

TO: **COUNCIL ASSESSMENT PANEL**  
 DATE: **19 DECEMBER 2018**  
 SUBJECT: **COUNCIL ASSESSMENT REPORT**  
 AUTHOR: **A STAMATOPOULOS**  
**DEVELOPMENT OFFICER - PLANNING**

ATTACHMENTS: **1. LOCALITY MAP**  
**2. PROPOSAL PLANS**

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DA NO.	:	<u>110/00590/18</u>
APPLICANT	:	<u>P AND N GREENER</u>
LOCATION	:	<u>9 HULBERT STREET, HOVE</u>
DEVELOPMENT PLAN	:	<u>CONSOLIDATED 2 JUNE 2016</u>
ZONE AND POLICY AREA	:	<u>RESIDENTIAL ZONE</u>
NATURE OF DEVELOPMENT:		<u>MERIT</u>
PROPOSAL	:	<u>TWO STOREY DETACHED DWELLING WITH CARPORT LOCATED ON EASTERN SIDE BOUNDARY, PRIVACY SCREENING ROOFTOP TERRACE AND SWIMMING POOL IN REAR YARD</u>
REFERRALS	:	<u>NIL</u>
CATEGORY	:	<u>ONE</u>
RECOMMENDATION	:	<u>DEVELOPMENT PLAN CONSENT SUBJECT TO CONDITIONS</u>

### 1. Background

An application was lodged to Council on 7 August 2018 to construct a two storey detached dwelling with a carport located on the eastern side boundary, privacy screening, rooftop terrace and a swimming pool in the rear yard. The application was a Category 1 development pursuant to Schedule 9 Part 1 2(a)(i) of the Development Regulations 2008.

### 2. Site and Locality

The subject site contains a rectangular shaped allotment with a primary frontage of 15.24m and a depth of 46.32m. The subject land is located on a conventional side street which contains a relatively consistent pattern of allotment sizes and dwelling types. Hulbert Street is generally characterised by single storey detached dwellings on allotments in excess of 600sqm. The majority of the dwellings are original housing stock which have been subject to development in the form of additions to the rear. There are a few examples of medium density dwellings located on the northern side of Hulbert Street directly opposite the subject land.

*Refer to Attachment 1*

### 3. Proposed Development

The applicant proposes to construct a conventional two storey dwelling with a rooftop terrace set within the confines of the dwelling walls along with privacy screening and a swimming pool. A carport is integrated into the dwelling which contains posts located on the eastern side boundary. The façade of the dwelling resembles a modern style of architecture characterised by vertical and

horizontal components, a rendered finish, and large windows on the façade. The swimming pool is located in the rear yard which is set 1.2m above natural ground level and is surrounded by 2.8m high privacy screening. The eastern side of the dwelling contains a set of stairs which provides access to the rooftop terrace which is screened by vertical slat style building components. The rooftop terrace is proposed to contain 1.7m high obscured glazing to the east, south and west to restrict overlooking into adjoining properties.

#### Finishes Schedule

Walls: Texture coated light grey concrete effect

Windows: Black powder coat

Garage door: Imitation timber

*Refer to Attachment 2*

#### 4. Development Data

DEVELOPMENT DATA		
Aspect	Proposed	Compliance
Site Coverage	337m <sup>2</sup> or 47%	<u>Complies</u>
Private Open Space	193m <sup>2</sup> or 27%	<u>Complies</u>
Primary Setback		
- Dwelling	6.9m & 7.5m	<u>Does not comply</u>
- Carport	8.1m	<u>Does not comply</u>
Side Setbacks		
- Ground Level	1.5m to 2.7m	<u>Complies</u>
- Upper Level	1.5m to 2.7m	<u>Does not comply</u>
- Complies	On boundary	<u>Complies</u>
Rear Setback		
- Lower Level	7m	<u>Complies</u>
- Upper Level	24m	<u>Complies</u>
Wall Heights		
- Lower Level	3m	<u>Complies</u>
- Upper Level	7.15m	<u>Exceeds anticipated maximum by 150mm</u>
- Carport	2.5m	<u>Complies</u>

