

URBAN PLANNING

ATTACHMENT DETAILS

<u>Attachment No</u>	<u>Details</u>
Attachment 1	Location Map
Attachment 2	Development Application Plans
Attachment 3	Cover Letter

Voting Requirement	:	Simple Majority
Acceptance Date	:	18/03/2021
Location / Property Index	:	6610
Application Index	:	DA2021/00009
LPS No 4 Zoning	:	Residential, R-12.5
Land Use	:	Residential
Lot Area	:	1507m ²
Disclosure of any Interest	:	Nil.
Previous Items	:	DA2019/00033
Applicant	:	Design Management Group Pty Ltd
Owner	:	Paul and Charmaine Blackburne
Assessing Officer	:	Mr. Josh Dallimore
Authorising Officer	:	Mr. Ross Montgomery

PURPOSE OF REPORT

Council is requested to consider the proposed planning application at 32 The Esplanade, Peppermint Grove. The application proposes retrospective approval to modifications to planning approval DA2019/00033 to works already been completed on-site, but not in accordance with the design in the approved plans.

SUMMARY AND KEY ISSUES

- Although development works are in progress there are two areas of the building which are not built according to the approved plan. These are concerned with the part of the house below ground level.
- The application is seeking approval for those completed works not in accordance with the approved plans (DA2019/00033) and replaces the Approved Plan to reflect the two changes only.
- The northern wall of the basement garage has been moved 1m closer to the northern boundary. Approved setback of 4.5m: built setback 3.5m
- A retaining wall to the driveway on the southern and western boundary has been built in a different position. Approved setback of 4.5m, built setback of 3m

LOCATION

32 The Esplanade, Peppermint Grove

BACKGROUND

In December of 2019 Council approved a “New Single House” with a basement garage for 32 The Esplanade, Peppermint Grove. In granting approval, the Council exercised discretion in areas of design that did not comply with the R Codes and Local Planning Scheme 4. This was noted in the advice which accompanied the Approval. This Approval contained two standard conditions which required that all development work undertaken shall be always consistent with the Approved Plans.

Following lodgement of independently certified building plans, a building permit was subsequently issued in September of 2020 and building work commenced shortly after.

As a condition of the building permit the builder was required to submit an independent survey of the site and location and height of completed works to the Shire for each level of the house. This was to confirm that the works were consistent with the Approved Plans. The Shire did not receive a copy of survey results conducted in December 2020, until 8 March 2021. This report indicates two areas where development had not occurred in accordance with the approved plans (DA2019/00033).

On Wednesday 10 March 2021 the Shire issued a direction under s 214 (2) of the *Planning and Development Act 2005*. The Shire requested further information from the applicant to explain how it was that works had been undertaken contrary to the planning approval.

In response to the direction notice being served and request for an explanation, the Shire received advice from the applicant for DA2019/00033 (a letter of justification is attached). The two areas of non-compliant works were not explained other than to be described as design improvements. The applicant indicated they would seek retrospective approval for the non-compliant works. A revised direction was issued by the Shire on March 12, 2021, which only applied to two areas of non-compliance works. Inspection of the site on March 15, 2021, determined that work had recommenced with no further work on the basement and retaining wall.

On March 17 a formal Planning Application and drawings were lodged seeking Council approval to approve the design changes retrospectively and to replace the Approved Plan with a new set of Approved Plans identical to the previous except for the two varied design areas.

CONSULTATION

There has been no specific consultation undertaken with respect to this matter.

STRATEGIC IMPLICATIONS

There are no Strategic Plan implications evident at this time.

POLICY IMPLICATIONS

There are no significant policy implications evident at this time.

STATUTORY IMPLICATIONS

The survey submitted to the Shire in March 2021 indicated two areas where works have been completed not in accordance with the approved plans (DA2019/00033). As planning approval is issued under the Shires Local Planning Scheme 4, it was determined that the completed works were undertaken not in accordance with the Scheme. As per the *Planning and Development Act 2005* the Shire has issued a direction notice. This section of the *Act* reads as follows:

“If a development, or any part of a development, is undertaken in contravention of a planning scheme or an interim development order or in contravention of planning control area requirements, the responsible authority may give a written direction to the owner or any other person undertaking that development to stop, and not recommence, the development or that part of the development that is undertaken in contravention of the planning scheme, interim development order or planning control area requirements”

Should it be determined that the completed works cannot be approved under a retrospective planning application the Shire may issue a Notice to alter works as well as the owner of the property could be liable for penalties under the *Planning and Development Act 2005*.

FINANCIAL IMPLICATIONS

There are no financial implications evident at this time.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications at this time.

SOCIAL IMPLICATIONS

There are no social implications at this time.

