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NEIGHBOUR'S RIGHTS FOR SETBACK RELAXATIONS

Residential Land

The City of Albany mainly uses the Residential Design Codes to control distances or "Setbacks" between buildings on, or near the boundary of properties.

These Codes are a statewide guide, with the following objectives:

- to provide for a full range of housing types and densities that meet the needs of all people;
- to provide for local variations in neighbourhood character;
- to ensure appropriate standards of amenity for all dwellings;
- to ensure provision of on-site facilities for all dwellings;
- to protect the amenity of adjoining residential properties;
- to encourage the conservation of buildings with heritage value; and
- to encourage environmentally sensitive design.

Occasionally, the landowner or an appointed representative may ask for a relaxation to the guidelines to enable them to fit a specific design on the property.

Steeply sloping blocks or strange shaped lots, which are common in Albany, can cause design and siting problems.

What is a Setback?

A setback for a building is the specified minimum distance from the property boundary (as required in the Residential Design Codes) to the walls of the buildings.

What is a Setback Relaxation?

A Setback Relaxation is a reduction in the minimum distance specified in the Residential Design Codes for a building of a certain height or configuration.

What are Neighbour's Rights Regarding "Setback Relaxations"?

As "the neighbour" is the party most likely to be affected by the proposed development, the landowner of the neighbouring property will be asked to provide Council with comments on the proposal.

The comments could be negative or positive, or can be a request for more information on the proposal or a request for a compromise.

What about Building on a Shared Boundary?

Developments, including retaining walls, built on boundaries will be referred to landowners of neighbouring properties for comment.

It is especially important for neighbours to consider the impact of parapet walls (wall built on a boundary) on their property. The Residential Design Codes do specify maximum lengths of a property boundary that can be developed with parapet walls.

What Information Needs to be Supplied to a Neighbour?

Landowners or a representative **MUST** supply the following information to neighbours when requesting a setback relaxation. The plans should provide the following:

- An accurate and current copy of the plans for the proposed development;
- Details of the usual setback that should apply;
- Details of the requested “relaxation”;
- A neighbour’s comment form or letter to complete and sign (if the neighbour agrees to the proposal). A form that can be used when needing a setback relaxation, is attached to this info pack. Please ensure that each neighbour that is affected completes one of these forms. (see also Info Pack – Retaining Walls for retaining wall form)

What Points Should be Considered Before Supporting a Relaxation?

Before signing any documents, a neighbour should carefully consider the following points regarding the impact of the development of their property:

- Privacy
- Light
- Ventilation
- Noise
- Any Specific Impacts
- Drainage
- Type of Materials used in the new construction.
- Impacts on Fencing
- Landscaping to soften development
- Changes in Property Levels

What About a Retaining Wall?

Details on retaining walls are contained in Info Pack – Retaining Walls. However, special points that need to be considered are:

- Will any fencing be placed on top of the retaining wall (this can sometimes double the height of the wall and the impact on the neighbour)?
- What are the obligations of each owner under the Dividing Fences Act?
- Will drainage cause a problem either now or in the future?
- What material is the retaining wall made of and how durable will it be?
- What is the actual height of the retaining wall in relation to the adjoining property and what impact will changes in level have?

How Long Does a Neighbour Have to Respond to a Request for a Setback Relaxation?

A neighbour is required to respond to a request for a relaxation within 14 days.

This may be documented in the form of a registered mail slip, to the neighbour in question if you are concerned that your requests may be overlooked.

What Happens if the Neighbour Feels They Have Been Coerced into Signing?

A neighbour who feels he/she has been pressured into signing a consent can contact the City of Albany within 24 hours and explain their concerns.

These comments will be taken into consideration and will supersede any previous comments.

How is a Neighbour's Comment Submitted to Council?

Neighbour's comments must be submitted on a copy of the attached form together with a copy of the building drawings, which must also be signed in a prominent position. This ensures that neighbours have seen plans of the reduction (see also the standard form for retaining walls in Info Pack – Retaining Walls).

What Happens if a Neighbour Refuses to Support an Application?

Should a neighbour refuse to support a setback relaxation, then the developer should begin negotiating with the neighbour to reach a compromise that suits all parties. However, sometimes a compromise cannot be reached. In this case, the proposal may be referred to Council for arbitration. Council will respect the rights of the neighbouring residents/landowners but may grant a relaxation if the situation requires.

The neighbour's objection must be in writing.

If a compromise cannot be negotiated, the proposed development may be referred to Council for consideration.

If the process involves the use of a Planning Scheme Consent for the proposed development, **no appeal rights** are available to objecting neighbours, the Council's decision is final.

What Happens if the Neighbour is Undecided?

The neighbouring landowner may have difficulty interpreting the building plans or may be uncertain of any potential impacts on their property.

We would encourage you &/or the neighbour to contact a Planning Officer in the City of Albany Development Services Team, who will be happy to explain any possible impact or interpret the drawings.

More Information....

Should you have any questions or require any further information, please contact a member of the Development Services Team by either phoning on 9841 9383, by email planning@albany.wa.gov.au or in person at the City Offices.

**** DISCLAIMER ****

This information sheet is a guide only. Verification with original Local Laws, Acts, Planning Schemes, and other relevant documents is recommended for detailed references. The City of Albany accepts no responsibility for errors or omissions.

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