

<b>DEVELOPMENT NO.:</b>	21026188
<b>APPLICANT:</b>	Gregory Phillips
<b>ADDRESS:</b>	239A Esplanade, Seacliff SA 5049
<b>NATURE OF DEVELOPMENT:</b>	Detached dwelling with wall located on southern side boundary comprising a total of 4 levels and an underground cellar
<b>ZONING INFORMATION:</b>	<p><b>Zones:</b></p> <ul style="list-style-type: none"> <li>• Waterfront Neighbourhood</li> </ul> <p><b>Overlays:</b></p> <ul style="list-style-type: none"> <li>• Airport Building Heights (Regulated)</li> <li>• Affordable Housing</li> <li>• Prescribed Wells Area</li> <li>• Regulated and Significant Tree</li> <li>• Stormwater Management</li> <li>• Urban Tree Canopy</li> </ul> <p><b>Technical Numeric Variations (TNVs):</b></p> <ul style="list-style-type: none"> <li>• Maximum Building Height (Metres)</li> <li>• Minimum Frontage</li> <li>• Minimum Site Area</li> <li>• Maximum Building Height (Levels)</li> </ul>
<b>LODGEMENT DATE:</b>	2 Sep 2021
<b>RELEVANT AUTHORITY:</b>	Assessment Panel at City of Holdfast Bay
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	26 August 2022 2021.12
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Dean Spasic Development Officer - Planning,

**CONTENTS:**


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**APPENDIX 1: Relevant P&D Code Policies**
**ATTACHMENT 2: Representations**
**ATTACHMENT 1: Application Documents**
**ATTACHMENT 3: Response to Representations**


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**DETAILED DESCRIPTION OF PROPOSAL:**

The development is for the construction of a 4 level building and an underground cellar, built into the hill face. The site elevates some 15 metres above the footpath level, over a length of only 33 metres, therefore a considerable slope. As a consequence, the building has been specifically designed in a way that it sits into the hill, hence the 4 levels.

**SUBJECT LAND & LOCALITY:****Site Description:**

**Location reference:** 239A ESPLANADE, SEACLIFF SA 5049

**Title ref.:** CT 5894/771    **Plan Parcel:** D61781 AL11    **Council:** CITY OF HOLDFAST BAY

The subject site is a longstanding vacant allotment with a frontage of 11 metres and a site area of only 334 square metres, all of which is on a slope.



## Locality

The site is in a unique setting in that it is surrounded by residential to the north, east and south (predominately multi-storey detached, semi-detached and residential flat buildings). The site is adjacent to a public car park used by beach goers and the Seacliff Surf Life Saving Club, which is located to the south-west of the site. The locality is characterised considerable sloping land, of which buildings have been constructed on over time.



## CONSENT TYPE REQUIRED:

Planning Consent

## CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:** New housing  
 Dwelling: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**  
 Code Assessed - Performance Assessed
- **REASON**  
 P&D Code

## PUBLIC NOTIFICATION

- **REASON**  
 The length of the garage wall located on the southern side boundary exceeds 11.5m

- **LIST OF REPRESENTATIONS**

Michael and Suzanne Fordham of 241A Esplanade, Seacliff support the development with some concerns:

- Creative and quality building;
- Deep excavation to be done in a way that does not affect neighbouring properties; and
- Privacy.

Tony Pope of Daw Park (no specific address submitted) supports the development with some concerns:

- All setbacks are strictly adhered to;
- Privacy; and
- Damage to existing retaining or fencing.

Susan Mikilewicz of 214 Esplanade, Seacliff supports the development with some concerns:

- Acoustic treatment to roof top area; and
- Excavation work to not impact on adjacent properties.

