

REPORT TO: COUNCIL ASSESSMENT PANEL

DATE: 22 MAY 2019

SUBJECT: APPEAL ITEM – 110/00447/17 - 75 WHYTE STREET, SOMERTON PARK

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TEAM LEADER DEVELOPMENT ASSESSMENT

ATTACHMENTS:

1. COMPROMISE DOCUMENT
2. HERITAGE COMMENTS ON BEHALF OF COUNCIL
3. ORIGINAL REPORT AND ATTACHMENTS

1. Background

On 23 January 2019, the Council Assessment Panel refused Development Plan Consent for alterations and additions to a Local Heritage Place (Somerlea), construction of two storey guest house and removal of a regulated tree (Willow Myrtle). The reasons for refusal was that it was contrary to Council Wide Design and Appearance Principles 1, 8 and 9, Heritage Places Objectives 3 and principles 2(a) and (h), 3, 6 and 10, Residential Development Principles 20 and 21. More specifically the application does not meet the intent of the Development Plan in relation to:

- Scale and siting of the northern addition;
- Setbacks from the northern boundary;
- Impact on the heritage character and prominence of a heritage place and
- The proposed new openings with quoins on the western elevation of Somerlea unduly interfere with the character of the heritage listed building.

The applicant has lodged an appeal with the Environment, Resources and Development Court. A compromise plan has been submitted for the Panel's consideration.

2. Compromise proposal

A number of options regarding siting and setbacks were considered. The preferred option includes:

- Increased setback from the western boundary by 4 metres;
- Increased setback to the canopy by 2.35 metres;
- Increased setback at western end from northern boundary by 700mm;
- Reduction in wall height by 400mm,
- Reduced size and re-design of extension entry element adjacent the Heritage Place; and
- Amended layout to guest house including relocated balcony and addition of privacy screens to relevant window.

3. Assessment

Aspect	Compromise	Refused	Required
Ground level wall setback from John Miller Reserve	Approximately 16 metres at south western corner	Approximately 12 metres at southwestern corner	None stipulated
First level deck setback from John Miller Reserve	Approximately 10 metres at southwestern corner	Approximately 6 metres at southwestern corner	None stipulated
First level wall setback from John Miller Reserve	Approximately 22 metres at south western corner	Approximately 18 metres at closest	None stipulated
Roof setback from John Miller Reserve	Approximately 16 metres at southwestern corner	Approximately 9.5 metres at southwestern corner	None stipulated
Side setback	2.5 metres (eastern end) to 3.2 metres (western end)	2.5 metres	4.5 metres at western end, 3 metres at eastern end
Wall height	6.5 to 8 metres	6.9 to approximately 9 metres	7 metres

As indicated in the above table the setback to the western boundary (John Miller Reserve) will be increased by 4 metres so that the ground floor wall will be approximately 16 metres (was 12 metres), the first level deck will be approximately 10 metres at its closest (was 6 metres) and the first level wall will be approximately 22 metres (was approximately 18 metres) from the western boundary. The canopy will also be setback a further 2.35 metres so that it will be approximately 16 metres at its closest (was approximately 9.5 metres) from the western boundary. By reducing floor to ceiling heights the overall wall height has been reduced by 400mm resulting in a wall height at its eastern end of 6.5 metres (was 6.9 metres) and due to the increased setback from the western boundary and the sloping nature of the site the wall height at its western end will be reduced by 1 metre from approximately 9 metres to approximately 8 metres. The western end of the addition will be angled away from the northern boundary resulting in an increased setback of 3.2 metres at its western end (previously 2.5 metres).

The increased setback from the western boundary have been achieved by relocating the addition to the east. Its relocation will not significantly impact the adjoining site at 77 Whyte Street given the smaller (compliant) wall height at that end and lack of any shading impacts. While there are still non-compliances with the wall height and northern boundary setback at the western end the proposed amendments represent a substantial improvement compared with that refused. It will provide reasonable visual spacing between the building and adjacent dwellings when viewed from John Miller Reserve and will not unreasonably impact the adjoining properties having regard to the siting of buildings and private open space on those sites.

Although Council's heritage advisor would prefer to increase the space between the addition and Somerlea (by not rotating the addition to increase the northern boundary setback) he advises 'the degree of rotation is relatively minor and, when balanced against other positive amendments particularly the increase in front setback and reduction in height of the proposed pavilion addition, could be considered to be acceptable for a compromise position with the applicant.'

No changes have been made to the alterations to the heritage place (Somerlea). Although the proposed new openings with quoins on the western elevation formed part of the Panels reasons for refusal, Council's heritage advisor considers that while the degree of impact is relatively substantial, on balance, is considered to be acceptable in underpinning the positive adaptation of the place and is supportable taking into account the conservation of more significant fabric and that the western elevation is historically the side or rear elevation.

In summary Council's heritage advisor considers 'the overall relationship between the proposed additions and the historic dwelling is much improved as a result of the amendments. While there remains a difference in scale and proportion between the proposed pavilion addition and the historic dwelling, the increase in the front setback, reduction in height, reduction in canopy extent, reduction of apparent scale of the linking element and the finer grain detail incorporated in the amended scheme assist in ameliorating the visual effect of the difference. Furthermore, the amendments and, in particular, the increased front setback, reduce the prominence of the proposed pavilion in relation to the historic dwelling.'

Although not forming part of the reasons for refusal alterations to the guest house have minimised potential overlooking of adjacent eastern properties by reducing the size and relocating the balcony and providing privacy screens to bedroom 1 window. Other upper storey windows remain high level.

