

<b>DEVELOPMENT NO.:</b>	21039035
<b>APPLICANT:</b>	Alan Cooper
<b>ADDRESS:</b>	43A MARLBOROUGH STREET, BRIGHTON SA 5048
<b>NATURE OF DEVELOPMENT:</b>	Three storey detached dwelling
<b>ZONING INFORMATION:</b>	<b>Zones:</b> <ul style="list-style-type: none"> <li>• General Neighbourhood</li> </ul> <b>Overlays:</b> <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>
<b>LODGEMENT DATE:</b>	20 Dec 2021
<b>RELEVANT AUTHORITY:</b>	Assessment Panel at City of Holdfast Bay
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	4 November 2021 2021.16
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Dean Spasic Development Officer - Planning

#### CONTENTS:

**APPENDIX 1:** Relevant P&D Code Policies

**ATTACHMENT 2:** Statements of Representation

**ATTACHMENT 1:** Application Documents

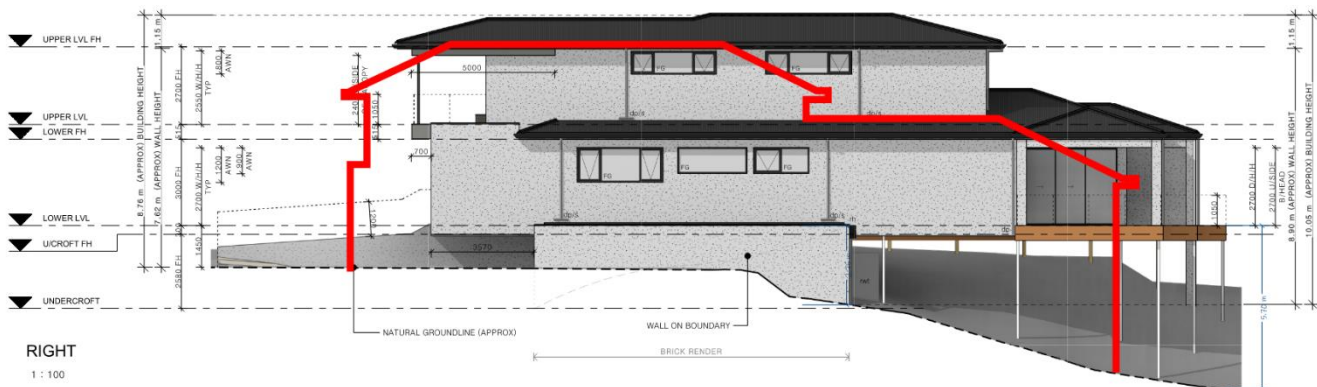
**ATTACHMENT 3:** Response to Representations

### DETAILED DESCRIPTION OF PROPOSAL:

The proposal comprises the construction of a three storey detached dwelling whereby the garage is located predominately under the existing ground level, resulting in walls between 1.5 and 1.7 metres above the natural ground level. The site has a heavy slope downward toward the rear of the site of some 4.5 metres between the rear section of the dwelling and the rear boundary. The building will appear as three storey from the footpath, and two storey at the rear, although the ground level at the rear is elevated on piers which are up to 5.7 metres above the natural ground level.

### BACKGROUND:

The site was subject to a previous application for a two storey detached dwelling, which was granted Development Plan Consent by the Environment, Resources and Development Court on the 18/12/2019. In terms of overall scale, the previous dwelling, although only two storeys, was similar to that of the proposed dwelling, as demonstrated on the western side elevation, below:



*Red outline depicts building outline of previous dwelling granted planning consent by the ERD Court in 2019*

### SUBJECT LAND & LOCALITY:

#### Site Description:

**Location reference:** 43A MARLBOROUGH ST BRIGHTON SA 5048

**Title ref.:** Plan Parcel: D127865 AL830 **Council:** CITY OF HOLDFAST BAY

The subject site is a vacant 70 square metres rectangular shaped allotment with a frontage of 10.2 metres was created in 2019 as a result of a Torrens title land division over what was previously 41 Marlborough Street.

