



MINUTES

OF THE

SPECIAL MEETING OF COUNCIL

HELD ON

MONDAY, 29 APRIL 2013

AT 7.30PM IN THE COUNCIL CHAMBERS

MELVILLE CIVIC CENTRE

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MINUTES OF THE SPECIAL MEETING OF COUNCIL HELD IN THE COUNCIL CHAMBERS, MELVILLE CIVIC CENTRE, 10 ALMONDBURY ROAD, BOORAGOON, COMMENCING AT 7.54PM ON MONDAY, 29 APRIL 2013.

1. OFFICIAL OPENING

The Presiding Member welcomed those in attendance to the meeting and declared the meeting open at 7.54pm. Mr J Clark, Governance & Compliance Program Manager, read aloud the Disclaimer that is on the front page of these Minutes and then His Worship the Mayor, R Aubrey, read aloud the following Affirmation of Civic Duty and Responsibility.

Affirmation of Civic Duty and Responsibility

I make this Affirmation in good faith on behalf of Elected Members and Officers of the City of Melville. We collectively declare that we will duly, faithfully, honestly, and with integrity fulfil the duties of our respective office and positions for all the people in the district according to the best of our judgement and ability. We will observe the City's Code of Conduct and Standing Orders to ensure the efficient, effective and orderly decision making within this forum.

2. PRESENT

His Worship the Mayor R Aubrey

COUNCILLORS

Deputy Mayor Cr D Macphail
Cr A Nicholson
Cr R Willis, Cr C Robartson
Cr N Pazolli
Cr J Barton, Cr S Taylor-Rees
Cr R Hill
Cr M Reynolds, Cr N Foxtan

WARD

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

3. IN ATTENDANCE

Dr S Silcox	Chief Executive Officer
Mr S Cope	Director Urban Planning
Mr L Hitchcock	Executive Manager Legal Services
Ms A Templeton	A/Manager Statutory Planning
Mr H Shigeyoshi	Senior Planning Officer
Mr J Clark	Governance & Compliance Program Manager
Ms K Thornton	Corporate Administration Officer
Ms J Paparella	Minute Secretary

At the commencement of the meeting there were six members of the public and no members from the Press in the Public Gallery.

4. APOLOGIES AND APPROVED LEAVE OF ABSENCE**4.1 APOLOGIES**

Nil.

4.2 APPROVED LEAVE OF ABSENCE

Cr P Reidy – Applecross/Mt Pleasant Ward
Cr R Kinnell – Palmyra/Melville/Willagee

**5. ANNOUNCEMENTS BY THE PRESIDING MEMBER (WITHOUT DISCUSSION)
AND DECLARATIONS BY MEMBERS****5.1 DECLARATIONS BY MEMBERS WHO HAVE NOT READ AND GIVEN
DUE CONSIDERATION TO ALL MATTERS CONTAINED IN THE
BUSINESS PAPERS PRESENTED BEFORE THE MEETING.**

Nil.

**5.2 DECLARATIONS BY MEMBERS WHO HAVE RECEIVED AND NOT READ
THE ELECTED MEMBERS BULLETIN.**

Nil.

6. QUESTION TIME

Nil.

7. DECLARATIONS OF INTEREST**7.1 FINANCIAL INTERESTS**

Nil.

7.2 DISCLOSURE OF INTEREST THAT MAY CAUSE A CONFLICT

Nil.

8. APPLICATIONS FOR NEW LEAVES OF ABSENCE

Nil.

9. IDENTIFICATION OF MATTERS FOR WHICH MEETING MAY BE CLOSED

At 7.59pm Cr Willis moved, seconded Cr Robartson –

That the meeting be closed to the public to permit discussion on a confidential matter under S5.23(d) relating to legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;

At 7.59pm the Mayor submitted the motion, which was declared

CARRIED (11/0)

At 8.23pm Cr Robartson moved, seconded Cr Reynolds -

That the meeting come out from behind closed doors and the public be invited back into the meeting.

At 8.23pm the Mayor submitted the motion, which was declared

CARRIED (11/0)

Six members of the public returned to the meeting.

10. REPORTS OF THE CHIEF EXECUTIVE OFFICER

The Presiding Member advised Elected Members that when dealing with the following Reports they act in their Quasi-Judicial capacity which means that they are performing functions which involve the exercise of discretion and require the decision making process be conducted in a Judicial Manner. The judicial character arises from the obligation to abide by the principles of natural justice and requires the application of the relevant facts to the appropriate statutory regime.