Jayne Lecornu of 66 Marine Parade, Seacliff opposes the development:

- Exceeds the maximum height specified in the Zone;
- Exceeds the maximum number of levels specified in the Zone;
- Side boundary wall exceeds 11.5 metres in length and 3 metres in height;
- Height of retaining wall exceeds current restrictions;
- Does not satisfy the superseded Development Plan;
- Excavation and fill exceeds 1 metre respectively; and
- Does not satisfy the SA Gov Publication, 'Developing a management strategy for coastal cliff erosion in South Australia No 37 May 2014' (Officers Note: Not relevant)

Stephanie and Peter Hartman of 68 Marine Parade, Seacliff oppose the development:

- Exceeds the maximum height specified in the Zone;
- Exceeds the maximum number of levels specified in the Zone;
- Insufficient side and rear boundary setbacks;
- Overshadowing; and
- Does not satisfy the superseded Development Plan (Officers Note: Not relevant).

- **SUMMARY**

The Applicant submitted a reply to representations, summarised as follows:

- A building engineer has reviewed the plans and confirmed that excavation works can be undertaken in a way that does not compromise neighbouring sites;
- Given the unique nature of the locality, which comprises varying, heavily sloped topography, there is an existence of mutual overlooking amongst residences. There are many examples of balconies, decks and windows which are unscreened. The dwelling has been designed in a way to maximise coastal views. Windows to the north and south are generally low use areas, such as hallways;
- It is acknowledged that side setbacks are generally less than required by the Design Code, however effort has been made to ensure as much distance is achieved as possible, particularly against the design constraints of the topography of the land and narrow frontage; and

- It is accepted that the building exceeds the number of levels and height allowed by the Design Code, however in context with the topography of the land and the fact a large proportion is built into the hill, its overall visual presentation will be complementary to the existing streetscape.

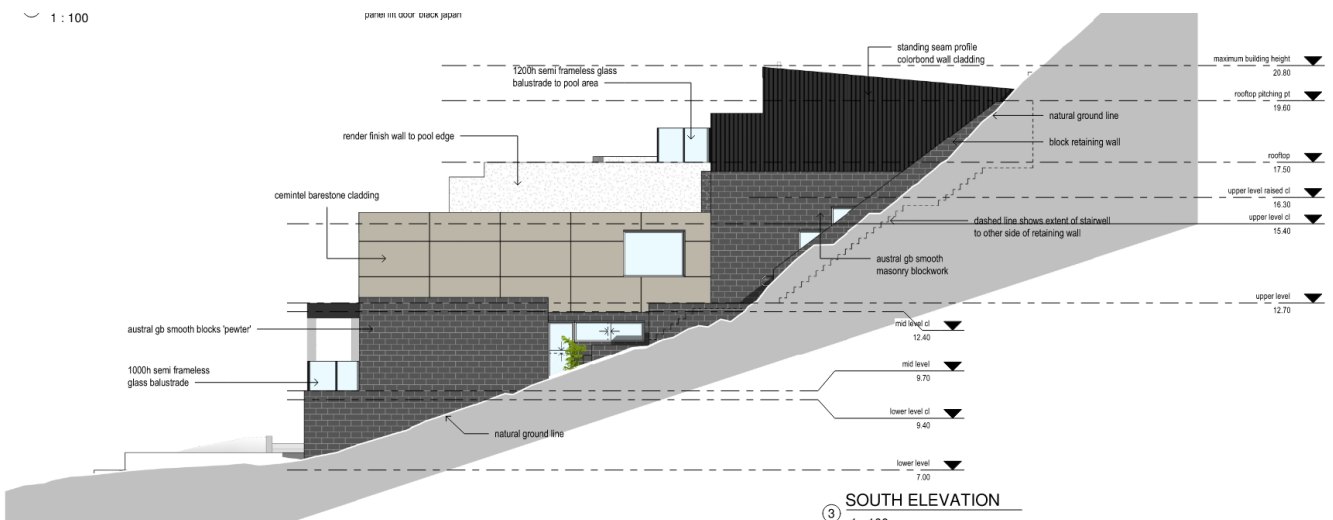


**PLANNING ASSESSMENT**

The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in Appendix One.

**Built Form and Height**

The proposed building is built into a site with a significant upward slope to the rear boundary. Although the building comprises 4 levels, at any one point it typically does not exceed 2.5 levels.



