

PS ref: 8433

18 January 2023

City of Vincent  
244 Vincent Street  
Leederville 7007

Attention: **Officer** Development and Design

Dear Sir,

**LOT 100 (109) PALMERSTON STREET, PERTH 6000**  
**OBJECTION TO PROPOSED DEVELOPMENT OF FOUR GROUPED DWELLINGS**  
**UNACCEPTABLE LEVEL OF OVERSHADOWING TO ADJOINING PROPERTY**

Planning Solutions acts on behalf of [REDACTED], the landowner of [REDACTED] Palmerston Street and [REDACTED] Palmerston Street. [REDACTED]  
[REDACTED]

We are instructed to provide this submission to supplement [REDACTED] comments on the proposed variations to the development advertised by the City of Vincent (City).

Our clients fully accept that four grouped dwellings will be developed on the subject site. However—they strongly object to the proposed development in its current form and instructed us to request that the application be refused on the grounds that it fails to protect the solar access of our clients property.

Our review of the assessment materials associated with this application has identified some serious issues with both the City's assessment and the lack of support for the proposed variations.

The deemed-to comply-requirement of the R-Codes as it relates to overshadowing is that 50% of the adjoining property to the south may be overshadowed at noon on 21 June.

The original development plans sought approval for overshadowing of 61%—but this has been increased to 63% following deferment at the Council meeting on 15 November 2022. The exceedance was 11% in November 2022, and is now 13% at the time of this submission. The proposal under consideration has increased the exceedance rather than reduced it.

Our clients consider this to be both a surprising and highly disappointing outcome.

**The relevant design principle of proceeding solar access has not been met by the proposed development**

Whilst or client does accept that a variation to allow additional overshadowing is capable of approval, they are deeply concerned with the approach and the assumptions evident in both the applicant and the City's assessment, and that the approach does not take in to account the relevant considerations for such a proposed variation to be granted. The submission in our client's opinion does not provide adequate justification to support the variation sought.

The variation sought requires a design principle assessment against the performance criteria of clause 5.4.2. This should include a demonstration that the proposed development is;

*"designed to **protect solar access for neighbouring properties** taking into account the potential to overshadow existing: outdoor living areas; north facing major openings to habitable rooms, within 15 degrees of north in each direction; or roof mounted solar collectors."*

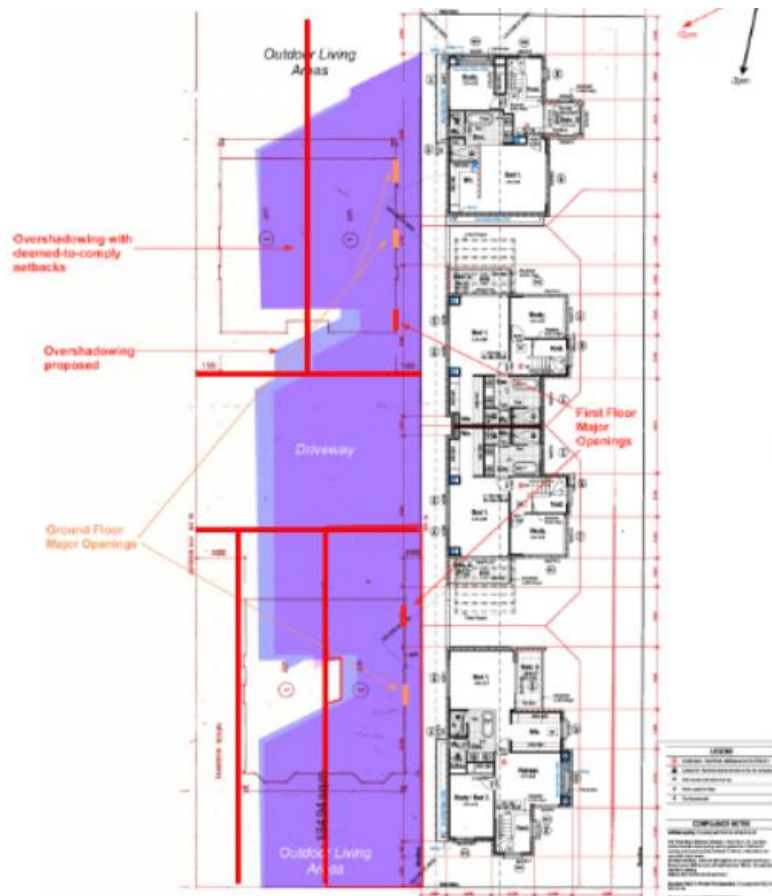
It is obvious the outdoor living areas and north-facing openings of the adjoining neighbour's houses have not been protected from overshadowing by the proposed development.