P13/3389 – DEVELOPMENT ASSESSMENT PANEL APPLICATION – FIVE STOREY MIXED USE DEVELOPMENT AT LOT 802 (554-558) CANNING HIGHWAY, ATTADALE (REC) (CONFIDENTIAL ATTACHMENTS)

Ward : Bicton/Attadale
 Category : Operational
 Application Number : DA-2012-1127
 Property : Lot 802 (554-558) Canning Highway, Attadale
 Proposal : Five Storey Mixed Use Development
 Applicant : Gavin Construction
 Owner : Gavin Construction
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.
 Previous Items : P05/3043 – Amended Plans for Proposed Three Storey Office at Lot 802 (554-558) Canning Highway, Attadale – Development and Neighbourhood Amenity Committee 8 November 2005.
 Responsible Officer : Amanda Templeton
 Acting 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 & 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"/>	Quasi-Judicial	<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>
<input type="checkbox"/>	Information	<i>For the Council to note.</i>

**P13/3389 – DEVELOPMENT ASSESSMENT PANEL APPLICATION – FIVE STOREY
MIXED USE DEVELOPMENT AT LOT 802 (554-558) CANNING HIGHWAY, ATTADALE
(REC) (CONFIDENTIAL ATTACHMENTS)****KEY ISSUES / SUMMARY**

- Planning approval is sought from the Joint Metro Central Development Assessment Panel (JDAP) to construct a five storey mixed use development at 554-558 Canning Highway, Attadale.
- The application by virtue of its estimated cost of development is an optional JDAP application which was submitted to the City on 25 September 2012.
- The proposed development was the subject of a previous Responsible Authority Report (RAR) report and JDAP meeting on 28 February 2012. The recommendation of the previous RAR report was to refuse the development application due to the bulk and scale of the proposed development and its resulting impacts upon the streetscape and adjoining property to the west.
- The JDAP at its meeting of 28 February 2012 resolved to defer consideration of the application to allow the matters raised in the Officer's report to be addressed by the Applicant; further negotiations to take place between the City and the Applicant; and to allow the JDAP to consider late correspondence received from the Application and Main Roads WA.
- As a result of further discussions between the City and the Applicant, the Applicant has submitted revised plans which have addressed the concerns outlined in the previous RAR report in relation to bulk and scale and the impacts upon the adjoining property to the west.
- Council officers have completed the Responsible Authority Report (RAR) which is required to be submitted to the JDAP under the Planning and Development (Development Assessment Panel) Regulations 2011 on 30th April 2013.
- Prior to the re-consideration of the application by the JDAP, the RAR is referred to Council for its consideration and endorsement.
- It is noted that the City has received preliminary legal advice relating to density and has sought expert legal opinion on this issue.
- As such, the recommendation of the RAR is that the JDAP defer the consideration of the application for a three week period to enable the City to obtain legal advice addressing this issue.
- A copy of the minutes of the Special Meeting of Council will be forwarded to the JDAP together with the RAR.

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(REC) (CONFIDENTIAL ATTACHMENTS)**



BACKGROUND

The subject lot (refer Figure 1) was historically part of a larger lot utilised by the Water Corporation as a pump station and sump. The pump station which existed centrally on the property was demolished in 2003 and the property subdivided to create Lot 801 (554A-558A Canning Highway) and the subject site: Lot 802 (554-558 Canning Highway). The Water Corporation has retained ownership of Lot 801.

Planning approval was granted on 21 December 2004 for the construction of a two storey office development on the subject site. This Planning approval was subsequently amended on 28 March 2006 to incorporate an undercroft car park level which resulted in the proposal becoming three-storey. The resultant approved development included a plot ratio of 1,299sqm (0.68), an eave height of 9.7m and a maximum height of 11.6m. This approval has since lapsed.

The current application was considered by the Metro Central Joint Development Assessment Panel (JDAP) at its meeting of 28 February 2013. At this meeting the JDAP resolved to defer consideration of the application to allow:

- The matters raised in the Officer's report to be addressed by the Applicant;
- Further negotiations to take place between the City and the Applicant; and,
- The consideration of the late correspondence by JDAP Members.

The City requested an Extension of Time from the DAP Secretariat on 24 April 2013 to delay the delivery of the Responsible Authority Report due to be submitted 30 April 2013 for the JDAP meeting on 9 May 2013, however the Applicant declined to agree to this for the following reason:

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'We are keen to get a determination on this matter as soon as possible. We have carried out the most recent round of negotiations with council in a prompt timeframe as requested in the DAP deferral and would like to maintain this progress where possible.'

As such, in accordance with Regulation 12(4) of the *Development Assessment Panels Regulations 2011*, the DAP Secretariat could not forward the request through to the Presiding Member on the basis that the consent of the Applicant has not been provided.

Scheme Provisions

MRS Zoning	:	Urban
CPS 5 Zoning	:	Commercial Centre Frame – CCF
R-Code	:	R25/50
Use Type	:	Residential and Office
Use Class	:	Residential – D use – discretionary use Office - S use – discretionary use following advertising in accordance with Clause 7.5 of CPS5

Site Details

Lot Area	:	1,904m ²
Street Tree(s)	:	Existing street trees along Groves Avenue – to be retained
Street Furniture (drainage pits etc)	:	Bus stop adjacent to the site on Canning Highway – to be retained
Site Details	:	See aerial photo above

[3389 Main Roads Comments 554 556 Canning Hwy Attadale](#)
[3389 554 Canning Hwy Traffic Review Report](#)

DETAIL

Planning approval is sought for the construction of a five-storey mixed use building comprising one ground floor Office tenancy and 34 Residential apartments within the four floors above.

The proposal consists of a total of 80sqm of office space and 2,649sqm of residential floor space comprising 34 units. A communal amenities area for tenants of the building is also proposed within the first floor, which includes a gym, recreation area, alfresco, deck and pool.