As viewed from the street however, the building visually presents as a 4 storey building (including small cellar), however this is mitigated by the fact that each level is recessed substantially further back from the level below, as well as the provision of quality landscaping in the front yard, which will assist in softening the built form appearance.



The Design Code allows for a maximum building height of 12 metres and a maximum of 3 levels. The proposed building has a total height of not more than 7.8 metres and comprises 4 levels (from small cellar to roof top deck, which comprises walls and roofing). It is acknowledged that the building fails to meet the Design Code with respect to building levels, however it is accepted that the intent of the Performance Outcome has been achieved, particularly as it complements the actual height of nearby buildings. The proposed design is unique in that it is built into a hill.

Although the proposal does not technically satisfy the Design Code with respect to building height (in that the total building height is measured from the lowest ground level to the highest point of the building, and thus not acknowledging built form that is steppe into the land), on balance, as the building height does not exceed 2.5 metres above any one point relative to the natural ground level, the proposal reflects a good design given the physical constraints presented by the site.

It is worthwhile noting that under the previous Development Plan, the provisions were structured in a way that was more complementary to the specific character of this locality, whereby the maximum building height was 3 storeys and a maximum wall height of 10.5 metres above the natural ground level at any one point (as opposed to the Design Code which takes the height from the lowest point of the building to the highest point of the building, and ignoring the heights relative to the natural ground level, particularly on sloping sites). During the drafting of the Design Code, Council had requested similar provisions be implemented, however the Government chose a more generalised approach.

### **Boundary Setbacks**

From the front boundary, the building is setback in-line with the northern and southern adjacent buildings, therefore it is complementary to the existing streetscape setback character.

The side boundary setbacks fail to satisfy the Waterfront Neighbourhood Zone, Part 2, Designated Performance Feature 7.1 (boundary walls) and 8.1 (side boundary setback).

Where boundary walls are concerned, the maximum height is 3 metres and maximum length is 11.5 metres. The proposed boundary walls exceed these figures considerably (i.e. up to 6.8 metres in height).

Similarly, the wall height relative to boundary setbacks also far exceeds the minimum of 900mm + 1/3 of the wall above 3 metres (and adding an additional 1m where the wall faces a southern side boundary). The proposed walls are up to 10.7 metres in height and setback 2 metres, as an example.

It is acknowledged that it is difficult to satisfy DPF 7.1 and 8.1 on a site with such a considerable slope, particularly as those features are heavily based on a typical setting on a reasonably flat allotment.

When considering the side boundary setbacks against the Waterfront Neighbourhood Zone, Part 2, Performance Outcome 7.1 (boundary walls) and 8.1 (side boundary setback):

*PO 7.1 dwelling boundary walls are limited in height and length to manage visual and overshadowing impacts on adjoining properties*

The northern elevation has a partial wall up to 7.2 metres in height, which will be to the west of the neighbouring buildings south facing windows, therefore it will not be directly in view (the upstairs window is obscured, and the ground level window is behind an existing fence, hence, the view from the windows will not be direct. The proposed building is setback some 1.5 metres from the boundary where those south facing windows are positioned, therefore the visual impact will not be significant. Due to the orientation, overshadowing will not occur.