Most of the other sites currently have dwellings under construction.

The site has a substantial downward slope to the rear of the site. The ground level at the rear of the site is some 4 metres slower than the ground level at the footpath, hence a difficult site to manage in terms of achieving a dwelling that satisfies the Design Code.



### Locality

The locality comprises a predominance of single and two storey detached dwellings, of mostly older housing stock but a growing increase in infill housing. The site is 75 metres east of the beach and 200 metres west of the railway line.



### CONSENT TYPE REQUIRED:

Planning Consent

#### CATEGORY OF DEVELOPMENT:

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

#### PUBLIC NOTIFICATION

##### REASON

Three storey dwelling exceeds maximum 2 level building height.

#### LIST OF REPRESENTATIONS

Summary of Representors			
Address of Representor	Position	Wish to be heard	Concerns
45 Marlborough Street, Brighton	Oppose	Yes	More than 2 levels Does not match character of locality Overshadowing
165 Esplanade, Brighton	Oppose	No	No specific reason given
165A Esplanade, Brighton	Support with concerns	No	Privacy
42 Marlborough Street, Brighton	Oppose	No	Exceeds height limit Too many hard surfaces Out of character with locality
46 Marlborough Street, Brighton	Oppose	No	Height above guidelines Privacy overshadowing
37A Marlborough Street, Brighton	Oppose	No	Height above guidelines Does not conform with amenity of the street
PO Box 241 Brighton	Oppose	No	3 storey out of character Overcrowded

#### SUMMARY

The applicant provided a reply to representations (See Attachment 3), which provides the following justification:

- Although the building exceeds the numerical height limits, the top of the buildings sit level with the two neighbouring two storey dwellings to the east (41 and 43 Marlborough Street) hence visually, the height is consistent;
- The proposed building presents a built form to the street that is consistent with the streetscape character in terms of height, scale, form and proportions; and



- With respect to privacy, views from the rear of the dwelling and alfresco area are significantly mitigated by distance, vegetation and line-of-sight. It is noted that there are no habitable room windows facing toward the subject site.



## PLANNING ASSESSMENT

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

	Proposed	DPF Requirement	Achieved
<b>Site Area</b>	369 square metres	300 square metres	existing
<b>Frontage</b>	10.2 metres	9 metres	Existing
<b>Building Height</b>	3 levels and 8.9 metres	2 levels and 9 metres	No
<b>Front Setback</b>	6.7 metres	4 metres	Yes
<b>Rear Setback</b>	4.55 from ground level and 9.45 from upper level	4 metres at ground level and 6 metres at upper level	Yes
<b>Side Setbacks</b>	Boundary wall 2.7 metres over 11 metres	Boundary wall 3 metres over 11.5 metres	Yes
	Ground level wall 1 metre	Ground level wall 1.1 metres	No
	Upper level wall 1.8 metres	Upper level walls 1.9 metres	No
<b>Site Coverage</b>	60 percent	60%	Yes

	Proposed	DPF Requirement	Achieved
Private Open Space	60 square metres	60 square metres	Yes
Soft Landscaping	24 percent of the site area	20 percent of the site area	Yes
Front Yard Landscaping	31 percent	30 percent	Yes
Tree Planting	7 medium trees	1 small tree	Yes

### Visual Appearance of Built Form

The proposed building reads as a substantial sized building from the front, western side and southern rear. At the front, the built form reflects a modern dwelling, with rendered walls and colorbond hipped roof, however at the footpath level, it presents as a three storey building, as demonstrated in the 3D views below:



*The applicant has submitted a detailed landscape design which is considered to effectively contribute to visually softening the building scale, as viewed from the streetscape, as demonstrated below:*