A total of 41 off street car parking bays are proposed, including one disabled bay, two office bays, eight visitor bays and 30 residential bays (22 of these being in the form of two car stackers). All bays are accessed via Groves Avenue.

A bicycle parking area for up to 16 bicycles is proposed to be provided within the undercroft car park area. End-of-trip facilities for office patrons are provided within the first floor amenities area.

Landscaping is proposed within the front setback area. In addition, substantial landscaping within the adjoining Water Corporation pump station / sump land (Lot 801) is detailed on the proposed plans.

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Development Requirements

The revised proposal does not satisfy the Acceptable Development provisions or development requirements contained within City of Melville Community Planning Scheme No. 5 (CPS5), the Residential Design Codes (R-Codes) and Council Policy with respect to the following:

Development Requirement	Acceptable Development / CPS5 Provision	Proposed
Plot Ratio*	0.6 (1,142.4sqm) + 0.2 (380.8sqm) = 0.8 (1523.2sqm)	1.43 (2,729sqm)
Building Height	9m max	15.8m
Landscaping*	25%	4.13%
Open Space*	45% (856.8sqm)	36% (678sqm)
Visual Privacy	Balconies setback 7.5 from boundaries.	Balconies along the western elevation setback 7m from the northern, eastern and western boundaries.

*Note: The plot ratio, landscaping and open space calculations are based upon the area of Lot 802 only and do not incorporate the area of Lot 801.

Section	Acceptable Development Provision	Provided
Rear (north)		
FF – Entire Wall	3.0m – 3.4m	0m
SF – Balconies	7.6m	4.2m
TF – Balconies	8.0m	4.2m
FrF - Balconies	11.5m	6.6m-7.7m
Side (west)		
TF – Central Wall	9.3m	6.8m-8.0m
FrF – Central Wall	11.2m	6.7m-8m
Side (east)		
FF – Central major openings	6.3m	3.4m-4.4m
SF – Central major openings	8.0m	3.3m-4.6m
SF – Bed 1/2 & Baths (front & rear)	4.5m	4m
TF – Central major openings	9.3m	3.2m-4.5m
TF – Bed 1/2 & Baths (front & rear)	6m	4m
FrF – Balconies & Central major openings	7.2m - 11.2m	5.7m-6.9m
FrF – Bed 2	7.8m	7.1m

(GF – Ground Floor, FF – First Floor, SF – Second Floor, TF – Third Floor, FrF – Fourth Floor)

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PUBLIC CONSULTATION/COMMUNICATION

The Subject application has been the subject of two public consultation periods.

The application which was originally submitted for approval on 25 September 2012 involved a four storey mixed use development, comprising 2,206sqm Office space across three floors and Residential on the top floor (343sqm).

These plans were advertised for a period of 21 days in October 2012 in the form of:

- Letters to adjoining landowners;
- Advertising sign on site; and,
- A notice in the Melville Times Newspaper.

Seven submissions were received, six in opposition to the proposal.

In response to the submissions received, as well as concerns raised by Council Officers and the City's Architectural and Urban Design Advisory Panel, the Applicant submitted revised plans. The revised plans were deemed to be substantially different to those originally submitted, therefore requiring further public consultation.

These plans were advertised for a period of 14 days in February 2013 in the form of letters to the adjoining landowners and to all parties who lodged submissions during the first advertising period.

31 submissions were received, 30 in opposition to the proposal. Additionally, a petition in opposition to the proposal containing 14 signatures was received.

Following the deferral of the application at the JDAP meeting of 28 February 2013, the Applicant provided a further set of revised plans (which are the subject of this report). These plans have not been the subject of formal consultation on the basis that they represent a less intensive development to that previously advertised and primarily address many of the concerns raised within the submissions received and the previous Responsible Authority Report. Notwithstanding, the parties who previously provided submissions on the application were invited to view the revised plans. A further five submissions in opposition to the proposal were received.

A summary of the comments received during the second consultation period and within the five latest submissions that were received in response to the final plans are provided in Table 1 below.

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Issue	Nature of Concern raised	Officer's Comment
Traffic	<ul style="list-style-type: none"> • Greater consideration of the management and flow of traffic within the locality is required. • Traffic congestion will increase as a result of there being no access available from Canning Highway. • Groves Avenue and Lentona Street will become a car park. • The proposal will exacerbate the existing traffic problem in the area, particularly during peak periods. • Increased traffic will result in a potential risk for children utilising the park. • There is insufficient parking bays for visitors. • Refuse collection should occur on-site or via Canning Highway. Should this occur on Groves Avenue, further traffic problems will result. 	<p>Whilst the concerns associated with the increase in traffic on to Groves Avenue and Lentona Street are acknowledged, the City's Technical Services have indicated that the local road network has the capacity to absorb the additional vehicle trips generated by the proposal.</p> <p>The proposal satisfies both the R-Codes and Council Policy requirements in relation to visitor parking.</p> <p>Groves Avenue is the preferred location for the bin collection rather than Canning Highway to prevent obstruction of the highway. Any potential obstruction of Groves Avenue will be temporary.</p>
Privacy	<ul style="list-style-type: none"> • Loss of privacy given the size and scale of the proposal. 	<p>The proposal satisfies the Acceptable Development provisions within the R-Codes in relation to visual privacy.</p>
Amenity	<ul style="list-style-type: none"> • Additional noise from residents and visitors will adversely impact the amenity of the currently quiet cul-de-sac. • The first floor pool and gym facility will have noise implications upon surrounding residents. • Adverse impact upon the amenity of the surrounding area. • The proposal will create a "ghetto". 	<p>Noise is not a planning consideration and is otherwise governed under the provisions of the <i>Environmental Protection (Noise) Regulations 1997</i>.</p> <p>The potential Amenity impact is addressed within the 'Planning Assessment' section of the report below.</p> <p>The size and type of the dwellings proposed is allowed by the R-Codes.</p>

