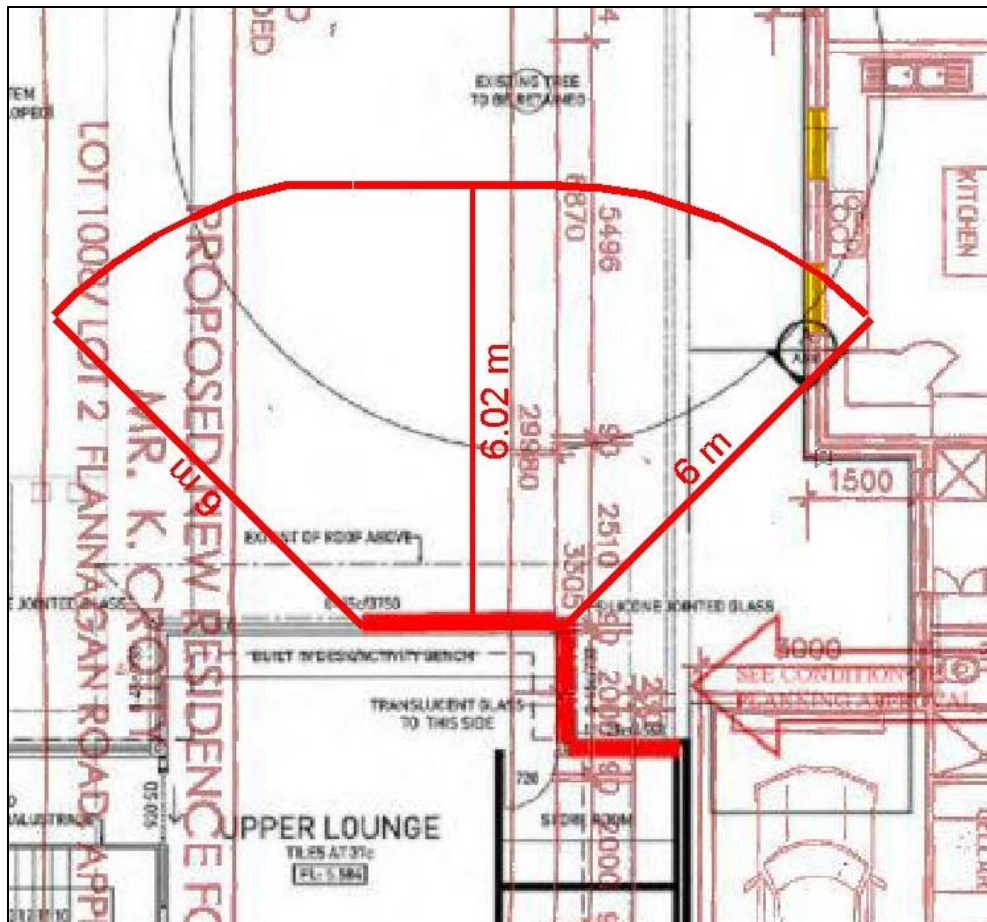


Figure 3: 6m cone of vision relative to adjoining ground floor

Construction of the house is now complete, and approval is now sought to remove Condition 6 on the basis that the Design Principles of the R-Codes (Cl. 5.4.1 P1.1 & 1.2) are met without the need for additional screening.

In addition to advertising as per part 4 of the R-Codes, site visits have been made to ascertain the precise impact of the development in visual privacy terms.

The Design Principles contained in Clause. 5.4.1 P1.1 & 1.2 are considered to be met as:

- Any potential overlooking is restricted towards a laundry window, two minor openings to a kitchen, a drying court, and a service strip. A laundry is not classed as a habitable room for the purposes of visual privacy, and as such the visual privacy requirements of Clause 5.4.1 of the R-Codes do not apply. In view of this, the laundry window is not a major opening capable of being overlooked, and the associated outdoor clothes drying court is a service space, not an active habitable space. This area is similarly not capable of being overlooked.
- The two kitchen windows are individually classed as minor openings, and only one of them falls within the 6m cone of vision (see Figure 3). This window is offset from the upper lounge window on the adjoining property, which means that any view towards it is at an oblique rather than direct angle, ensuring that overlooking towards it is negligible (see Figure 4)

U16/476 PROPOSED DELETION OF PLANNING CONDITION – 5 FLANAGAN STREET,  
APPLECROSS (REC) (ATTACHMENT)



Figure 4: View from subject lot towards kitchen windows of adjoining lot

It is noted that the applicant has installed opaque film to the window that looks down towards the laundry room. This is not a formal requirement of the planning approval, and as such no control is exercised over its long term retention.

### STAKEHOLDER ENGAGEMENT

|                               |                      |
|-------------------------------|----------------------|
| Advertising Required:         | Yes                  |
| Neighbour's Comment Supplied: | Yes                  |
| Reason:                       | Variation to R Codes |
| Support/Object:               | Objection            |

**U16/476 PROPOSED DELETION OF PLANNING CONDITION – 5 FLANAGAN STREET,  
APPLECROSS (REC) (ATTACHMENT)**

**I. COMMUNITY**

| <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> |
|--------------------------|---|--------------------------|--|---|
| 1                        | The lounge room window provides a direct view into the kitchen window and impacts upon privacy. | Objection                | As demonstrated above the development is considered to meet the Design Principles of the R-Codes | Not Uphold                                    |

**II. OTHER AGENCIES / CONSULTANTS**

Required: N/A  
Reason: No relevant issues requiring referral  
Support/Object: N/A

**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**

There are no financial implications applicable.

**STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

There are no strategic, risk or environmental management implications with this application.

**POLICY IMPLICATIONS**

There are no council policies applicable to this proposal.

**ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

This amended planning application is recommended to be approved under delegation through the Development Advisory Unit (DAU) process.

Alternatively, the City could refuse to accept the removal of the condition, although this is not recommended as the design principles of the R Codes are seen to be met in this case.

**U16/476 PROPOSED DELETION OF PLANNING CONDITION – 5 FLANAGAN STREET,  
APPLECROSS (REC) (ATTACHMENT)**

Should elected members or interested parties have an alternative view, the DAU 'call up' procedures provide opportunity to call this matter up for council consideration.

**CONCLUSION**

It is considered that the development meets the Design Principles of the R-Codes and therefore it is recommended that condition 6 be deleted as requested.

**OFFICER RECOMMENDATION (INSERT ITEM NUMBER) (AMENDED APPROVAL)**

- A) THAT THE AMENDED PLANNING APPLICATION FOR THE REMOVAL OF PLANNING CONDITION NO. 6 OF DA-2013-416 AT 5 FLANAGAN STREET APPLECROSS BE APPROVED.**