#### 5. Development Plan Provisions

##### HOLDFAST BAY (CITY) DEVELOPMENT – ASSESSMENT – RESIDENTIAL ZONE AND POLICY AREAS – OBJECTIVES AND PRINCIPLES OF DEVELOPMENT CONTROL

RESIDENTIAL ZONE	
Objectives	
1. A residential zone comprising a range of dwelling types, including a minimum of 15% affordable housing.	Complies
3. Development that contributes to the desired character of the zone.	Complies

<b>RESIDENTIAL ZONE (Cont)</b>	
<b>Desired Character</b>	
<p>Development outside of the policy areas will be suburban in nature and evolve in response to progressive infill development of existing individual sites and through consolidation of sites to form larger comprehensive redevelopment opportunities. Infill development outside of the Policy Areas will not compromise the suburban character but will progressively increase dwelling densities through unobtrusive small-scale developments. In this regard, infill development will have a comparable height, mass, scale and setbacks to that of existing dwellings in the relevant locality.</p> <p>The zone's primarily suburban character outside of the policy areas is defined by detached dwellings on individual allotments. Infill development in these suburban areas will contribute to the city's housing diversity through development opportunities that (in order of preference):</p> <p>(a) increase dwelling numbers on allotments that have dual road frontages</p>	Complies
<b>Development outside of the policy areas will comprise:</b>	
<ul style="list-style-type: none"> <li>• Single storey in areas east of Brighton Road, and up to two storeys in areas west of Brighton Road.</li> </ul>	Complies
<ul style="list-style-type: none"> <li>• Buildings both domestic and contemporary in design and character to support and reinforce the essentially suburban character through typical domestic design forms, low front fencing and landscaping.</li> </ul>	Complies
<ul style="list-style-type: none"> <li>• Materials and finishes that respond to the character of the immediate locality and utilise brick, stone and rendered finishes to provide visual interest to facades.</li> </ul>	Complies
<ul style="list-style-type: none"> <li>• Architectural design and detailing that responds to localised character by way of fenestration, doorways, windows, eaves and roof forms.</li> </ul>	Complies
<ul style="list-style-type: none"> <li>• Development will be setback and be orientated to minimise impacts of the privacy of neighbouring residents.</li> </ul>	Complies
<p>1. The following forms of development are envisaged in the zone:</p> <ul style="list-style-type: none"> <li>• affordable housing</li> <li>• domestic outbuilding in association with a dwelling</li> <li>• domestic structure</li> <li>• dwelling</li> <li>• dwelling addition</li> <li>• small scale non-residential use that serves the local community, for example:             <ul style="list-style-type: none"> <li>• child care facility</li> <li>• health and welfare service</li> <li>• open space</li> <li>• primary and secondary school</li> <li>• recreation area</li> <li>• supported accommodation.</li> </ul> </li> </ul>	Complies

<b>RESIDENTIAL ZONE (Cont)</b>			
<b>Principles of Development Control</b>			
6. Development should not be undertaken unless it is consistent with the desired character for the zone.		Complies	
8. Dwellings and residential flat buildings, except where specified in a particular policy area or precinct, should not exceed the maximum heights shown in the following table:			
<b>Location of the dwelling</b>	<b>Maximum wall height above natural ground level</b>	<b>Maximum height above natural ground level</b>	
West of Brighton Road or Tapleys Hill Road	7 metres	Two storeys	Exceeds anticipated maximum by 150mm
East of Brighton Road or Tapleys Hill Road	3.5 metres	One storey, or two storeys if the second storey is incorporated within the roof space and the floor area of the second storey does not exceed 40 percent of the ground floor footprint of the dwelling, including attached garages.	

**HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT – GENERAL SECTION - COUNCIL WIDE – PRINCIPLES OF DEVELOPMENT CONTROL**

<b>Residential Development</b>	
11. Development should minimise direct overlooking of habitable rooms and private open spaces of dwellings through measures such as: (a) off-setting the location of balconies and windows of habitable rooms with those of other buildings so that views are oblique rather than direct (b) building setbacks from boundaries (including building boundary to boundary where appropriate) that interrupt views or that provide a spatial separation between balconies or windows of habitable rooms (c) screening devices (including fencing, obscure glazing, screens, external ventilation blinds, window hoods and shutters) that are integrated into the building design and have minimal negative effect on residents' or neighbours' amenity.	Complies with principle 11(c)
12 Permanently fixed external screening devices should be designed and coloured to complement the associated building's external materials and finishes.	Complies

**HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT – RESIDENTIAL - COUNCIL WIDE – PRINCIPLES OF DEVELOPMENT CONTROL**

<b>Residential Development</b>	
5. Residential development should be designed to ensure living rooms have an external outlook.	Complies
10. The design and location of buildings should ensure that direct winter sunlight is available to adjacent dwellings, with particular consideration given to: (a) windows of habitable rooms (all rooms excluding bathrooms, laundries and hallways), particularly living areas (b) ground-level private open space (c) upper-level private balconies that provide the primary open space area for any dwelling (d) access to solar energy.	Complies

<b>Residential Development (Cont)</b>					
11. Development should ensure that north-facing windows to habitable rooms (all rooms excluding bathrooms, laundries and hallways) of existing dwelling(s) on the same allotment, and on adjacent allotments, receive at least 3 hours of direct sunlight over a portion of their surface between 9 am and 5 pm on the 21 June.	Complies				
12. Development should ensure that ground-level open space of existing buildings receives direct sunlight for a minimum of two hours between 9 am and 3 pm on 21 June to at least the smaller of the following: (a) half of the existing ground-level open space (b) 35 square metres of the existing ground-level open space (with at least one of the area's dimensions measuring 2.5 metres) Development should not increase the overshadowed area by more than 20 per cent in cases where overshadowing already exceeds these requirements.	Complies				
<p>19. Except where specified in a particular zone, policy area or precinct or <b>Residential High Density Zone</b>, the main face of a building should be set back from the primary road frontage in accordance with the following table: <b>Setback difference between buildings on adjacent allotments with frontage to the same primary street</b></p> <table border="0"> <tr> <td>Up to 2 metres</td> <td><b>Setback of new building</b></td> </tr> <tr> <td>Greater than 2 metres</td> <td>The same setback as one of the adjacent buildings, as illustrated below: At least the average setback of the adjacent buildings.</td> </tr> </table>	Up to 2 metres	<b>Setback of new building</b>	Greater than 2 metres	The same setback as one of the adjacent buildings, as illustrated below: At least the average setback of the adjacent buildings.	<p>Does not comply</p> <p>7 Hulbert Street primary setback 8.7m            11 Hulbert Street primary setback 8.6m</p>
Up to 2 metres	<b>Setback of new building</b>				
Greater than 2 metres	The same setback as one of the adjacent buildings, as illustrated below: At least the average setback of the adjacent buildings.				
20. Dwelling setbacks from side and rear boundaries should be progressively increased as the height of the building increases to: (a) minimise the visual impact of buildings from adjoining properties (b) minimise the overshadowing of adjoining properties.	Complies				

