



18A (LOT 891) AND 18B (LOT 890) TWEEDDALE ROAD, APPLECROSS – SAT S.31 RECONSIDERATION – MULTIPLE DWELLING DEVELOPMENT

State Administrative Tribunal Reconsideration – Responsible Authority Report (Regulation 12)

DAP Name:	Metro Inner South JDAP	
Local Government Area:	City of Melville	
Summary of Modifications:	1. Upper floor setbacks increased; 2. Roof terrace reconfigured and roof cover clearly indicated; 3. Internal layout reconfigured; 4. Finished floor levels and total height modified.	
Applicant:	Mr Michael Hotchkin, Hotchkin Hanley Lawyers	
Owner:	Tjhing Kiauw The, Phoebe Moi Ping The, John Anthony and Lory Anne Farac	
Value of Development:	Not stated as part of this application <input type="checkbox"/> Mandatory (Regulation 5) <input checked="" type="checkbox"/> Opt In (Regulation 6)	
Responsible Authority:	City of Melville	
Authorising Officer:	Steve Cope – Director Urban Planning	
LG Reference:	DAP-2017-1238	
DAP File No:	DAP/17/0120	
SAT File No (DR reference):	DR 184/2020	
Date of Decision under Review:	17 November 2020	
Application for Review Lodgement Date:	Ongoing	
Attachment(s):	1. Development Plans 2. Landscape Plans 3. Applicant's supporting statement 4. Applicant's hand drawn comparison 5. 17 November JDAP determination 6. November RAR	
Is the Responsible Authority Recommendation the same as the Officer Recommendation?	<input type="checkbox"/> Yes <input type="checkbox"/> N/A	Complete Responsible Authority Recommendation section
To be completed following the Council meeting.	<input type="checkbox"/> No	Complete Responsible Authority and Officer Recommendation sections

Responsible Authority Recommendation

That the Metro Inner South Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 184 of 2020, resolves to:

Reconsider its decision dated 17 November 2020 and **AFFIRM** its decision for DAP Application reference DAP/17/0120 and amended plans (Site Plan, Undercroft Plan, Ground Floor Plan, First Floor Plan, Second Floor Plan, Third Floor Plan, Roof Plan, Elevations 1 & 2 and Elevation 3 & 4 dated 7 May 2021) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the City of Melville Local Planning Scheme No. 6 for the following reasons:

1. The proposed development by virtue of its height, bulk and scale does not satisfy the desired outcomes or requirements of Element 3 – Building Height or Element 5 – Side and Rear Setbacks of the Canning Bridge Activity Centre Plan;
2. The proposed development, by virtue of its reduced setbacks to the northern boundary and its overall height, is considered to have a negative impact on the adjoining property and the broader locality in terms of visual bulk and as such is considered inconsistent with the provisions of Clause 67 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Details: outline of development application

Region Scheme	Metropolitan Region Scheme
Region Scheme Zone/Reserve	N/A
Local Planning Scheme	City of Melville Local Planning Scheme No. 6
Local Planning Scheme Zone/Reserve	N/A
Structure Plan/Precinct Plan	Canning Bridge Activity Centre Plan
Structure Plan/Precinct Plan Land Use Designation	Q1 - Kintail Quarter H4 Zone
Use Class (proposed) and permissibility:	Multiple Dwellings – preferred land use in the H4 Zone
Lot Size:	1157m ²
Net Lettable Area (NLA):	N/A
Number of Dwellings:	10
Existing Land Use:	Vacant Land
State Heritage Register	No
Local Heritage	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> Heritage List <input type="checkbox"/> Heritage Area
Design Review	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> Local Design Review Panel <input type="checkbox"/> State Design Review Panel <input type="checkbox"/> Other
Bushfire Prone Area	No
Swan River Trust Area	No

Proposal:

Approval is sought for 10 multiple dwellings with undercroft car parking and a roof terrace on Lots 899 (18A) & 898 (18B) Tweeddale Road in Applecross.

Proposed Land Use	Multiple Dwellings
Proposed Net Lettable Area	N/A
Proposed No. Storeys	4
Proposed No. Dwellings	10

Background:

The history of the development site is explained in detail in the Responsible Authority Report prepared for the consideration of the JDAP at its meeting held 17 November 2020. A copy of that RAR is attached to this report.