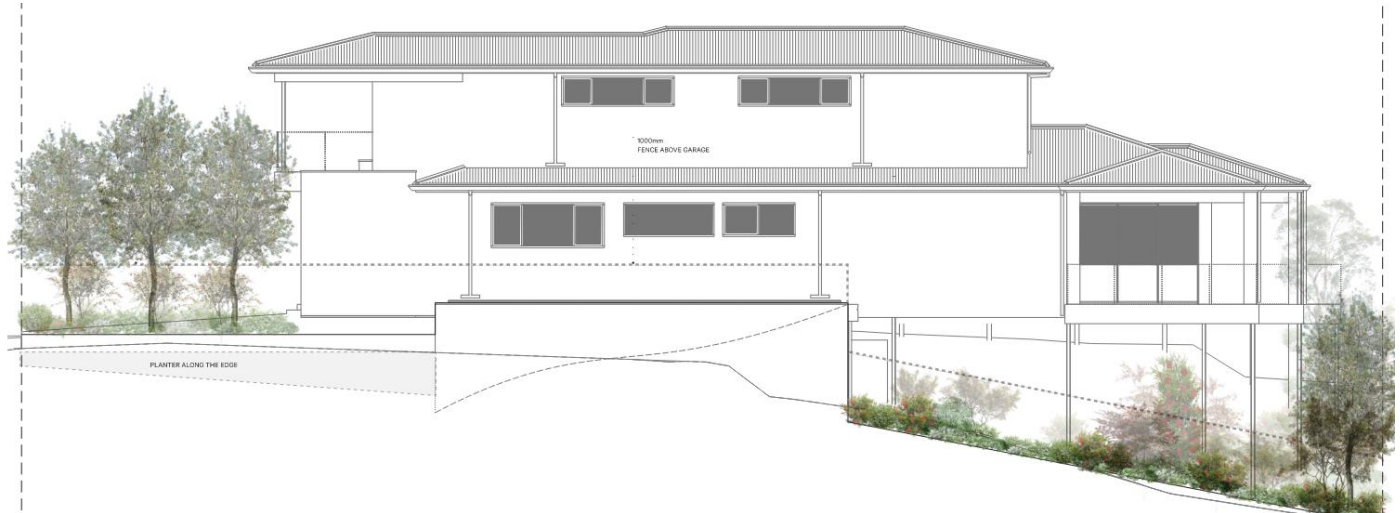


The building façade comprises three storeys, which exceeds the maximum of 2 levels anticipated by the Zone. As demonstrated in the 3D views above, the three storey building has a total height that matches the approved and under construction two storey buildings immediately to the east. The levels therefore do not compromise the general built form scale, rather the third level is contained practically under the ground level of a site that is lower than the eastern neighbouring sites. The proposal is therefore considered to be not satisfy General Neighbourhood Zone, Part 2, Performance Outcome, 4.1 *buildings contribute to a low-rise suburban character ('low-rise' is defined in the Design Code as buildings up to 2 levels)*, albeit by way of building below ground, matching neighbouring buildings heights and provision of quality landscaping, the proposal is considered to not be significantly at odds with this policy.



From the perspective of the western adjacent property, the building reads as a two and a half storey, however this is more so a product of the unique topography of the land, which falls downwards to the west as well as a heavy downward fall to the south. The western adjacent dwelling itself, is a two storey building whereby the rear portion is also on stilts, as opposed to stepping down with the topography of the land, which in this case, comprises a heavy fall that is not typically found within the wider locality.