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Density / scale	<ul style="list-style-type: none"> • 44 apartments and office space will have a significant impact upon the locality, particularly traffic and parking. A lower density development would be supported. • The height is significant and the proposal exceeds many council guidelines. 	<p>Since the previous advertising period the total number of apartments has been reduced from 44 to 34. Furthermore, the proposed office space has been reduced from two tenancies to one 80sqm tenancy.</p> <p>The proposed height of the building represents a variation to the CPS5 and Council Policy provisions and is addressed within the 'Planning Assessment section of the report below.</p>
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CONSULTATION WITH OTHER AGENCIES / CONSULTANTS

Architectural and Urban Design Advisory Panel:

The City of Melville Architectural and Urban Design Advisory Panel (the Panel) provides professional and technical advice to City officers and Council in relation to the design of buildings and other related matters, pursuant to Council Policy CP-069.

The application has been reviewed by the Panel on two occasions, the first in relation to the original plans submitted for approval and the second on 5 March 2013 in relation to the plans which were previously presented to the JDAP on 28 February 2013 as requested at that JDAP meeting.

Details of the comments and the Applicant's response are outlined below:

Panel Comment	Applicant's Response	Officer Comment
<i>Density, Bulk & Scale</i>		
In principle, the current design is considered to be of acceptable scale in terms of height and plot ratio as a result of the proximity to Canning Highway and the benefit of the adjacent Water Corporation land.	Concur with Panel's feedback.	Noted.
Due to the design, the penthouse / uppermost floor does not add to building bulk.	Concur with Panel's feedback.	Noted.

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<p>The western elevation should be redesigned to address setback variations and overlooking to the adjoining property.</p>	<p>The setbacks from the western boundary have been substantially increased. The balconies now achieve the 7.5m cone of vision.</p>	<p>The western setbacks have been increased and are now generally compliant with the exception of two portions of wall (refer Table 3).</p> <p>The balconies along the western boundary do not satisfy Acceptable Development provisions of the R-Codes being setback 7m in lieu of the 7.5m requirement, however, as outlined in the 'Planning Assessment' section below, these are considered to satisfy the relevant Performance Criteria as they do not overlook major openings or outdoor living areas.</p>
<p>It would be beneficial for the number of one bedroom apartments to be increased.</p>	<p>The Applicant considers that the two bedroom (65sqm) corner units be of similar size to a notional one bedroom apartment and are likely to be priced accordingly.</p>	<p>The proposal satisfies the Acceptable Development provisions of the R-Codes with respect to dwelling size.</p>
<p><i>Streetscape</i></p>		
<p>The bulk of the Canning Highway elevation could be reduced by lowering the height of the porticos on the top level and changing to louvers or transparent roofing.</p>	<p>The main porticos at the front have been reduced in height which has reduced the bulk of the elevation. The roof has been left impermeable as this is required for weather protection.</p>	<p>The height of the portico's have been slightly reduced which has had a marginal impact on reducing the overall bulk.</p>
<p><i>Function</i></p>		
<p>Many of the balconies are too shallow to be usable.</p>	<p>The balconies have been redesigned to be more practical in their dimensions. Indicative outdoor furniture layouts are also marked.</p>	<p>All balconies satisfy Acceptable Development provisions of the R-Codes.</p>
<p>The proposed mesh vegetation screen along the western boundary is problematic and unlikely to work.</p>	<p>The need for this screen is now negated by the increased setbacks along the western boundary.</p>	<p>Screen is no longer part of the proposal.</p>

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There are potential issues regarding fire rating.	A BCA consultant has indicated that the amended proposal satisfies the relevant standards.	Noted.
The car stackers appear to be too narrow and the storage areas behind the stackers would be unusable.	The undercroft area has been redesigned to provide adequate space for the car stackers. The storage areas have also been relocated.	Parking and storage areas are now functional.
The management of rubbish requires further consideration.	The bin collection point has been relocated to Groves Avenue and two collections are planned per week.	The City's Waste Services have reviewed the proposal and support the bin pad location and have stated that the provision of 32 bins is satisfactory. Collection can be made twice a week.
Due to the small area of Office proposed, the proposal represents a 'token' mixed use development. Consideration should be given to the deletion of the proposed office space to provide additional space for car parking, storage and associated amenities.	One of the Office tenancies has been removed and replaced with storage bays, the parking layout redesigned and a public art wall relief panel proposed.	The deletion of one Office tenancy has significantly improved the internal layout and functionality. The remaining Office tenancy is supported however to provide activation along the frontage.
Storage areas located against external walls limit ventilation to car parking areas.	Storage areas have been relocated.	Noted.
Bicycle parking: <ul style="list-style-type: none"> • Concerns regarding location on Water Corporation land. • Concerns regarding accessibility, security and shelter. 	Bicycle parking relocated to undercroft area.	Noted.
<i>Privacy</i>		