There were no previously identified issues with other aspects of the development including removal of the regulated tree.

On balance the amended proposal is not considered to be seriously at variance with the Development Plan and reasonably accords with the relevant principles of the Development Plan. In particular the northern addition as amended will minimise impacts on the heritage place and adjoining northern properties. The amendments are considered to adequately address the majority of the reasons for refusal and accordingly it is recommended that the panel accept the amended plans as a compromise in the appeal matter.

4. RECOMMENDATION

That the ERD Court be advised that Council accepts the amended plans as a compromise in the ERD appeal matter 19 of 2019, Craig and Leah Hargraves v City of Holdfast Bay and recommends the following conditions be included:

PLANNING CONDITIONS

- 1. That the design and siting of all buildings and structures and site works shall be as shown on the plans listed below submitted to and approved by Council unless varied by any subsequent conditions imposed herein:**

Existing and demolition plan SK-01 Rev B dated 23/11/18;
Proposed site plan SK-02 Rev C dated 18/4/19;
Streetscape elevations SK-03 Rev D dated 18/4/19;
Ground and basement plan – existing and demolition SK-04 Rev B dated 23/11/18;
Elevations – existing and demolition SK-05 Rev B dated 23/11/18;
Ground and basement plan – existing residence SK-06 Rev B dated 23/11/18;
Elevations – proposed works existing residence SK-07 Rev B dated 23/11/18;

Basement floor plan SK-08 Rev D dated 30/04/19;
 Ground floor plan SK-09 Rev D dated 30/04/19;
 Level 1 floor plan SK-10 Rev D dated 30/04/19;
 Roof plan SK-11 Rev D dated 30/04/19;
 Guest house – ground and level 1 SK-12 Rev D dated 30/04/19;
 Guest House – roof plan and elevations SK-13 Rev C dated 30/04/19;
 North and east elevations SK-14 Rev D dated 30/04/19;
 South and west elevations SK-15 Rev E dated 30/04/19;
 Building Sections SK-16 Rev D dated 30/04/19; and
 Building sections SK-17 Rev D dated 30/04/19.

2. That the premises shall be maintained, kept tidy, free of graffiti and in good repair and condition to the reasonable satisfaction of Council at all times.
3. That the premises shall not be used, directly or indirectly, for the purpose now approved until all work has been completed in accordance with the plan approved and the conditions of consent have been complied with, except those conditions that continue to apply.
4. That stormwater from the addition to Somerlea and the guest house shall each be collected and connected to a 1000 litre (minimum) rainwater tank with a sealed system over flow connection to the street water table. Final details of the location and size of the tank(s) shall be submitted to Council for approval prior to the issue of full Development Approval. Furthermore, all stormwater from the dwelling and the site shall be collected and disposed of in a manner that does not adversely affect any properties adjoining the site or the stability of any building on adjacent sites.
5. Stormwater shall not be disposed of over a vehicle crossing place and any connection to the street water table, including remedial works to footpaths, verges or other Council infrastructure, is subject to any necessary approvals from Council and will be at the applicant's cost.
6. The stormwater disposal system shall cater for a 5 year rainfall event with discharge to the street not to exceed 10 litres per second. Any excess above this flow is to be detained on site to the reasonable satisfaction of Council.
7. That the guest house be used only by friends and relatives to the occupants of the associated dwelling (Somerlea) and not be rented or leased.
8. That all upstairs windows in the guest house on the southern elevation and east of the balcony on the northern elevation shall have minimum window sill heights of 1.7 metres above finished floor level, or any glass below 1.7 metres shall be of obscure glass and fixed shut or comprise external privacy screens, details of which are to be submitted and approved prior to development approval. Further details of this requirement shall be provided at Building Rules Assessment stage.
9. That landscaping shall comprise where practicable, trees and shrubs that are indigenous to the local area and are semi mature or of fast growing tubestock. All such landscaping shall be established within 3 months of substantial completion of the development and any such vegetation shall be replaced if and when it dies or becomes seriously diseased.

10. That any remaining regulated trees on-site be protected during construction by the establishment of Tree Protection Zones comprising a steel mesh fence at least 1.8 metres high and clearly signed as 'Tree Protection Zone no entry or storage of materials.
11. That no materials or machinery shall be stored closer than 4 metres to the main stems of the Norfolk Island pines adjacent to the main driveway.
12. That all domestic mechanical plant and equipment, including air conditioners, should be selected, designed, and installed to comply with the following mandatory criteria:
 - (a) Noise level not to exceed 52dB(A) between the hours of 7am and 10pm when measured and adjusted at the nearest residential zone interface in accordance with the Environment Protection (Noise) Policy 2007*, and
 - (b) Noise level not to exceed 45dB(A) between the hours of 10pm and 7am when measured and adjusted at the nearest residential zone interface in accordance with the Environment Protection (Noise) Policy 2007*, and
 - (c) Where marked with an * the above noise levels must include a penalty for each characteristic where tonal/modulating/impulsive/low frequency characteristics are present in accordance with the Environment Protection (Noise) Policy 2007.
13. That all domestic mechanical plant and equipment including refrigerated air conditioners, but excluding evaporative air conditioners associated with the guest house, shall be mounted on the ground and fitted with an approved acoustic enclosure incorporating correctly designed ventilation, to minimize environmental harm, which includes nuisance from noise, to occupants on adjacent premises.
14. That repointing of masonry in the heritage place shall be undertaken with lime mortar.