#### ***Western side elevation***

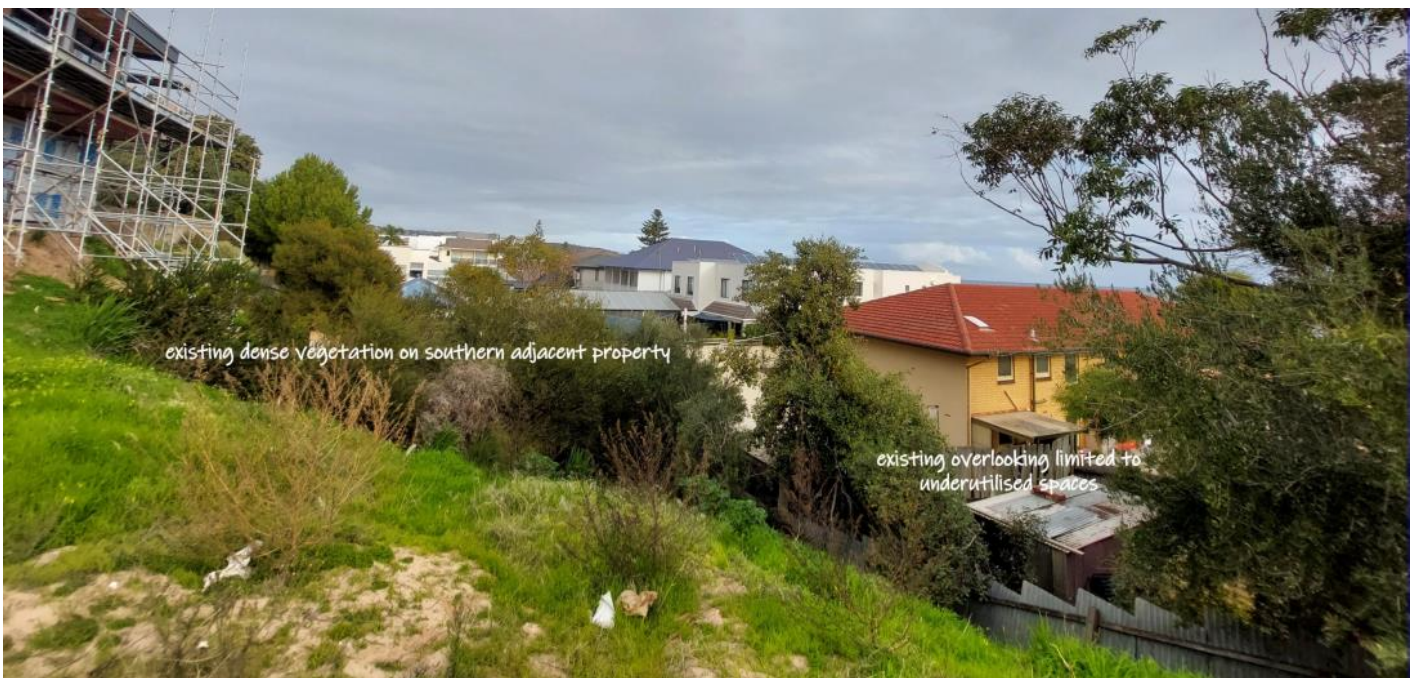
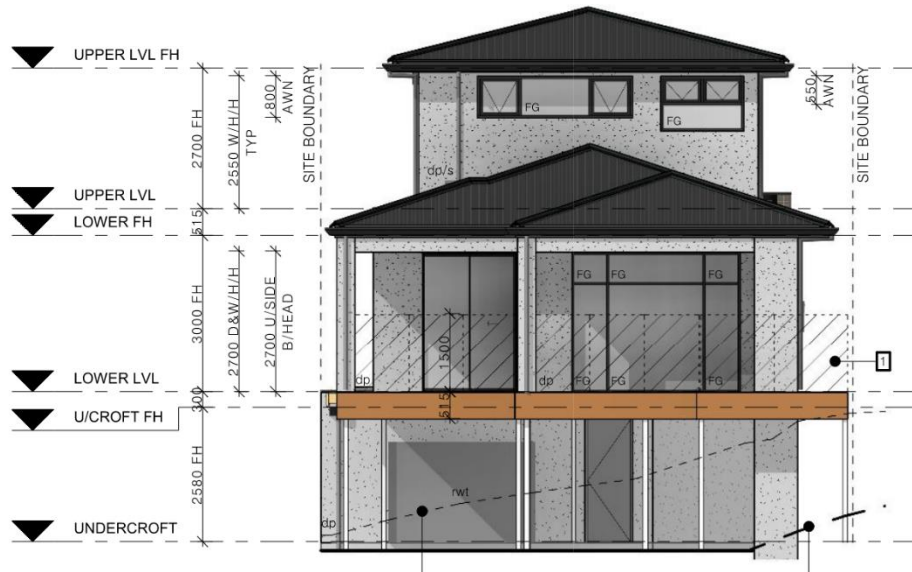


