



Form 2 – Responsible Authority Report (Regulation 17)

Property Location:	No. 18A (Lot 899) and No. 18B (Lot 898) Tweeddale Road Applecross
Development Description:	Ten (10) Multiple Dwellings
Proposed Amendments:	Extension Of Time Request
DAP Name:	Metro Inner South JDAP
Applicant:	Mr Michael Hotchkin, Hotchkin Hanley Lawyers
Owner:	Tjhing Kiauw The, Phoebe Moi Ping The, John Anthony and Lory Anne Farac
Value of Amendment:	\$7 million
LG Reference:	DAP-2017-1238/B
Responsible Authority:	City of Melville
Authorising Officer:	Steve Cope- Director Urban Planning
DAP File No:	DAP/17/0120
Report Date:	17 July 2020
Application Received Date:	21 April 2020
Application Process Days:	90 Days
Attachment(s):	1. DA-2017-1238 – Determination 2. DA-2017-1238/A – Amended Approval (current plans) 3. Applicant Justification 4. Amendments to CBACP Gazetted 19 August 2019.

Officer Recommendation:

That the Metro Central JDAP resolves to:

1. **Accept** that the DAP Application reference DAP – 2017-1238/B as detailed on the DAP Form 2 dated 21 April 2020 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;
2. **Refuse** the DAP Application reference DAP-2017-1238/B as detailed on the DAP Form 2 date 21 April 2020 and accompanying plans DAP/17/01320 (DA-2017-1238 & DA-2017-1238/A) 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 proposed minor amendment to the approved Ten (10) Multiple Dwellings at No. 18A (Lot 899) and No. 18B (Lot 898) Tweeddale Road Applecross, for the following reason:

Reasons

1. The planning framework, specifically the Canning Bridge Activity Centre Plan (CBACP) has changed substantially since the original development application was approved and the proposal would be unlikely to receive development approval now. On that basis the proposal to extend the period of time is not considered appropriate.

Details: outline of development application

Zoning	MRS:	Urban
	TPS:	Residential R-ACO Canning Bridge Activity Centre Plan
Use Class:		Residential (Multiple Dwellings)
Strategy Policy:		None Applicable
Development Scheme:		Local Planning Scheme No. 6
Lot Size:		1157m ²
Existing Land Use:		Vacant

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 on the 8th March 2018 DAP/17/01320 (DA-2017-1238).

Approval is now sought for an amendment to the development approval DAP/17/01320 (DA-2017-1238) to extend the period within which the approved development is required to be substantially commenced (for an additional 3 years).



Figure 1: Aerial photo of the subject lots

Background:

There have been a number of development approvals relating to this site over the past 12 years. This planning history is summarised as follows:

- December 2008; Development approval was granted for retaining walls. This approval formalised the natural ground levels for both of the lots which make up the subject application site. (DA-2008-1557 refers).
- After this, three further planning approvals were issued for the development of Lot 899 (18a Tweeddale) only, comprising;
 - DA-2011-439 (Three storey multiple dwelling with undercroft),
 - DA-2011-920 (Three storey single house),
 - DA-2016-404 (Three storey multiple dwelling with undercroft).
- 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: Form 2 amendment to DAP/17/01320 (DA-2017-1238) was approved by the City. This Form 2 amendment proposed 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. (refer to Attachment 2) .

The subject extension of time request does not involve any further changes to the plans approved by the City in April of last year.

Site Context

The application site comprises of 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.



Figure 2: Subject site located within the Canning Bridge Activity Centre Plan

Since both DA-2017-1238 and DA-2017-1238/A were 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. The amendments relevant to the subject site are summarised in Attachment 4.

Given these changes to the prevailing development controls, it is highly unlikely that the development as previously approved would receive development approval now. As such it is considered that an extension of time to the DA would be inappropriate.

Legislation and Policy:

Legislation

- Planning and Development Act 2005
- City of Melville Local Planning Scheme No. 6
- Canning Bridge Activity Centre Plan

State Government Policies

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

Local Policies

- LPP1.1: Planning Process and Decision Making
- LPP1.2: Architectural and Urban Design Advisory Panel

- LPP1.3: Waste and Recyclables Collection for Multiple Dwellings, Mixed Use and Non-Residential Developments
- LPP 1.5 Energy Efficiency in Building Design
- LPP 1.8 Crime Prevention Through Environmental Design of Buildings
- LPP1.10: Amenity
- CP-029: Street Tree Policy

Consultation:

Public Consultation

The proposed development was the subject of public consultation in accordance with Clause 1.8 of LPP 1.1: *Planning Process and Decision Making*. Comment was sought on the proposed development in light of the changes to the CBACP which effectively result in elements of the development now being inconsistent with the provisions of the CBACP. These elements are summarised as follows:.