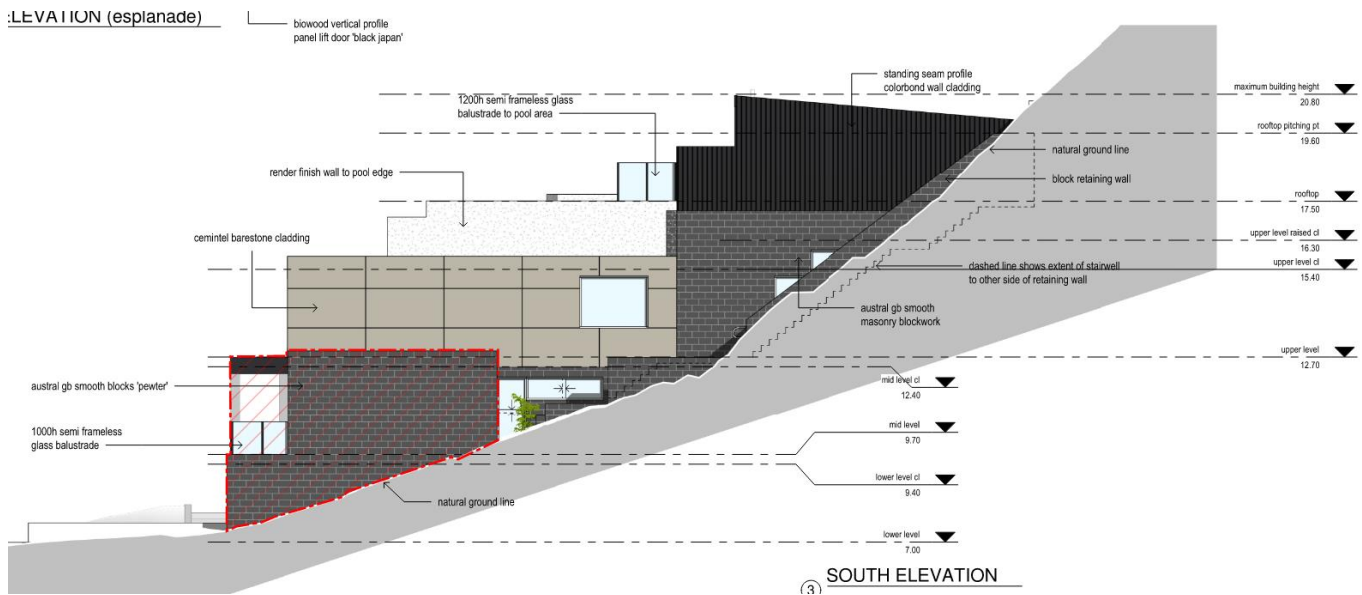


**Red outline highlights development on the northern boundary**

The southern elevation has a solid boundary wall up to 6.8 metres in height, which will abut a carport and balcony on the southern adjacent property. The wall will in effect, create a solid wall on the northern side of the adjacent carport and balcony. This will result in result in both a visual and overshadowing impact to the southern adjacent property.







**Red outline highlights development on the southern boundary**

PO 8.1 Building walls are setback from the side boundaries to provide:

- Separation between dwellings in a way that contributes to the suburban character and
- Access to natural light and ventilation for neighbours