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Variations to overlooking are best addressed through achieving compliant setbacks.	Plans redesigned to provide 7.5m cone of vision.	Balconies along the western elevation are setback 7m from the boundary which does not satisfy the Acceptable Development provisions of the R-Codes. However, the balconies are considered to satisfy the relevant Performance Criteria as outlined in the 'Planning Assessment' section of this report.
Use quality balustrade materials to minimise signs of ageing and weathering.	Glass balconies with aluminium stanchions will be installed.	Noted.
Designate sections of glass balustrade to be opaque / obscure to provide screening for future air conditioning units and/or clothes drying racks.	The location of future air conditioning units have been nominated on the balconies. Opaque glass will also be provided to screen AC units.	Noted.

Main Roads Western Australia

The application as originally submitted was referred to Main Roads Western Australia (MRWA) in accordance with the Western Australian Planning Commission Instrument of Delegation 2011/02.

MRWA stated that the development was not acceptable as presented, however it would be supported subject to the following changes:

- *Access should be from Groves Avenue only, as directed by WAPC Development Control Policy 5.1 Regional Roads (Vehicular Access). This could be achieved by removing the car parking bays from along the side of the rear access way, allowing two-way vehicle traffic. To achieve this, the Water Corporation should be contacted to determine that the boundary between Lots 801 and 802 to the east of the access leg remain unfenced with a low profile kerb. This would allow two way access from Grove Avenue in line with AS/NZS2890.*
- *The existing driveways accessing Canning Highway should be removed and the verge and its vegetation made good at the Applicant's cost.*

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- *The area required for future road widening is not to be included in the specific car parking requirements for this development.*

Further comments were then received on 28 February 2013 and submitted as late information to the JDAP which outlined the following:

- *The development as it currently stands does not recognise the 3.5m land reservation to be used for road widening in the future to MRWA's satisfaction, this will need to be rectified in order for the planning approval of the development.*

In addition to the above, the loading bay located within the 3.5m road reservation will, as a matter of course, need to be removed from the area reserved for road widening as any future widening will require this land. This is a serious concern for MRWA as the land set aside for road widening is planned to be used for a left turn pocket into Lentona Road and any crossover/s or site facilities that are located within the area reserved for this purpose would need to be removed at the full cost of the applicant. It is MRWA preference, and in our opinion sound planning policy, to remove the existing crossover as well as remove the planned crossover and loading bay from the development. Not only will the loading bay and other uses outlined in the current development plan encroach onto MRWA reservation but the introduction of any sort of access point into the Lot, especially where a left turn pocket is situated, will create unnecessary conflict and create a scenario where traffic movements are severely impacted by a lack of certainty regarding expected vehicle movements within the left turn pocket. Addressing this issue at the current stage of planning approval will result in a reduction of confusion for all stakeholders as well as create a level of certainty as to the allowed location of commercial access points and the relationship between the Lot and Canning Highway.

It would also be prudent to restore the verge and its vegetation where the redundant crossovers are located, this would be conducted by the applicant.

- *The applicant is required to undertake a transport noise assessment in accordance with the guidelines of the WAPC State Planning Policy 5.4 "Road and Rail Transport Noise and Freight Considerations in Land Use Planning".*

The noise report shall pay special consideration in addressing noise amelioration measures for two-storey dwellings, in this case five (5) storey.

The applicant shall be responsible for all costs in implementing all the recommendations in the report.

Following the deferral of the item at the aforementioned JDAP meeting, the revised plans which are the subject of this report have been the subject of further referral to MRWA.

MRWA are now satisfied that the revised plans address the abovementioned points, however, reiterate concerns relating to potential noise impact. MRWA therefore recommended that the following condition be imposed:

The applicant is required to undertake a transport noise assessment in accordance with the guidelines of the WAPC State Planning Policy 5.4 "Road and Rail Transport Noise and Freight Considerations in Land Use Planning".

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The noise report shall pay special consideration in addressing noise amelioration measures for two-storey dwellings, in this case five (5) storeys.

The applicant shall be responsible for all costs in implementing all the recommendations in the report.

The abovementioned condition is contained within the Officer's recommendation to the JDAP.

Water Corporation

In addition to being consulted with regard to the variations sought, the Water Corporation has been consulted regarding the substantial soft and hard landscaping works proposed within Lot 801 which is owned by the Water Corporation.

The Water Corporation have indicated that they do not object to the proposal relative to the variations sought, however they recommend that the following site circumstances be taken into consideration:

- *The proposal is located next to a wastewater pump station of a moderate size with emergency overflow tank.*
- *The proposal overlooks the pump station site which may not be aesthetically pleasing.*
- *The pump station requires regular and perhaps emergency maintenance that requires the attendance of trucks. Odour and noise may occur during such times.*

Based on the above, it may be preferable to located residential balconies away from the potential site nuisances.

