



NO. 18A (LOT 899 AND NO. 18B (LOT 898), TWEEDDALE ROAD, APPLECROSS – EXTENSION OF TIME REQUEST

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

DAP Name:	Metro Inner South JDAP	
Local Government Area:	City of Melville	
Summary of Modifications:	Extension Of Time	
Applicant:	Mr Michael Hotchkin, Hotchkin Hanley Lawyers	
Owner:	Tjhing Kiauw The, Phoebe Moi Ping The, John Anthony and Lory Anne Farac	
Value of Development:	\$7 million <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/B	
DAP File No:	DAP/17/0120	
SAT File No (DR reference):	DR 184/2020	
Date of Decision under Review:	3 August 2020	
Application for Review Lodgement Date:	12 August 2020	
Attachment(s):	<ol style="list-style-type: none"> 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 5. Special Meeting of Council Minutes 14 July 2020 6. Special Meeting of Council Minutes 3 November 2020 7. Insert most recent DAP decision 8. Insert most recent RAR. 	
Is the Responsible Authority Recommendation the same as the Officer recommendation?	<input type="checkbox"/> Yes	Complete Responsible Authority Recommendation section
	<input type="checkbox"/> N/A	
	<input type="checkbox"/> No	Complete Responsible Authority and Officer Recommendation sections

Responsible Authority Recommendation

The Metro Inner – South Joint Development Assessment Panel resolved 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.
2. The applicant has not demonstrated that it has actively and conscientiously pursued the implementation of the development approval.

Proposed Land Use	Residential
Proposed Net Lettable Area	N/A
Proposed No. Storeys	Four Storey with undercroft parking and roof terrace
Proposed No. Dwellings	10 Dwellings

Proposal:

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 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).

Background:

History of Application

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); and
 - 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. (see Attachment 2).
 - An extension of time request was refused by the JDAP on 3 August 2020 and is the subject of this reconsideration.

In the context of this planning application history, it is clear that whilst the development of the site could have been legitimately commenced in 2011, the opportunity to do so has not been taken.

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.

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. 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.

Application to the State Administrative Tribunal

Following the decision of the Metro Inner-South JDAP on 3 August 2020 (DAP ref: DAP/17/01320, LG ref: DAP-2017-1238/A) to refuse the application for an extension of time, an application for review was lodged with the State Administrative Tribunal. .

Following a directions hearing in August 2020, the matter was referred to mediation in September 2020. The result of this mediation process is that 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: 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

No public consultation has been undertaken in respect of the subject application for reconsideration. Public consultation was undertaken as a part of the original Form 2 application considered by the JDAP on 3 August. The details of this consultation were outlined in the original RAR and are summarised below for ease of reference

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 • The development should be allowed because the State Government has demonstrated an interest in reducing red tape. 	<p>Comments are noted.</p>

Referrals/consultation with Government/Service Agencies

Nil

Design Review Panel Advice

There are no changes to the approved design and therefore the comments of the Canning Bridge Design Review Panel have not been sought.

Planning Assessment:

SAT Mediation was held on 21 September 2020 and under Section 31 of the State Administrative Tribunal Act 2004 (WA) the JDAP was invited to reconsider its decision. To facilitate this reconsideration the applicant was invited to provide additional information.

The additional information submitted by the applicant includes the recognition of the introduction of Covid – 19 exemptions; a timeline of the applicant's efforts to progress the planning approval; and details of costs incurred by the applicant to date.

The remainder of this RAR considers the additional information provided by the applicant to assess if an extension of time is appropriate having regard to Clause 9 of the Development Assessment Panel Practice Notes:

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

Whether the planning framework has changed

The applicant asserts that the amendment to the CBACP approved by the WAPC in August 2019 does not constitute a substantial change to the planning framework that would prohibit the granting of an approval however the applicant does not provide any meaningful support for this comment. In addition, and notwithstanding the amended CBACP, the applicant indicates that the proposal will not have a negative impact on the adjoining property.

The recent changes to the CBACP are outlined in the previous RAR. The changes included the introduction of an increased side setback requirement for upper floors. The City considers that this alone represents a marked change to the planning framework, and for the acceptability of development proposals proposed post the introduction of the amended setback requirements. 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 second objective 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.

In order that the CBACP remains viable, the views of the community as key stakeholders in the successful implementation of the ACP vision must be taken into consideration. The amendments that were introduced in August 2019 are a product of community involvement in the plan review process undertaken at that time, whereby concerns were raised in relation to the interface between the lower density properties adjacent to the CBACP area and the H4 zone (multiple dwellings @ four storey). Development adjacent to the CBACP generally includes residential dwellings with modest bulk, scale and siting consistent with suburban amenity. Following the review, a formal amendment to the CBACP was initiated and this was endorsed by all relevant parties in accordance with the process outlined by the Planning and Development (Local Planning Schemes) Regulations 2015.

As outlined on page 7 of the previous RAR 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 bulk impact of the building as perceived as people approach the CBACP area from the north.

