

REPORT TO: **COUNCIL ASSESSMENT PANEL**

DATE: **23 JUNE 2021**

SUBJECT: **APPEAL ITEM – 110/00587/20 – TWO STOREY DETACHED DWELLING WITH ASSOCIATED GARAGE ADJOINING SOUTHERN BOUNDARY AND SWIMMING POOL, VERANDAH AT REAR AND RETAINING WALLS UP TO 800MM IN HEIGHT**

SUBJECT SITE: **5 SEAVIEW TERRACE, BRIGHTON**

WRITTEN BY: **DEAN SPASIC – DEVELOPMENT OFFICER PLANNING**

ATTACHMENTS: **A. COMPROMISE DOCUMENTS AND PLANS**
117.21 ORIGINAL REPORT
1. LOCALITY PLAN
2. PROPOSED PLANS
3. STATEMENT OF REPRESENTATION
4. APPLICANT’S REPLY TO STATEMENT OF REPRESENTATION

1. Abstract of Report

On 28 April 2021, the Council Assessment Panel issued a refusal for DA 110/00587/20 for the construction of a two storey detached dwelling with associated garage adjoining southern boundary and swimming pool, verandah at rear and retaining walls up to 1 metre in height. The refusal was issued on the basis that the proposed development was not consistent with relevant principles of the Holdfast Bay Development Plan. The reasons for refusal are shown below:

Development Application 110/00587/20 be refused Development Plan Consent for the reason that it is contrary to the provisions of the City of Holdfast Bay Development Plan. Specifically, the proposal does not adhere with the General Section, Residential Development Principles of Development Controls 1, 2(b)(d)&(d). More specifically, the application does not meet the intent of the Development Plan in that:

- Does not reduce the bulk of proposed structures by virtue of the scale and height of the retaining walls;
- Does not minimise the extent of cut and fill;
- Does not minimise the need for high retaining walls; and
- Provides excessive visual and amenity impacts on the adjoining land.

Note: Noise and siting of the pool pump and air conditioning should be resolved.

Subsequent to the decision, an appeal was lodged to the ERD court. The decision was appealed as the applicant believes that the reasons for refusal can be addressed through a redesign of the proposal. Amended plans were received and are attached to this report (Attachment A).

2. Assessment

The applicant has made amendments to the initial application seeking to address the reasons for refusal. The amendments are listed below:

1. A reduction in the finished ground level of the pool area. Now 1.34 metres lower than the alfresco level;
2. A reduction in height of retaining to a maximum height of 800mm. The retaining is now predominately 620 to 640mm in height;
3. Amendment to fencing and retaining, which now results in a total height of 2.4 metres when measured from the neighbours side (lower level). The fencing is proposed to comprise rendered and painted board (to the colour of the neighbours choosing on the neighbours side);
4. Alterations to internal stairs and ramps to ensure sufficient grade to support the mobility of specific occupant needs due to medical reasons;
5. Relocation of air conditioning and pool equipment to the wall of the dwelling in lieu of the boundary. The equipment will be enclosed with a commercial cover to lower the noise levels;
6. Additional landscaping throughout the site, aimed at softening the visual bulk to the front, side and rear of the dwelling;
7. Site line elevations demonstrating the extent of overlooking. Although not listed as a reason for refusal, the applicant sought to alleviate some general concerns raised at the original panel meeting.

The amendments are considered to demonstrate a genuine attempt by the applicant to address the reasons for refusal, whilst balancing the need for specific design needs to accommodate mobility limitations. Although this is not specifically covered in the planning guidelines, it is important to ensure that planning outcomes also meet likely occupant needs, in which consideration to health and mobility are valid, as it contributes to achieving design that ensures a good level of amenity and usability for occupants.

The applicant has put a sound effort in addressing the Panel's concerns regarding visual bulk and cut and fill by way of decreasing the height of retaining, incorporating quality fencing (rendered and painted board in lieu of sheet metal) as well as a quality level of landscaping in key spaces, such as adjacent to the north eastern rear corner of the yard. This landscaping will contribute significantly to softening the scale of the building and design levels, contribute to visual privacy, whilst providing a pleasant visual outlook for neighbouring residents.

Regarding levels, is it not uncommon for sites to be built up by 1 metre, particularly where the land falls at the rear. It is noted that under the new Design Code, the site could accommodate retaining up to 1 metre in height, hence classified as 'deemed to satisfy' development, which is effectively the equivalent to the previous residential code development. The fact that retaining and fill has been reduced, along with improved fencing and quality landscaping, points to the fact that the applicant has committed to achieving an outcome that is in balance with the concerns raised by neighbours, the Panel and meeting occupant needs.

The compromise plan is considered to satisfactorily address the reasons for refusal, an improvement to the original design and therefore considered to be supportable.

3. RECOMMENDATION

That the Council Assessment Panel advise the ERD court that Council supports Development Application 110/00587/20, as amended subject to the conditions listed below:

PLANNING CONDITIONS

- 1. That the development shall be implemented in accordance with the plans and documentation prepared by mlei Consulting Engineers, Drawing A2020-10718, Sheet C01, (E) and Anthony Donato Architects, Job 474520, Sheets DD01 (H), DD02 (E), DD03 (B), DD04 (D), DD05 (D), DD05 (B), DD08 with Amended Plan stamp dated 03/06/2021 and the 'Landscaping Plants and Images' document submitted to and approved by the Environment, Resources and Development Court unless varied by subsequent conditions imposed herein.**
- 2. All upstairs windows on the side and rear elevations shall have minimum window sill heights of 1.7 metres above the finished floor level, or any glass below 1.7 metres shall be manufactured obscured glass and fixed shut or as otherwise approved by Council. Further details of this requirement shall be provided at Building Rules Assessment Stage.**
- 3. Landscaping shall be established in the front, side and rear yards in accordance with the landscaping demonstrate on the plan prepared by Anthony Donato Architects, Job 474520, Sheet DD01, Revision H, Amended Plan 03/06/2021.**
- 4. 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.**
- 5. That stormwater from each dwelling shall 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.**

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NOTE: 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. That the associated filter pump be enclosed in such a way that noise levels do not exceed 45db(a) measured at adjoining property boundaries