<b>Residential Development (Cont)</b>		
21. Residential development (other than where located on a boundary) should be setback from side and rear boundaries in accordance with the following parameters:		
<b>Parameter</b>	<b>Value</b>	
Side walls with a height up to (and including) 3 metres at any point above the natural ground level	1 metre	Complies
Side walls with a height exceeding 3 metres and up to (and including) 6 metres at any point above the natural ground	1.5 metres plus an additional 500mm for every metre in height above 4 metres	Does not comply
Side walls greater than 6 metres at any point above the natural ground level	2.5 metres plus the increase in wall height above 6 metres	Does not comply
Rear boundary setback for single storey buildings with a wall height 3 metres or less above natural ground level	4 metres	Complies
Rear boundary setback for a building of two or more storeys with a wall height more than 3 metres above natural ground level	6 metres	Complies
23. Side boundary walls in residential areas should be limited in length and height to: (a) minimise their visual impact on adjoining properties (b) minimise the overshadowing of adjoining properties		
24 Walls associated with a dwelling located on a side boundary should be designed in accordance with the following parameters: (a) a height not exceeding 3 metres above natural ground level (b) a length not exceeding 8 metres (c) the wall, when its length is added to the length of any other relevant walls or structures located on that boundary: (i) will not result in all such relevant walls and structures exceeding a length equal to 45 per cent of the length of the boundary (ii) will not be within 3 metres of any other relevant wall or structure located along the boundary, except where the side wall is located immediately abutting the wall of an existing or simultaneously constructed building on the adjoining site and is constructed to the same or to a lesser length and height.		
28. Site coverage (the proportion of a site covered by ground floor level buildings and structures including dwelling, garage, carport, verandas and outbuildings but excluding unroofed pergolas and unroofed balconies) should not exceed the following values:		
<b>Parameter</b>	<b>Value</b>	
Site with an area less than or equal to 300 square metres	60 per cent	Complies
Site with an area greater than 300 square metres	50 per cent	

<b>Residential Development (Cont)</b>	
<p>29. Site coverage should be limited to ensure sufficient space is provided for:</p> <ul style="list-style-type: none"> <li>(a) vehicle parking</li> <li>(b) domestic storage</li> <li>(c) outdoor clothes drying</li> <li>(d) a rainwater tank</li> <li>(e) private open space and landscaping</li> <li>(f) front, side and rear boundary setbacks that contribute to the desired character of the area</li> <li>(g) <i>convenient storage of household waste and recycling receptacles</i></li> </ul>	Complies
<p>31. Private open space (land available for exclusive use by residents of each dwelling) should be provided for each dwelling (including a dwelling within a residential flat building) and should be sited and designed:</p> <ul style="list-style-type: none"> <li>(a) to be accessed directly from the internal living areas of the dwelling</li> <li>(b) generally at ground level to the side or rear of a dwelling and screened for privacy</li> <li>(c) to take advantage of but not adversely affect natural features of the site</li> <li>(d) to minimise overlooking from adjacent buildings</li> <li>(e) to achieve separation from bedroom windows on adjoining sites</li> <li>(f) to have a northerly aspect to provide for comfortable year-round use</li> <li>(g) to not be significantly shaded during winter by the associated dwelling or adjacent development</li> <li>(h) to be shaded in summer.</li> </ul>	Complies
<p>32. Dwellings and residential flat buildings at ground level should include private open space that conforms to the requirements identified in the following table:</p>	Complies
<p><b>Site area of dwelling</b> - 250 square metres or greater.</p>	
<p><b>Minimum area of private open space</b> - 20 per cent of site area.</p>	
<p><b>Provisions</b> Balconies, roof patios, decks and the like, can comprise part of this area provided the area of each is 10 square metres or greater. One part of the space should be directly accessible from a kitchen, lounge room, dining room or living room (excluding a bedroom) and have an area equal to or greater than 10 per cent of the site area with a minimum dimension of 5 metres and a maximum gradient of 1-in-10.</p>	
<p>33. Private open space should not include driveways, front yards (except where it is a group dwelling that has no frontage to a public road and the private open space is screened from adjacent dwellings), effluent drainage areas, rubbish bin storage, sites for rainwater tanks and other utility areas and common areas such as parking areas and communal open space.</p>	Complies
<p>40. Except for buildings of 3 or more storeys in the Minda Incorporated Brighton Campus, upper level windows, balconies, terraces and decks that overlook habitable room windows or private open space of dwellings should maximise visual privacy through the use of measures such as sill heights of not less than 1.7 metres or permanent screens having a height of 1.7 metres above finished floor level.</p>	Complies