- 1) Variations to the side and rear boundary setbacks (to the second and third floor),
- 2) A variation to the height of the lift overrun (relative to the amended definition of 'Building Height'), and
- 3) The setback variations to the rooftop structures relative to the preceding floors and the street boundaries.

Comment was sought from adjoining neighbours via letter and the City's online engagement portal 'Melville Talks'.

During the advertising period 36 written submissions received - 34 comments of support and 2 comments of objection (1 of the written objections was undertaken on behalf of the owners of 4 properties).

Submission Summary	Officer's comments
<p>The objections received are summarised as follows;</p> <ul style="list-style-type: none"> • Objections to height of lift and its visual impact; • Privacy concerns as a result of the failing to comply with the required 8m upper floors boundary setbacks; • Bulk impact concerns should the building be allowed to ignore the required 8m setbacks to sites outside the CBACP; • The planning framework has changed and the extension of time should therefore not be granted; and • Existing concerns addressed in earlier versions of the application remain unresolved. 	<p>Comments are noted and discussed below</p>
<p>The submissions in support of the development are summarised as follows;</p> <ul style="list-style-type: none"> • The design is considered of high quality and will contribute to the location; • The development will support the economy in the context of Coronavirus; • The proposal will not have a negative impact on the immediate area; and 	<p>Comments are noted.</p>

<ul style="list-style-type: none"> The development should be allowed because the State Government has demonstrated an interest in reducing red tape. 	
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Consultation with other Agencies or Consultants

Nil

Planning Assessment:

Canning Bridge Activity Centre Plan (CBACP)

The CBACP was originally approved by the WAPC in April 2016. The Canning Bridge area is recognised as a District Centre under the WAPC's *State Planning Policy 4.2: Activity Centres for Perth and Peel (SPP 4.2)*.

As stated, the CBACP was reviewed in 2019 with a number of changes approved for the H4 zoned areas. The WAPC endorsed the changes in July 2019 and the changes were gazetted in August 2019. The changes to the H4 zoning were intended to improve the transition between the bulk and scale considered appropriate within the CBACP and the more suburban, less dense style of development that typifies the areas which adjoin but are outside of the CBACP itself.

In considering whether to support the request to extend the approval period for the development the City must apply the reviewed and updated provisions of the CBACP to the development application, and assess the impacts that the revised planning policy framework has. The following table specifically accounts for the clauses within the updated CBACP that are not now met by the proposal, and which require further consideration.

Element	Requirement	Proposed	Officer Comment
Element 3. Heights	Lift plant and open roof structures maximum height – 3m measured from FFL of roof deck (definition)	Lift plant – 4.3m above roof deck	See planning assessment below.
Element 5. Side and Rear Setbacks	<i>Clause 5.8-</i> Any 3 rd and 4 th storey adjoining residential land outside the CBACP setback 8m from common boundary	No. 15 Riverway – 4m setback to boundary	See planning assessment below.
	<i>Clause 5.9-</i> Side and rear setbacks at roof level – 2.5m from building edge	Rear (Northern Boundary) Provided – 1m min, 2.1m, 2.5m Side (eastern boundary) Provided – 1.3m,	See planning assessment below.

		0.9m	
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Element 5 Side and Rear Setbacks

Upper floor setbacks

Clause 5.8 to the CBACP (see above) was introduced to improve the interface between lots within and those lots outside of the CBACP in terms of height and building bulk. The density codes of lots adjacent to the H4 zoning vary, with some lots having a density coding as low as R15. The lots outside of the CBACP adjacent to the subject site are zoned Residential with a density code of R30.

Under the provisions of Element 5.7 of the CBACP there are no development controls relating to visual privacy and overshadowing. Setbacks are therefore the key development control for dealing with visual privacy, overshadowing and building bulk. Due to the orientation of the subject site, the shadow from the proposal falls towards Tweeddale Road and therefore the setbacks do not cause any amenity issues in the context of overshadowing.

In relation to visual privacy and bulk, and in accordance with the changes to the H4 provisions of the CBACP, it is considered that the 4 metres setback of the 3rd and 4th storey has the potential to result in a negative impact on the amenity of the properties to the north when considered under the updated planning framework.