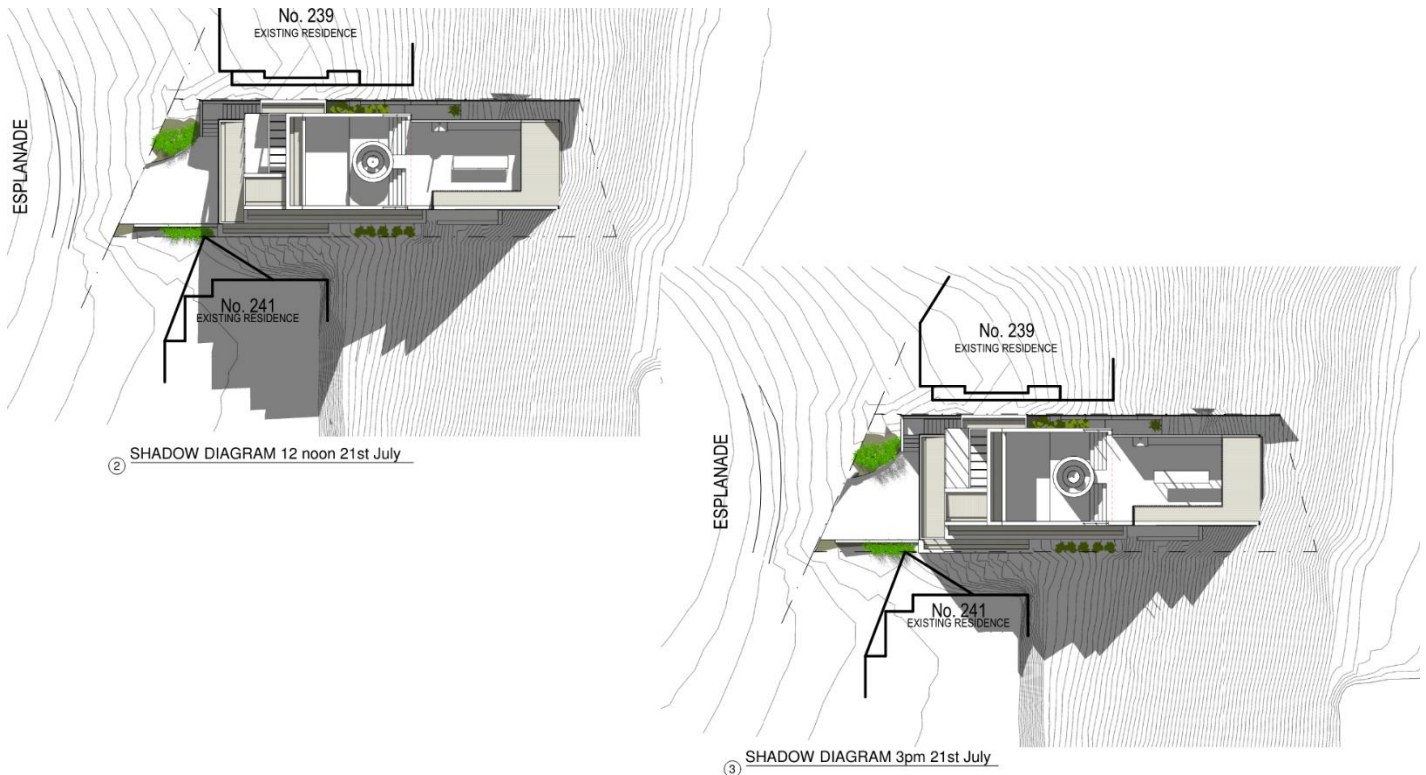
The second and third level walls are set off the side boundaries, generally in the range of 1.5 metres to the northern side boundary and 2 metres to the southern side boundary. The building walls are considered to achieve a reasonable level of physical separation in a way that is consistent with the existing suburban character (nearby buildings comprise semi-detached and row dwellings, hence the built form is close at the side boundaries). The setbacks however do compromise natural light to the southern adjacent property.

When assessing the proposal against the above Performance Outcomes with respect to overshadowing, when considering the shadow diagrams submitted, it is noted that, during the Winter Solstice, in the morning, all properties are naturally overshadowed due to the topography of the land.

At midday, the proposed building would cast a shadow directly over the southern adjacent property, including its north facing windows and part of the rear yard

At 3pm, the shadow would be cast over a small portion of the north-east rear corner of the building and part of the rear yard.

On balance, the proposal is able to ensure sunlight and ventilation to the southern adjacent property.



***Shadow overlay demonstrates shadow cast over southern adjacent building and part of rear yard at midday, and shadow cast at 3pm, which is predominately away from the southern adjacent building.***

### Site Coverage

Site coverage amounts to 58 percent of the site area, which is within the maximum of 60 percent allowed by the Design Code. The level of site coverage proposed is considered to meet Neighbourhood Waterfront Zone, Part 2, Performance Outcome 3.1 as the building footprint is consistent with the character of the waterfront neighbourhood and allows sufficient space around the building to reasonably limit visual, provides an attractive outlook, access to light and ventilation.