OFFICER COMMENT

This situation has arisen due to the building permit compliance reporting conditions which required regular independent survey and reporting for building progress compliance. Although the applicant has not met the conditions of their planning approval (Conditions 1 & 2) the lodgement of the application for retrospective approval can redress this in a practical sense but does not resolve the breach of condition.

The plans submitted for consideration as a part of the retrospective planning application identify the two areas of non-compliance and seek approval for the completed works. The two areas of non-compliance pertain to separate areas of the development and are assessed as follows:

Area of Non-compliance	Assessment
Basement setback to Leake Street - northern boundary (secondary street) Current Approval – 4.5m	The proposed reduction of the basement level to the secondary street is non-compliant with the provisions of Local Planning Scheme 4 which requires a 4.5m setback. The proposed setback is justified by the applicant because it aligns the garage portion of the basement with the below-ground gym. (This element is approved to be setback 3.47m by Council under DA2019/00033).

<p><i>Proposed for retrospective approval – 3.47m</i></p>	<p>The applicant explains that to compensate for the reduction in the setback to the northern boundary and the added floor space this would generate, the basement garage was narrowed east/west by approximately 1.4m. This offsets the extension to the north and maintains an equivalent in the garage floor area to that of the original approval.</p> <p>The portion of the basement level in question is below ground level at that point of the site. The additional part of the basement which extends towards Leake Street will not be visible and will not affect the overall streetscape of the area. The adjustment to maintain the basement area retains the availability of deep planting areas, albeit in a slightly different configuration.</p>
<p>Driveway retaining/planter box setback to the southern boundary</p> <p>Current Approval – 4.5m</p> <p>Proposed for retrospective approval - 3m</p>	<p>The second area of no-compliance with the original approval pertains to the setback of the driveway wall/planter box in the south-west corner of the lot. The subject wall has been brought 1.5m closer to the southern boundary, reducing the setback to 3m and bringing it in line with the rest of the southern façade.</p> <p>Similarly, to the garage variance, this area is below ground level and will have a negligible impact on neighbours or view from the street.</p> <p>In the revised application the applicant has taken the opportunity to redefine this space as a services court for plant and equipment to be locate. As there would be no further impact on setbacks from a planning perspective any noise-related design considerations will be addressed by subsequent building permit amendments.</p>

In terms of overall implications of the changes to the design, Council is advised each of the two variations is located below ground level and does not affect above-ground works covered by the current approval.

Should Council agree to approve the substitution of plans to retrospectively approve the two modifications ‘as constructed’ then the remainder of the building work is expected to proceed subject to the approved plans and will match the design originally approved by Council including with respect to boundary setbacks and building heights.

The approved plans require that the finished building not exceed RL 15.5m AHD. The street and boundary setbacks would need to conform to the 4.5m Leake Street and the other setbacks.

It is recommended that Council approve the substitution of plans to amend the Approved Plan which relates to the approval DA2019/00033 and to re-issue the approval with revised terms and conditions to ensure the applicant and architect are made well aware about the requirement for all works and submitted drawings to be consistent with the Approved Plan in the overall layout, including setback and building height.

OFFICER RECOMMENDATION/S – ITEM NO

That Council resolves to adopt the proposed plans (series A01.02, A02.01-A02.03) submitted on 17 March 2021 as the approved plans for Development at 32 The Esplanade, Peppermint Grove, to be read in conjunction with the original approved plans and conditions, and subject to the following additional conditions:

1. The development plans, as dated marked and stamped “Approved”, together with any requirements and annotations detailed thereon by the Shire of Peppermint Grove, are the “Approved Plans” as part of this application and shall form part of the development approval issued. The development must comply with the approved plans at all times.
2. All works are to be subsequent to the issue of a Building Permit and shall not be carried out, other than in accordance with this Planning Approval and with Building Permit certified/approved plans.
3. Prior to lodgement of Building Permit Plans the applicant shall ensure that all plans have been checked and are consistent with the Approved Plans associated with this Approval and shall certify this compliance in writing to accompany all Plans.
4. A certified compliance survey of the site and building works, completed by an independent building surveyor, is to be submitted to the Shire within 7 days of completion of each of the following stages of the development:
 - Pouring of the basement slab (confirm setbacks and levels – sent March 2021)
 - Pouring of the ground floor slab (confirm setbacks and levels)
 - Pouring of the first-floor slab (confirm setbacks and levels)
 - Roof Fascia (confirmation of completed roof height at 15.5m AHD)

Advice:

In regard to Condition 4 above, the applicant’s attention is drawn to the Planning and Development Act 2005 which provides for penalties for non-compliance with the terms of a Planning Approval including execution of works not in accordance with Approved Plans. The Shire may initiate proceedings where there is evidence that works have occurred without Planning Approval and contrary to approved plans and conditions of approval.