History of Application

The recent decisions relating to the subject site are summarised as follows:

- 8 March 2018: Development Approval was granted for a four storey multiple dwelling development with undercroft parking and roof terrace on Lots 899 (18A) & 898 (18B) Tweeddale Road in Applecross by the Metro Central JDAP DAP/17/01320 (DA-2017-1238) (see Attachment 1).
- 5 April 2019: An amendment to DAP/17/01320 (DA-2017-1238) was approved by the City. This was progressed under Clause 17A of the *Planning and Development (Development Assessment Panel) Regulations 2011* and consisted of minor changes to the approved plans, limited to the relocation of stores, modification of the air conditioning condensers, additional roof cover to the rooftop area and additional roof cover in front of the master suite on the eastern elevation (see Attachment 2).
- An extension of time request was refused by the JDAP on 3 August 2020. This decision was the subject of SAT Section 31 Reconsideration and was refused for a second time at the meeting held 17 November 2020.

Site Context

The application site comprises two adjacent lots, 18A and 18B Tweeddale Road. The land parcel is located on the corner of Tweeddale Road and Carron Road, and has a total lot area of 1157sqm. The site is characterised by a downward slope and a level change of some 3m from the south (street locations) to the north east.

Under the provisions of the City of Melville Local Planning Scheme No. 6 (LPS6) the subject site is zoned 'Residential' with a density coding of R-ACO. The CBACP approved by the WAPC in April 2016 provides the development controls for the site. The development site is located on the fringe of the CBACP in an area referred to as the 'H4' zone, on account of the four storey height limit that applies to development in this area. The adjoining properties to the north are located outside the CBACP and are zoned R30.

Since DA-2017-1238 was approved, the CBACP has undergone a review, with specific changes made to the development requirements within the H4 zoning. These changes included, but are not limited to revised lot boundary setbacks, height controls and additional and updated definitions. The WAPC approved the changes to the CBACP on 19 August 2019.

Application to the State Administrative Tribunal

Following the November 2020 decision of the JDAP, this matter was listed for a final hearing by the State Administrative Tribunal. This hearing was to take place in May 2021. In late April the City received advice that the SAT had issued amended orders, inviting the respondent to reconsider its decision on or before 31 May 2021.

The proposed plans increase the setback of the upper floors to the northern boundary. These changes will be described in more detail in the following sections of this report.

The State Administrative Tribunal (SAT) has made orders inviting the decision-maker, under Section 31 of the *State Administrative Tribunal Act 2004* (SAT Act) to reconsider its decision. The decision-maker may:

- affirm the previous decision,
- vary the decision, or
- set aside the decision and substitute a new decision.

Legislation and Policy:

Legislation

- Planning and Development Act 2005
- City of Melville Local Planning Scheme No. 6

State Government Policies

- SPP3: Urban Growth and Settlement
- SPP4.2: Activity Centres for Perth and Peel

Structure Plans/Activity Centre Plans

- Canning Bridge Activity Centre Plan

Local Policies

- LPP1.1: Planning Process and Decision Making
- LPP1.2: Design Review Panel
- LPP1.3: Waste and Recyclables Collection for Multiple Dwellings, Mixed Use and Non-Residential Developments
- LPP 1.8 Crime Prevention Through Environmental Design of Buildings
- LPP1.10: Amenity

Consultation:Public Consultation

The previous applications for development approval for the subject site, including the extension of time request from August 2020, were the subject of public consultation. The results of this were summarised in the November 2020 RAR which is an attachment to this report. No further consultation has been undertaken in respect of the current Section 31 reconsideration.

Referrals/consultation with Government/Service Agencies

N/A

Design Review Panel Advice

The original design was considered by the Design Review Panel on a number of occasions and was considered to be of acceptable design quality. The amended plans have not been presented back to the DRP for review given the time constraints associated with this S.31 reconsideration request.

Other Advice

N/A

Planning Assessment:

The proposed development has been assessed against all the relevant legislative requirements of the City of Melville Local Planning Scheme No.6, Local Planning and Council policies and the Canning Bridge Activity Centre Plan.

As indicated in the background section of this report, development approval was initially granted by the JDAP on 8 March 2018 for a four storey multiple dwelling development on the subject site. Minor amendments to the development were approved by the City in April 2019.