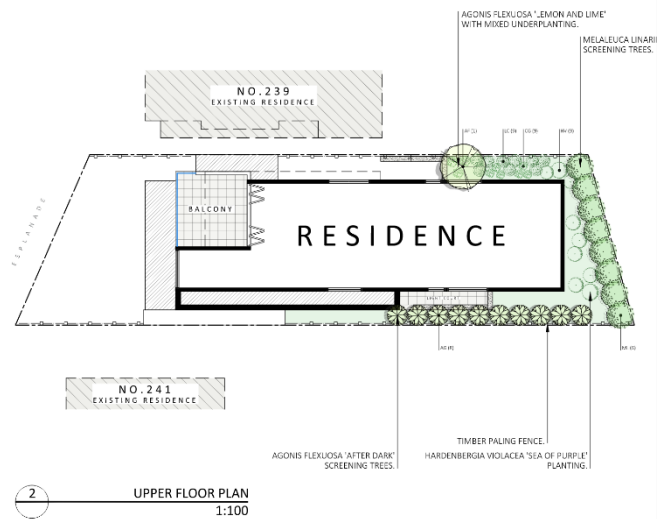
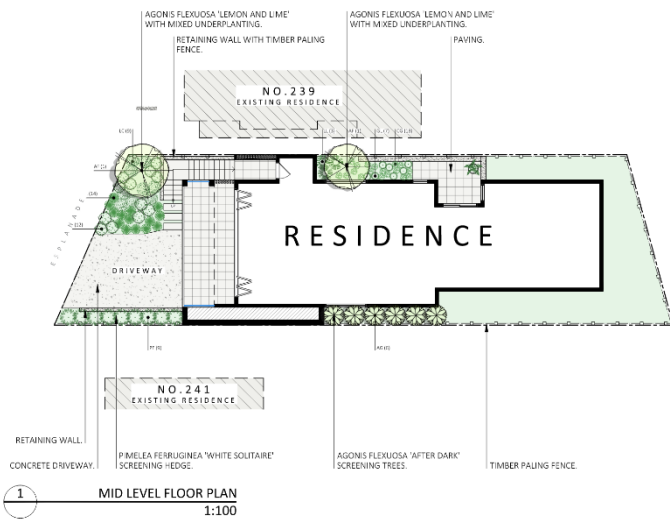
### Private Open Space

Private open space amounts to 106 square metres, which exceeds the minimum of 60 square metres required by the Code. Private open space is predominately located on the roof top, as the ground level comprises a steep slope and is not usable without substantial retaining, which would create adverse impacts on adjacent land. The site is located some 100 metres from Seacliff Beach, therefore the future occupants will have sufficient ground outdoor accessibility to meet their likely needs.

### Landscaping

The Design Code requires a minimum of 20 percent of the site area dedicated as soft landscaping. The site has an area of 334 square metres, therefore a minimum of 66 square metres should be landscaped. The proposal demonstrates a total landscaped area of 88 square metres, which equates to 26 percent of the site area. 31 percent of the total landscaping is in the front yard.

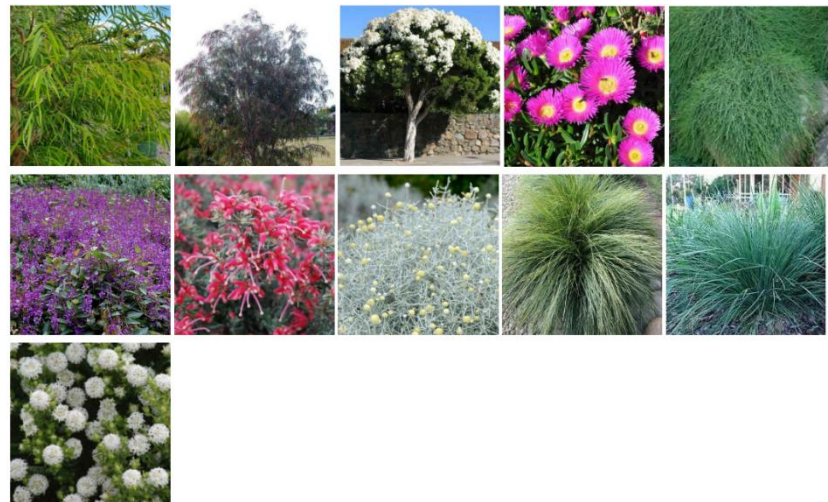
The Design Code requires the planting of at least 1 small tree (grown height 4 metres and spread of 2 metres). The proposal comprises the planting of 3 *Willow peppermint* trees (growth height 8m), 14 *After dark peppermint willows* (growth height 3-6m) and 6 *Paperbark* trees (growth height 2.5m), therefore demonstrating a high level of quality landscaping. The remaining landscaping comprises a variety of ground covers and shrubs.