It is considered that in the context of the planning tools used to control development within the CBACP, the introduction of a revised setback requirement is a significant change, which will have positive impact on the area in general. To allow the extension of time application now in respect of a proposed development that fails to

achieve these important setback requirements will undermine the objectives of the CBACP, and deliver a negative outcome for the locality.

Whether the development would likely receive approval now

The applicant does not specifically address whether the application would receive approval now in its letter of justification. It does indicate that it would be open to the decision maker to consider the application on its merits and issue a decision.

It is very unlikely that the City, either as decision maker or Responsible Authority to the JDAP would support the proposal in its current form if it was lodged as a new application today. This conclusion is reached on the basis of an assessment against the applicable planning policy framework that applies today, which, given that the proposal does not incorporate the setback requirements to the upper floor, and given this would conflict with the built form objectives of the CBACP, renders the application for an extension of time unacceptable.

As stated in the initial RAR, the proposal does not demonstrate a design outcome that provides a clear separation between the H4 zone and the adjoining suburban residential area. In considering an application on this site, the City would encourage an applicant to present an application to the Design Review Panel for review at the pre-lodgement stage. This pre lodgement design review process would allow an applicant to demonstrate the measures they have undertaken to mitigate visual privacy and bulk impacts on adjoining properties as well as how they have created a distinction between the zones. The applicant could use advice from this process to inform their final drawings. In this case the proposal does not incorporate a variety of setbacks or building materials and balconies are oriented directly towards the adjoining property to the north.

Whether the applicant has actively pursued implementation

Applicant Justification

In addition to the list of costs associated with the attempted implementation of the expired DA approval, the applicant has included in their additional information justification for the extension of time request being granted given the introduction of existing Covid – 19 exemptions. In this context the lawyers representing the applicant cite delays brought about by the City as a mitigating factor in their favour.

COVID-19

Despite the applicants' contentions, the City considers that as the approval had lapsed prior to the introduction of Ministerial exemptions of 8 April 2020, the exemptions do not apply. As such the introduction of Covid-19 related exemptions are not material to the consideration of the subject Section 31 reconsideration. The City understands that the applicant intends to proceed with development on the site, but whether this should proceed at the expense of the updated CBACP setback provisions or be justified as a result of the introduction of Ministerial exemptions that do not apply in this case, is of key concern to the City.

City's Delays

The applicant submits that they experienced delays caused by the City's planning and building departments noting that:

- A planning application for minor amendments was submitted 8 November 2018 with planning approval issued on 9 April 2019.
- A certified building permit was lodged on 14 February 2020 and requests for further information were made without a formal request from the City.

In response the City provides the following information:

Planning Timeline:

- Application lodged **08/11/18**
- Within 13 working days, i.e. by **27/11/18**, the City had undertaken its initial assessment and further information to continue with the assessment was requested.
- The required information was not provided in a timely manner, and despite repeated requests, the information was only supplied in a piece meal nature. The City made repeated requests for exact information, attended meetings, and provided follow up advice in writing. As a result the City received additional supporting information on **06/12/18, 17/01/19, 14/02/19, 22/02/19, 28/02/19, 07/03/19**.
- The final plans that were the subject of the approval were submitted on **25/03/19**.
- Amended Development Approval was issued on **09/04/19**.

Building Timeline:

- Building permits BA 2020-285 and BA 2020-286 were received on 14 Feb 2020 (10 business days to process).
- No formal written request from applicant was made to the City to stop the clock.
- A further information letter was sent from Building Services dated 21 Feb 2020 (Day 5) - the further information letter provides 21 business days to allow the applicant to provide information sought - the end date being 23 March 2020.
- Applicant letter was received on 23 March 2020 withdrawing both the BA's.
- The BA's were withdrawn on effective time less than 10 days - within the Building Act requirements.
- Withdrawal acknowledged by the City on 26 March 2020, fees refund arranged. It is noted that the City had the right to not refund the application fees.

The actions undertaken to pursue the implementation of the development approval such as submission of building permits, were undertaken in the month prior to the expiry of the development approval. This was not sufficient for the proposal to be substantially commenced in a timely manner once the building approval was issued.

The costs undertaken by the applicant to date do not demonstrate that significant effort was made to secure implementation of this development within the then prescribed period of currency. These are standard costs associated with development implementation. The key determinant of substantive commencement rests with the approval of a Building Licence, and as has been shown, the applicant failed to secure this within a timeframe that would support substantive commencement from taking place. The City considers that there were no external impediments beyond the control of the applicant to prevent construction from substantially commencing within the period initially provided.

It remains unclear as to whether this project will be implemented anytime soon. The request for an extension of a further 3 years within which the development must be substantially commenced indicates that construction is not that imminent at all.

Conclusion:

As discussed above, the planning framework has changed and the development would not be supported in its current form. The actions undertaken towards substantial implementation are not significant. This does not warrant a further extension of time being provided as to issue such an extension of time would be contrary to the applicable planning policy framework.