The applicant has provided amended plans for the consideration of the JDAP as a part of the Section 31 process. At the time of writing the applicant has not indicated the precise nature of all the changes that are now proposed. The key changes as identified by the City are as follows:

1. Upper floor setbacks increased;
2. Roof terrace reconfigured and roof cover provided to these spaces;
3. Internal layout reconfigured;
4. Finished floor levels and total height modified.

The key considerations in relation to this proposal are:

1. The suitability of the proposed setbacks having regard to the desired outcomes and requirements contained in Element 5 – Side and Rear Setbacks of the Canning Bridge Activity Centre Plan (CBACP).
2. The suitability of the proposed building lift shaft and the roof cover associated with the roof level terraces having regard to the definition of building height in the CBACP.

3. Driveway and ramp gradients having regard to the relevant Australian standards.

These matters are discussed in below.

Setbacks

Clause	Requirement	Proposed
Clause 5.8	Development of any third of fourth storey on any site (in Q1 and Q2) adjoining residential zoned land outside of the Canning Bridge Activity Centre Plan shall be setback a minimum of 8 metres from that common boundary.	<u>Third Storey setback:</u> 4 metres to balcony. 6 metres to internal floor areas. <u>Fourth Storey setback:</u> 6 metre setbacks to internal floor areas.
Clause 5.9	Within H4 zones (in Q1 and Q2) any structure located at roof level shall be setback a distance of 2.5 metres from the building edge at the side and rear boundaries.	1.5 metre setback provided

History of changes to the CBACP

As noted in the site context section of this report, since DA-2017-1238 was approved, the CBACP has undergone a review, with specific changes made to the development requirements within the H4 zoning. These changes included, but are not limited to revised lot boundary setbacks, height controls and additional and updated definitions. The WAPC approved the changes to the CBACP on 19 August 2019.

As part of the WAPC approved changes, the requirements stated in the table above were introduced into Element 5: The minutes of the March 2019 City of Melville Ordinary Council Meeting contain a detailed description of the proposed changes to the CBACP and the reasons for these changes. The previous RAR (November 2020) in relation to this site also discussed the changes in detail. The City as Responsible Authority reiterates its view that the specific intention of this setback change was to provide a clear built form distinction between those lots within the CBACP and the lower density adjoining sites located outside the ACP area. The secondary objective of the amended setback provisions is to improve the amenity of adjoining properties.

The CBACP aims to achieve its objectives through a strong focus on the built form – and the key mechanism to achieve this desirable built form are the height and setback controls that are provided by the ACP. The changes to the CBACP are considered to result in an improved built form outcome, reducing the bulk impact on the adjoining landowners as well as the perceived bulk impact of the building when viewed from the approach to the CBACP area from the north.

Specific considerations of the proposed setbacks

The proposed upper floor setbacks to the northern boundary do not meet the requirements in Clause 5.8 or Clause 5.9 and as such require a performance assessment in accordance with the relevant desired outcomes.

The Desired Outcomes of Element 5 of the CBACP states that:

Developers should consider the amenity of the precinct by minimising overlooking and overshadowing of adjacent and adjoining properties through appropriate design response supported by the setback provisions of this Element (CBACP p30)

The desired outcomes promote an appropriate design response to ensure that matters such as overshadowing and visual privacy are managed. While not specifically stated in the desired outcomes, there is a link between building setbacks and building bulk and as such it is considered that building bulk impacts require consideration when Element setback requirements are not met. .

In respect of the Desired Outcomes of Element 5 referred to above, the information submitted by the applicant in support of the Section 31 reconsideration DA fails to address how the development as proposed, with reduced setbacks to the third and fourth storey, minimises its resultant overlooking. It is noted that the proposed development is located to the south of the adjoining dwelling, in which case overshadowing impacts will not result. There is no specific information provided to explain the design response in this case relative to the development proposed. The proposal does not incorporate a variety of setbacks or building materials into the design, and balconies are oriented directly towards the adjoining property to the north. In addition the northern elevation with the reduced setbacks contain high levels of fenestration, intended to capitalise on the views towards the Swan River and Perth City skyline, but nonetheless having scant regard for Element 5 of the ACP.

The existing adjoining property at 15 Riverway is of two storey design with two major openings on the upper floor which will look directly towards the subject site. The applicant has not demonstrated how the proposed design reduces the visual privacy impact that will occur from proposed balconies and clear glazed windows of the third and fourth floors towards these major openings.