Balconies are proposed along the rear elevation adjacent to the Water Corporation land. These balconies take advantage of views across the Water Corporation land and the upper floors may also achieve views across the Swan River toward Perth City.

A condition of approval is therefore recommended to require the lodgement of a notification on the Certificate of Title(s) for the property to advise all future property owners that the property is located next to a pump station and therefore may be subject to noise, odour and other activities not normally associated with a typical residential development.

With respect to the proposed landscaping of Lot 801, the Applicant has obtained an 'in principle' licence agreement from the Water Corporation that Lot 801 will remain as open space for the life of the proposed development given the pumping station / holding tanks are highly unlikely to be made redundant (in fact, there are plans to increase the capacity in the long-term). In this regard, lease agreements are currently being prepared which propose a 10 year lease period, with options to keep increasing in 10 year increments to maintain the landscaping on Lot 801 for the benefit of the occupants of the proposed development and the public.

The above agreement does not form any part of the current development proposal as Lot 801 is outside of the subject development site and has not been an influencing factor in the drafting and submission of this report by the City, other than landscaping considerations.

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STATUTORY AND LEGAL IMPLICATIONS

Pursuant to Clause 4.2(iii) of CPS5, the proposed plot ratio variation can be approved only by a Special Majority decision of Council. In addition, the height and landscaping variations can be approved only by an Absolute Majority decision of Council.

The City has received preliminary legal advice relating to density and has sought expert legal opinion on this issue.

FINANCIAL IMPLICATIONS

There are no financial implications applicable for Council as a result of this application.

STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS

Directions 2031 is a high level spatial framework strategy that establishes a vision for future growth of the metropolitan Perth and Peel region and provides a framework to guide the detailed planning and delivery of housing, infrastructure and services necessary to accommodate a range of growth scenarios. The final report was released by the Western Australian Planning Commission on 30 August 2010.

The City's Corporate Plan 2012 -2016 incorporates a number of Key Actions 2012/13 onward including finalisation of the draft Local Planning Strategy and Local Planning Scheme 6 to provide clear long term strategic direction in land use planning in response to demographic trends and State Government planning policy.

POLICY IMPLICATIONS

The proposal satisfies all of the relevant provisions contained within Council Policy with the exception of Council Policy-066: Height of Buildings Policy. This is addressed within the RAR.

The City's draft Non-Residential Development and Provision of Art in Development Proposals policies have been taken into account in the assessment of the subject application. Both of these policies have been advertised and are therefore considered to be seriously entertained planning documents.

ALTERNATE OPTIONS & THEIR IMPLICATIONS

The recommendation of this report is for Council to endorse the recommendation in the RAR for the JDAP to defer the consideration of the application for a further three week period.

Council may resolve to not endorse the recommendation within the RAR however should provide reasons in the usual manner to inform the members of the JDAP.

The minutes of the Special Meeting of Council will be attached to the RAR and forwarded to the JDAP for its consideration.

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Where Council wishes to provide a deputation to the JDAP in support of a Council resolution a nominated person on behalf of the Council may request to make a deputation at the JDAP meeting. The authorisation to grant a request to make a deputation lies with the Presiding Member of the JDAP.

COMMENT

Land Use

The subject site is located within the 'Commercial Centre Frame - Hislop Frame' Precinct.

Under the provisions of CPS5, an 'Office' is an 'S' use which means the use is not permitted unless Council exercises discretion and grants planning approval after advertising. 'Residential' is a 'D' - discretionary use.

The Statement of Intent for the 'Hislop Frame' Precinct states:

Primarily residential but may include small-scale offices and medical practitioners where privacy of neighbours is respected and design has a residential character. Shops, open-air display of goods and vehicles, service stations and the like are prohibited. Building height is restricted because of the proximity of the Alfred Cove Conservation Reserve. Buildings shall not use mirror glass externally.

The proposal presents as a predominantly residential proposal with a single small-scale office tenancy of 80sqm. Accordingly, the proposed uses are considered consistent with the above Statement of Intent.

Based on the above, the proposed development is considered to be acceptable in land use terms, being consistent with the existing and future intended character of the area.

Density

The subject site has an R-Coding of R25/50.

Part 4 relating the subject Precinct – Commercial Centre Frame (Hislop Frame) states with regard to density:

R25/R50 in accordance with Clauses 5.1, 5.2, provided that densities may be increased to R50 on lots over 1600 square metres where there is no vehicular access to or from Canning Highway.

As the subject lot is greater than 1,600sqm (1,904sqm) and no vehicular access is proposed to or from Canning Highway, the R50 density applies to the proposed development.

The fundamental reasoning behind the R50 density is based upon 50 dwellings per hectare which equates to approximately 200sqm per dwelling. The development as proposed equates to approximately 56sqm per dwelling.

With the introduction of Part 7 of the R-Codes in November 2010 all minimum and average site areas per dwelling for multiple dwellings developed as part of mixed use developments, such as the current application, were removed.

However legal opinion is being sought on the issue of density.