The adjoining property (a two storey single dwelling) enjoys an aspect to the south towards the development site from their primary outdoor living area, a tennis court and multiple upper floor windows. The proximity of the upper floor storeys of the proposed development to this adjoining property is considered likely to have a negative bulk impact, and will compromise the enjoyment of the property, including the use of its active habitable indoor and outdoor spaces, to the detriment of residential amenity when considered under the updated planning framework. This is considered to be inconsistent with Element 5 which aims to minimise overlooking through an appropriate design response.

The City considers that the 8m setback requirement for the two upper floors of a four storey development indicates in streetscape terms, that this is the edge of the CBACP precinct. The increased setbacks for those upper floors make it clear that there is a building transition from the more dense multiple dwelling style of development that is encouraged by the CBACP, and the lower intensity residential development styles that characterise the areas outside of the CBACP area.

In view of this, the endorsement of an application for the extension of time to the DA is not supported. Should a DA for the development proposed in this case be lodged today, it is considered that the City as responsible authority to the JDAP would not recommend it be supported. On that basis, the proposed extension of time to the DA is similarly not supported.



Figure 3: View from Carron Road with the subject lot to the right of the picture

Rooftop structures

The introduction of Clause 5.9 to the CBACP requires that rooftop structures be setback a minimum of 2.5m from the side/rear building edge to avoid them contributing to the building bulk and presenting as an additional storey.

The proposed development includes a rooftop patio structure less than 1m from the eastern building edge whereby it would potentially be visible from the adjoining property and also the streetscape. Given the change to the planning framework, the proposed roof structures would be highly unlikely to be supported in their current form if this was a new application and as such an extension of time to the previous DA is not supported.

Element 3- Heights

The definition of Building Height in the CBACP was amended to clarify that roof structures are excluded from the calculation of building height provided they don't exceed 3m above the finished floor level of the roof deck.

Both of the proposed lift shafts are a maximum of 4.3m above the roof deck (1.3m above the permitted maximum). The plan shows that the lift shafts are centralised on the roof, at least 8.5m from the nearest roof edge. The location of the lifts relative to the roof edge is visible in Figure 4 below. The total height of the lifts overrun is 19.4 metres from the natural ground level below which is 400mm above the building height limits anticipated by the CBACP- that being the permitted 16m building height limit (Clause 3.5 in the CBACP) plus the 3m provided for the lift overrun. The lift location and height is obscured from adjoining properties by other roof top structures including stores, stairwells and patio roofing and therefore the bulk impact from the lifts is concealed from the immediate adjoining properties. Further if the lifts were able to be viewed from a distance then the variation to the height is modest enough not to obstruct views. While the lift heights do not meet the revised requirements of the CBACP the City considers these meet the relevant desired outcomes and could be approved on that basis.



Figure 4: Lift Shafts relative to roof edge

Crossover Design and Ramp Gradient

The City notes that the design of the ramp gradients shown on the attached plans does not comply with the relevant Australian Standards. The City's Traffic and Road Safety engineers have however scrutinised the plans and believe that in accordance with Condition 9 of DA-2017-1238 the ramp gradients can be amended to comply with the Australian Standards. In view of this the ramp design as proposed does not cause any impediment to the extension of time now sought.

Development Assessment Panel Practice Notes – Practice Note 4

Under the provisions of Clause 9 of the Development Assessment Panel Practice Notes – Practice Note 4 when considering an application for an extension of time the decision maker must consider the following matters:

- Whether the planning framework has changed;
- Whether the development would likely receive approval now; and
- Whether the applicant has actively pursued implementation.

The first two dot points have been covered in detail in the report above. In relation to the third dot point, the applicants supporting document in attachment 3 details the measures taken to implement the approval, including the lodgement of a building permit application earlier in 2020. Despite these measures the applicant was not able

to commence development before the expiry of the approval. The City acknowledges the importance of construction jobs as the state deals with the Covid – 19 pandemic and is generally supportive of development within the Canning Bridge Activity Centre Plan however the proposal is considered inconsistent with the revised provisions and is not supported on that basis. The applicant is encouraged to modify the plans and lodge a new and updated DA for the development. This can then be assessed and determined in accordance with the prevailing planning policy framework.

Council Recommendation:

To be provided.

Conclusion:

The proposed four storey multiple dwelling development, previously approved by the City on the 5 April 2019, has been assessed against the recent changes to the Canning Bridge Activity Centre Plan. The changes to the CBACP are considered to be significant and specific in their intent, and the development proposal is considered to no longer comply with these development requirements or the desired outcomes. As such the proposed extension of time request is not supported.