Carron Road, which abuts the site to the west side, rises upward on the approach to Tweeddale Road. This slope serves to increase the visual prominence of the site and any buildings built on it also have the potential to appear more bulky. The applicant has not demonstrated how the proposed development with reduced upper floor setbacks manages to reduce the visual bulk impacts. On the contrary, rather than designing the building with an articulated architectural form, with varied setbacks on the upper levels, or via the use of a varied palette of building materials, or by providing landscaping, the building presents in a uniform manner which serves to consolidate its bulk impacts.

It is noted that at a density code of R30 and with a lot size of 1138 sqm, No 15 Riverway has inherent development potential. This development potential is however constrained to a maximum building height to the roof ridge of 10.5 metres. In addition, due to the topography of the land, there is a significant change in levels between the subject site and the neighbouring property, with the natural ground level of 15 Riverway being significantly lower, than that of the subject site. On that basis, and irrespective of whether 15 Riverway is re-developed in the future, the bulk impact of the proposed subject development will not be negated by future development at 15 Riverway.

Roof structures

There are a number of issues associated with the proposed roof terrace.

Firstly in relation to the roof cover above the proposed roof terrace, it is noted that a portion of this does not meet the minimum setback requirement to Carron Road. This reduced setback, combined with the height of the structure, serves to increase its visual prominence when viewed from Carron Road, contrary to the requirements of Element 5 of the ACP. There is concern that the design of the proposed building with this reduced rooftop setback, depicts the building as a five storey structure. This is contrary to the requirements of Element 3 of the ACP (Building Heights) and is not supported on that basis.

Secondly, the proposed finished floor levels of the building have increased when compared to the associated previous approvals. The cumulative impact of these increased ffl's for each floor add to the perception of building bulk and as such are not supported by the City.

Thirdly, the requirements of the ACP state that open sided roof structures and lift shafts are permitted up to a height of 3.0 metres. The proposed roof structure measures 3.2 metres from the finished floor level of the roof terrace. The height of the lift shaft is not shown on the proposed plans however has been measured at 3.9 metres for the purposes of this assessment. These structures require a performance assessment against the desired outcomes in Element 3 of the CBACP, which seek to ensure that building heights are appropriately managed having regard to the amenity of the wider precinct.

In considering the impact of these roof structures, it is noted that the combination of reduced setbacks, coupled with the design which includes a box facia element to the roof cover to a height of 0.8m, results in further bulk impacts, inconsistent with the stated desired outcomes of the BACP

Driveway and ramp gradient

Condition 9 of the Development Approval granted by the JDAP at its meeting dated 8 March 2018 stated:

Prior to commencement of development, amended plans shall be submitted demonstrating that all vehicle and bicycle parking bays, manoeuvring areas and points of ingress and egress will meet the provisions of AS/NZS 2890.1:2004. These plans shall be approved in writing by the City and prior to occupation shall be implemented to the satisfaction of the City and be retained for the life of the development.

In February 2020, the applicant lodged a building permit application for the proposed development and it was observed that the proposed building permit plans did not meet the requirements of the above condition particularly in relation to the ramp gradients which were identified as being steeper than the Australian Standards would allow.

In response to correspondence from the City, the applicant provided revised plans which deleted the crossover to Carron Road and amended the driveway gradient to Tweeddale Road. The City's Technical Services team reviewed these revised plans and considered the gradient issue had been addressed, however concerns remain in relation to vehicle manoeuvring within the site and sightlines for vehicles exiting the property. This information was not provided, prior to the building permit application being withdrawn in March 2020.

As a part of the assessment of this proposal, amended plans were requested from the applicant, to demonstrate compliance with Condition 9 and the potential impacts that this has on the built form and landscaping design. This information was not forthcoming.

While this issue remains outstanding, it has not been identified as a reason for refusal as it is considered this matter could be addressed in the future if the decision maker decides to approve the development. It is considered that the removal of the crossover to Carron Road will result in an opportunity for increased landscaping provision in this space, and this would have a positive impact on the streetscape.

Conclusion:

The Canning Bridge Activity Centre Plan promotes high quality development, with a strong emphasis on appropriate built form. This built form is guided by the height and setback requirements contained in Elements 3 and 5. The proposed development is not considered to be consistent with the desired outcomes or requirements of these elements and therefore is not supported.

Officer Recommendation

It is recommended that the Metro Inner South Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 184 of 2020, resolves to affirm its previous decision and refuse to grant an extension of time for substantial commencement of DA 2017-1238A.