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Bulk and Scale

Building bulk and scale is considered to be a combination of a number of key development criteria, principally, building height, plot ratio, setbacks, open space and to a lesser extent, landscaping.

As outlined above, the proposal presents variations to all of the above in relation to the requirements set out within CPS5 and the R-Codes.

These variations require consideration under the Performance Criteria of the R-Codes, in particular Clauses 7.1.1 Building Size, 7.1.2 Building Height, 7.1.4: Side and Rear Boundary Setback, 7.1.5: Open Space and 7.3.2 Landscaping.

Notwithstanding the below assessments against the relevant Performance Criteria of the R-Codes, the question in relation to the ability to consider a development which represents a greater density than the R50 zoning remains. As such, it is recommended that the JDAP defer consideration of the application until this matter is explored further.

Building Size and Open Space

Given that the adjacent Lot 801 is planned to remain vacant for the foreseeable future in order to house necessary infrastructure for the Water Corporation, the potential impacts of the proposed development in relation to plot ratio and open space is considered to be appropriate. In fact, were the proposed development assessed utilising the area of the adjoining Lot 801 in addition to the area of the subject site, the proposal would satisfy the CPS5, R-Codes and Council Policy provisions relating to plot ratio, open space, landscaping and the setbacks from the northern and eastern boundaries.

Notwithstanding the above, given the location of the property adjacent to Canning Highway, within a Commercial Centre Frame and adjacent to the vacant Water Corporation land, the bulk and scale of the proposed development is considered to be consistent with the future desired built form of the locality.

The proposed development is therefore considered to satisfy Performance Criteria 7.1.1 and 7.1.5 of the R-Codes.

Building Height

From a streetscape perspective, in the context of its zoning and the future intended built form for the locality, the height of the proposal is considered to be appropriate. The potential impact of the proposed height has been minimised through the design of the building which includes greater setbacks of the 4th floor creating a podium level.

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It is noted that the Architectural Panel was supportive of the proposed height and scale of the proposed development given the site's proximity to Canning Highway, however the Panel did recommend the reduction in the height of the porticos on the 4th floor level in order to reduce their bulk. The Applicant subsequently amended the plans to address this matter.

The design of the proposed development has also taken into account the potential impacts upon the adjoining property to the west through increased setbacks to the western boundary.

In particular, the 4th floor level is setback between 6.7m and 8m from the western boundary. In addition, the existing apartment building located on this adjoining property is setback from the common boundary approximately 9.5m which further ameliorates the impacts of the proposal.

As outlined above, the potential impacts upon the adjoining properties to the north and east as a result of the proposed height variation are mitigated by virtue of the vacant Lot 801 in between.

Furthermore, by virtue of the orientation of the site, the proposed development will not result in a significant impact upon the access to direct sun or daylight on the adjoining properties.

No impacts upon access to views of significance will result from the proposed development as the properties to the south do not currently access views across the property to the north.

The human scale has been respected through the design of the proposal, through the incorporation of an awning and public art at ground floor level.

The proposal is therefore considered to satisfy Performance Criteria 7.1.2 of the R-Codes.

Side and Rear Boundary Setbacks

As outlined above, the proposed setbacks to the northern, eastern and western boundaries do not satisfy the Acceptable Development provisions of the R-Codes and therefore require assessment against Performance Criteria 7.1.4.

The subject site benefits from the adjoining Water Corporation land along the northern and eastern boundaries. The location of this property adjacent negates, or otherwise lessens, the impact of a number of the variations relating to the development proposal upon the adjoining properties to the north and east on the basis of the separation distance provided by Lot 801. Specifically, the adjoining commercial office to the east is situated over 12m away from the subject site, whilst the nearest residential dwelling to the north is over 30m away.

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The setback of the western elevation has been the subject of discussion between the Applicant and Council officers and comment from the City's Architectural Panel. In response, the amended plans have resulted in a development with much greater setbacks from the western boundary than originally proposed. In addition, the design incorporates the use of varied setbacks and window openings to reduce the visual impact of the elevation.

As a result of these negotiations, the setbacks associated with the proposed development now satisfy the Acceptable Development provisions with the exception of only two portions of the western elevation, specifically the central portion of the elevation on both the third and fourth floors. Notwithstanding, these walls are setback between 6.7-8m from the common boundary. Furthermore, the neighbouring apartment building is setback 9.5m from the common boundary, which therefore provides a separation distance of between 16.2-17.5m between the existing building to the west and the third and fourth floors of the proposed building. This degree of separation is considered to mitigate any building bulk impact arising from the proposed setback variations.

With regard to access to daylight and direct sun, the proposal by virtue of the site orientation, will not result in a significant impact upon the access to direct sun or daylight on the adjoining properties.

The adjoining apartment building to the west contains a number of major openings facing east towards the subject site, however it is noted that these are separated by a communal walkway which extends along the entire eastern elevation of the building. Consequently, these openings are typically obscured by curtains to maintain privacy. Furthermore, these openings are located approximately 10m away from the common boundary.

As outlined above, the proposed development is considered to satisfy Performance Criteria 7.1.4 of the R-Codes.