KEY TO SYMBOLS

- AGONIS FLEXUOSA 'LEMON AND LIME'
- CARPOBROTUS GLAUCESCENS 'AUSSIE RAMBLER'
- MELALEUCA LINARIIFOLIA
- PIMELEA FERRUGINEA 'WHITE SOLITAIRE'
- LOMANDRA CONFERTIFOLIA 'WINGARRA'
- LOMANDRA LONGIFOLIA 'NYALLA'
- HARDENBERGIA VIOLACEA 'SEA OF PURPLE'
- GREVILLEA LAVANDULACEA X ALPINA 'JELLY BABY'
- LEUCOPHYTA BROWNII
- CARPOBROTUS GLAUCESCENS 'AUSSIE RAMBLER'
- CASUARINA GLAUCA 'COUSIN IT'

PLANT PALETTE



**CONCLUSION**

The development is considered to reflect a good built form design on a unique and difficult allotment, in that it has a very steep slope upwards at the rear of the site. The site has a longstanding vacancy, primarily due to the difficulties in achieving a building design that meets the relevant planning requirements, as well as likely occupant needs in terms of usability of the site.

The proposal technically fails to satisfy the maximum building levels, however this is a quantitative provision, which does not take into account unique circumstances such as those presented by this particular allotment. As expressed above, at no point does the building exceed 2.5 levels above natural ground level and each level is setback substantially further than the level below in order to reduce the visual bulk as viewed from the streetscape. Waterfront Neighbourhood Zone, Part 2, Performance Outcome 4.1 is considered to be satisfactorily achieved, in that it is consistent with the form expressed in the Maximum Building Height (Levels), particularly as the levels do not exceed 2.5 at any one point relative to natural ground level.

The proposal also fails the Design Code numerical provisions with respect to boundary walls and side boundary setbacks, however as discussed in subheading 'Boundary Setbacks', the proposal is considered to be designed in such a way that visual impacts from adjacent properties are reasonable relative to the constraints of the site and sufficient solar access and ventilation are achieved on the southern adjacent property.

**RECOMMENDATION**

It is recommended that the Council Assessment Panel resolve that:

1. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
2. Development Application Number 21026188, by Gregory Phillips is GRANTED Planning Consent subject to the following conditions:

**CONDITIONS**

1. The development granted approval shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).
2. That landscaping as detailed in the approved plans shall be planted prior to occupation and shall be maintained in good health and condition at all times. Any such vegetation shall be replaced if and when it dies or becomes seriously diseased.
3. Tree(s) must be planted and/or retained in accordance with DTS/DPF 1.1 of the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). New trees must be planted within 12 months of occupation of the dwelling(s) and maintained.
4. That all upstairs windows, other than facing the street, shall have minimum window sill heights of 1.5 metres above finished floor level, or any glass below 1.5 metres shall be obscure and fixed shut and be installed prior to occupation of the dwelling.

5. Rainwater tank(s) must be installed in accordance with DTS/DPF 1.1 of the Stormwater Management Overlay in the Planning and Design Code (as at the date of lodgement of the application) within 12 months of occupation of the dwelling(s).

**ADVISORY NOTES****General Notes**

1. No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.
2. Appeal rights – General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.
3. This consent or approval will lapse at the expiration of 2 years from its operative date, subject to the below or subject to an extension having been granted by the relevant authority.
4. Where an approved development has been substantially commenced within 2 years from the operative date of approval, the approval will then lapse 3 years from the operative date of the approval (unless the development has been substantially or fully completed within those 3 years, in which case the approval will not lapse).
5. A decision of the Commission in respect of a development classified as restricted development in respect of which representations have been made under section 110 of the Act does not operate—
  - a. until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or
  - b. if an appeal is commenced—
    - i. until the appeal is dismissed, struck out or withdrawn; or
    - ii. until the questions raised by the appeal have been finally determined (other than any question as to costs).

**OFFICER MAKING RECOMMENDATION****Name:** Dean Spasic**Title:** Development Officer - Planning**Date:** 02/06/2022