<b>Residential Development (Cont)</b>	
<p>41. Where development is greater than single storey (excluding the Minda Incorporated Brighton Campus):</p> <p>(a) any upper storey window that directly overlooks the private open space of an adjoining residential property that is within 30 metres from the vertical centre line of the overlooking window and beyond a 45 degree angle from the plane of the wall containing the overlooking window (as illustrated by the figure below) should be glazed in fixed obscure glass or have window sills a minimum of 1.7 metres above the upper floor level:</p> <p>(b) (b) any upper storey window that directly overlooks habitable rooms (all rooms excluding bathrooms, laundries and hallways) of residential buildings that are within 15 metres from the vertical centre line of the overlooking window and beyond a 45 degree angle from the plane of the wall containing the overlooking window (as illustrated by the figure below) should be glazed in fixed obscure glass or have window sills a minimum of 1.7 metres above the upper floor level:</p> <p>(c) (c) any upper storey balcony should be located and/or designed to avoid directly overlooking the private open space of adjoining residential properties and into habitable rooms (all rooms excluding bathrooms, laundries and hallways) of other dwellings.</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p>
<p>50. Swimming pools, outdoor spas and associated ancillary equipment and structures should be sited so as to protect the privacy and amenity of adjoining residential land.</p>	<p>Complies</p>

## 6. Summary of Assessment

The application complies with a majority of the quantitative objectives and principles of the Holdfast Bay Development Plan. The following assessment will touch on aspects of the application which requires further discussion.

### Primary Setback

The dwelling contains a primary setback of 6.9m to the upper storey component of the dwelling and 7.5m to the lower storey. The carport is stepped behind the main face of the dwelling and contains a primary setback of 8.2m. The primary setback of the dwelling does not comply with PDC 19 as the dwellings either side of the subject land contain greater setbacks. 7 Hulbert Street contains a primary setback of 8.7m and 11 Hulbert Street a setback of 8.6m.

The subject land is in a gazetted area for Residential Code assessment which allows primary setbacks of dwellings to encroach 1m forward of those that are adjoining. In this instance, a primary setback of 7.6m would be appropriate. The upper level setback is 600mm short of this requirement and the lower 100mm. The carport and the stepped in dwelling wall dominate the width of the façade and sit in excess of 8.2m from the primary frontage, an additional 600mm than anticipated under the Residential Code.



The upper level is cantilevered over the front dwelling wall. Whilst it is located closer to the primary frontage it is considered to add visual interest to the façade without detrimentally impacting on the streetscape. Figure 1 shows the site plan superimposed over the allotment. The red horizontal line represents the setback of the adjoining dwellings either side and the blue line the allowable setback under the Residential Code.



**Figure 1:** Primary setback of immediate locality and proposed dwelling.

Figure 1 provides a good visual representation of how the dwelling sits in comparison to the adjoining dwelling. A small component of the upper level is located forward of the Residential Code setback which is not considered to detrimentally impact the immediate locality

### Side Setbacks

The wall of the dwelling contains a total height of 7.15m which exceeds the anticipated maximum by 150mm. The setbacks to the upper level of the dwelling vary from 1.5m to 2.7m. The anticipated upper level side setback for a 7.15m high wall is 3.65m. The side of the dwelling lacks articulation as it is comprised of flat vertical walls finished in a light grey texture coat finish. The upper level of the dwelling contains a depth of 12m and is located adjacent to a driveway and carport of both adjoining dwellings either side of the subject land.

Given the orientation of the dwelling overshadowing will not be of major concern as any shadow cast from the dwelling will be over the driveway and carport of the adjoining dwellings, the northern facing windows of the adjoining dwellings will not be affected. The adjoining dwellings contains additions to the rear which were constructed post dwelling approval. Any shadow cast over the east and west of the subject land will be over a roofed area well short of the private open space located

further to the south. The roof terrace contains side setbacks of 3.8m and 4.7m which will result in the balustrades being barely visible from adjoining properties.