### **The full impact of the overshadowing on the amenity of the residential dwellings has not been recognised**

In fact, the extent of the impact is masked somewhat by reference to the overshadowing of the overall site only. A more individualised assessment of the impact upon the individual neighbouring dwellings within the development (excluding driveway areas) demonstrates the full extent of overshadowing:

- The residents of **Unit 1** will experience overshadowing of **74%**, meaning that the majority of their outdoor living area will be cast in shade by this development.
- The residents of **Unit 2** will experience overshadowing of **95%** including the complete overshadowing of their outdoor living area and the obstruction to daylighting of five of their windows.
- The residents of **Unit 4** will experience overshadowing of **73%**, with half of their outdoor living area cast in shade and daylighting to five of their windows completely obstructed.

This can be seen more clearly by showing the internal lot boundaries on Figure 1 below.



**Figure 1** – Overshadowing analysis with the strata lot boundaries included

It clear the only compromise here is by the neighbouring residents and owners of No. 107, the majority of whom will have to live with their outdoor living areas being in shadow for much of the day, 4 months of the year. The proposed overshadowing will also result in the blocking of direct solar access to a number of the major openings to habitable rooms.

### **The underlying assumptions and assessment methodology are flawed**

The underlying assumption appears to be that the everyone is entitled to build the biggest development that they can, regardless of the size, shape and orientation of their lot without justification.

The City's own assessment<sup>1</sup> seeks to justify the proposed overshadowing on the grounds that "*deemed-to-comply standards [in relation to building height and lot boundary setbacks] would result in 57.2 per cent overshadowing to the adjoining property.*"

This argument is used to suggest that actual variation is a mere 3.4% greater than what would otherwise be acceptable. It implies that that a landowner has the **right** to maximise their building envelope—to build the largest building possible—without any serious expectation of meeting the maximum overshadowing requirements.

This is not the case.

The R-Codes are clear that when the clauses relating to lot boundary setbacks are in conflict with the overshadowing requirements—it is the protection of solar access that takes precedence.

Clause 2.1 of the R-Codes states that:

*"**Notwithstanding** the lot boundary setbacks in clause 5.1.3, the development in climatic zones 4, 5 & 6 of the state shall be so designed that its shadow cast at midday, 21 June onto any other adjoining property does not exceed the following limits:"*

"Notwithstanding" is generally understood to mean "despite the fact that" or "even though" and is included here to mean that whatever the deemed-to-comply lot boundary setbacks are stated as, the 50% maximum overshadowing still needs to be met, or at the very least the variation needs to be properly considered and justified.

This interpretation is clearly supported by other clauses within the R-Codes, such as clause 5.3.7—which relates to the height of retaining walls—including a note that makes clear that "*overshadowing provisions under clause 5.4.2 apply*" meaning that the height of retaining walls needs to be calculated in the overall overshadowing impact.

Moreover, even though clause 2.1 explicitly references only the lot boundary setbacks in clause 5.1.3, it does not preclude consideration of other deemed-to-comply provisions, as made clear by the DPLH in their response to stakeholder concern about increasing deemed-to-comply building heights under the latest version of Volume 1 of the R-Codes<sup>2</sup>. The response stated that "*additional permissible height would not preclude an application from having to address the overshadowing provisions*".

Consequently, contrary to the City's assessment, adherence to the deemed-to-comply setbacks does not support the proposed variation to overshadowing.

Furthermore, it is not accurate to refer to "deemed-to-comply" setbacks in the overshadowing analysis as the only alternative outcome. Doing so serves to give the impression that a strict compliance approach would yield no greater reduction in overshadowing and is therefore unwarranted.

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<sup>1</sup> Page 20, Ordinary Council Meeting, 15 November 2022

<sup>2</sup> Interim Review of R-Codes Submissions Summary Paper

In reality, a compliance approach would see the development designed to meet the 50% overshadowing requirement and would protect the solar access to outdoor living areas. This is the comparison our client considers should have been provided in the analysis.

### **Vulnerability to overshadowing warrants greater efforts to protect solar access, not the opposite**

The City also identifies our client's property as "*vulnerable to being overshadowed*" (page 19). This is true—but this cannot be used to justify a variation to the design objectives to support a design which disregards the requirements which set a foundation for assessment, without justification for the variations sought. The objectives require a demonstration that the solar access of our client's property will be protected—not a demonstration that it is vulnerable to overshadowing and that therefore it is simply acceptable to further negatively impact the amenity of the adjoining residents with the revised proposal.

### **Conclusion**

[REDACTED] are aware that four grouped dwellings would be likely to be developed on the subject site. However, they object to the proposed development in its current form as the accumulative effect of the proposed variations will detrimentally affect the amenity of the property and the amenity of the residential neighbours.

It has been our experience that ensuring adequate daylighting, ventilation and solar access has become increasingly critical to the success of development projects and we do not consider there to be any inconsistency with this overarching industry trend and the desire of the landowner to ensure that solar access to their own property is protected.

The current design has apparently no regard for the amenity of its neighbours and does not satisfy the R-Codes Design principle of "protect[ing] solar access for neighbouring properties".

We are instructed to request Council to refuse the revised application as the resultant re-design continues to unacceptably overshadows our client's properties.

Should you have any queries or require further clarification in regard to the proposal, please do not hesitate to contact the writer.

Yours faithfully,

[REDACTED]