Landscaping

As outlined above, the proposed development does not provide landscaping covering an area which equates to 25% of the site area in accordance with CPS5. The proposal has therefore been assessed against the provisions of the City's draft Non-Residential Development policy which states:

Landscaping should be concentrated within the street setback area to:

- *enhance and positively contribute to the streetscape; and*
- *soften the appearance of the building; and*
- *where relevant, provide a buffer between the development and adjoining residential properties.*

The proposed development incorporates landscaping within the front setback area adjacent to Canning Highway. In addition, the Applicant proposes to landscape the adjoining Lot 801 which fronts Groves Avenue, to provide an amenity for occupants of the subject development, adjoining properties and the general public.

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Although the landscaping of the adjoining Lot 801 cannot legally be tied into the development of the subject lot, the evidence of the agreement between the Applicant and the Water Corporation has been taken into consideration. Furthermore, the landscaping of the adjoining Lot 801 would be considered beneficial to the amenity of the future occupants of the proposed development for both their use, but also for views over this area from the rear facing apartments.

A condition of approval is recommended requiring the submission of a detailed landscaping plan prior to implementation to ensure that the future landscaping satisfies the above criteria.

Visual Privacy

The proposed development does not satisfy the Acceptable Development provisions within the R-Codes relating to visual privacy with regard to the openings and balconies proposed along the northern, eastern and western boundaries.

As detailed above, the Water Corporation's pumping station on Lot 801 is located adjacent to the northern and eastern boundaries of the site. As a result, this land provides sufficient privacy separation between the proposed development and the surrounding residential properties.

With respect to the adjoining apartment building to the west, the balconies proposed along the western elevation of the proposed development are setback 7m in lieu of the 7.5m Acceptable Development criteria. Upon an assessment of the adjoining existing apartment building, it is noted that there are a number of major openings facing east towards the subject site. These major openings however, are located adjacent to a communal walkway which extends along the entire eastern elevation of the building. Consequently, these openings are primarily obscured by curtains to maintain privacy.

The major openings along the eastern elevation of the adjoining building are also located approximately 10m away from the common boundary. Consequently, taking into account the 7m setback distance from the proposed balconies, a separation distance of approximately 17m will exist.

As a result, it is considered that the proposed development satisfies Performance Criteria 7.4.1 of the R-Codes.

Traffic

A Traffic Impact Assessment was submitted with the original application which has been reviewed by the City's Technical Services staff. This document concluded that the original proposal would result in a minimal impact upon existing traffic operations and the local road network.

As a result of the amended proposal which has reduced the scale of the proposed Office space and the number of residential apartments, the traffic implications of the proposed development are further reduced from that originally considered within the Traffic Impact Assessment and by the City's Technical Services.

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Notwithstanding the findings of the report, traffic impact has been a key issue raised by submitters. It is purported by submitters that the impact of the proposed development will exacerbate existing traffic issues along Groves Avenue and Lentona Road. Contrary to the advice provided by MRWA, submitters have recommended that all access and egress to the development should be limited to Canning Highway only.

The City's Technical Services comment supports MRWA's advice and also does not support access on to or from Canning Highway in the interest of minimising the risk of crashes and so not to compromise the Department of Planning and MRWA's future plans for widen Canning Highway for the Rapid Transit Route.

Based on the above, the concerns raised by submitters relating to the increased trip generation and the impact upon the local road network are not upheld.

CONCLUSION

As outlined above, the City has received a preliminary legal advice note in the last week relating to issues of density. As such, it is recommended that Council endorse the recommendation in the RAR for the JDAP to defer the consideration of the application for a three week period to allow these concerns to be addressed.

OFFICER RECOMMENDATION (3389)

DEFER

That the Council advise the Joint Metro Central Development Assessment Panel that the Council of the City of Melville endorses the recommendation of the Responsible Authority Report to defer the consideration of the application for a proposed Five Storey Mixed Use Development at Lot 802 (554-558) Canning Highway, Attadale for an additional three week period for the following reason:

- **Urgent legal advice is being sought on issues relating to density.**

REJECT AND REPLACE

At 8.25pm Cr Robartson moved, seconded Cr Foxtton -

That the Officer Recommendation be rejected and replaced with:

That the Council acknowledges that the Joint Metro Central Development Assessment Panel has provided a two week extension for the provision of the Responsible Authority Report and resolves to defer consideration of the application pending legal advice on issues relating to density.

At 8.25pm the Mayor submitted the motion, which was declared

CARRIED (11/0)

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Reasons for Reject & Replace

In written advice received by email on 29 April 2013 the DAP Secretariat has advised that the Presiding Member has granted a two week extension to the date for submission of the Responsible Authority Report (RAR) on the development application such that the RAR is now due to be submitted on 14 May 2013.

During the additional two week period the City proposes to obtain legal opinion on the issue of density with the outcome to be reported to a Special Council Meeting to be arranged prior to the Metro Central JDAP meeting at which the development application will be considered.

CARRIED UNANIMOUSLY (11/0)

11. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil.

12. MOTIONS WITHOUT NOTICE BY ABSOLUTE MAJORITY OF THE COUNCIL

Nil.

13. CLOSURE

There being no further business to discuss the Presiding Member declared the meeting closed at 8.36pm.