### Overlooking

The swimming pool located at rear of the property is elevated 1.2m from natural ground level. There are a set of stairs that lead to a small landing where occupants will enter the pool. As the landing is elevated 1.2m from natural ground level concerns were raised with respect to overlooking in to the adjoining properties located west, east and south of the subject land. As a result, the applicant proposes to erect a screen to the southern and western side of the pool which sits 2.8m above natural ground level and 1.6m above the landing of the pool.

Attachment 2.1 shows the extent of the screen around the pool and attachment 2.2 shows the height and visual built form. Attachment 2.2 makes it clear that overlooking will be restricted to the west and south. Whilst the screen minimises overlooking the visual impacts of such a tall structure must be taken into consideration. The southern side of the structure will be partially screened by a shed, mature tree and cubby house however the back of the screen will remain visible. The western side screen will be less visible from the neighbouring property as there is tall vegetation located along the boundary.

There is a garage located on the western side of 7 Hulbert Street which screens the majority of views into the private open space facing east. The applicant has proposed a screen on the subject land just north of the eastern neighbour's garage which will restrict overlooking from the pool landing.

Figure 2 shows views to the south and west of the subject land adjacent to the proposed screen.



**Figure 2:** Vegetation of western neighbour (left) cubby house, mature tree and shed of southern neighbour (right)

The proposed screening is in line with General Section Design and Appearance Principle of Development Control 11(c) and 12. The Development minimises direct overlooking of habitable rooms and private open spaces of dwellings through the implementation of the screen that is integrated into the building design which will have minimal negative effect on residents' and the neighbours' amenity.

PDC 12 states that permanently fixed external screening devices should be designed and coloured to complement the associated building's external materials and finishes. The screen is comprised of timber slats supported by vertical steel posts with evergreen creepers to soften its appearance. The adjoining neighbours will be subject to viewing the vertical posts as well as the horizontal slats which is unlikely to be softened by the evergreen creepers. It is recommended that treatment to the rear of the screen be imposed as a condition of consent in order to improve the aesthetic appearance when viewed from adjoining properties.

### **Conclusion**

When assessed against the relevant provisions of the Development Plan and having regard to the context of the locality and the nature of the proposed development, it is considered that the proposal as amended on balance satisfies the relevant provisions of the Development Plan. The proposal is broadly consistent with the desired character of the zone and will not detrimentally impact upon the amenity of the adjoining properties of the locality. Accordingly, the proposal warrants Development Plan Consent subject to conditions.

## **7. RECOMMENDATION**

- 1. The proposed development is NOT seriously at variance with the policies in the Development Plan.**
- 2. Following a detailed assessment of the proposal against the provisions of the Holdfast Bay (City) Development Plan, the Development Assessment Panel resolves to grant Development Plan Consent to Development Application 110/00590/18 subject to the following conditions:**

### **PLANNING CONDITIONS**

- 1. That the design and siting of all buildings and structures and site works shall be as shown on the plans submitted to and approved by Council unless varied by any subsequent conditions imposed herein.**
- 2. That construction shall take place between 7am and 7pm Monday to Saturday and not on Sundays or public holidays. All such work shall be undertaken in such a manner so as not to, in the reasonable opinion of Council, cause any nuisance or annoyance to any of the occupiers of buildings within the locality. Any work outside of these hours requires the written approval of Council.**

3. That storm water from the 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 storm water 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.

**NOTE:**

Storm water 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.

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 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.
6. That all upstairs windows on the wester, southern and eastern elevations shall have minimum window sill heights of 1.7 metres above finished floor level, or any glass below 1.7 metres shall be obscured and fixed shut or as otherwise approved by Council. Further details of this requirement shall be provided at Building Rules Assessment stage.
7. That the associated filter pump be enclosed in such a way that noise levels do not exceed 45db(a) measured at adjoining property boundaries.