The photo below demonstrates the built form to the west, which is a two storey dwelling with the rear portion on stilts:



When considering General Neighbourhood Zone, Part 4, Performance Outcome 8.1 which seeks to minimise the need for earthworks to limit disturbance to the natural topography of the land, it is noted that the topography comprises a heavy fall, which would result in significant costs, engineering constraints to be reasonably feasible. The use of stilts as opposed to stepping the building is evident on the western adjacent property, and is generally considered to be a reasonable alternative on difficult sites.

From the rear, the building reflects a two and a half storey built form (as shown below), however there is a substantial amount of existing mature vegetation in the rear yard of the southern adjacent property, which heavily screens the lower half of the building (see photos further below), this in addition with the proposed landscaping will contribute significantly to screening the proposed building.



### Building Height

The Design Code allows for a maximum of two building levels and maximum building height of 9 metres. The wall height should not exceed 7 metres.

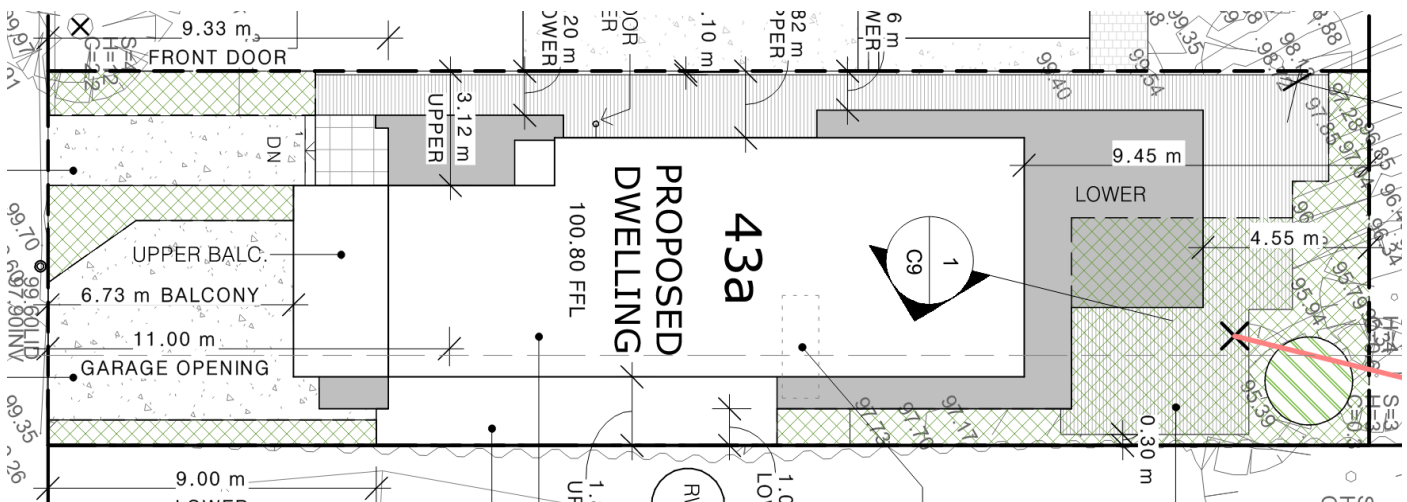
The proposal comprises a building of three levels and a maximum building height of 8.9 metres at the highest point. The wall height is 6.5 metres from the footing, and up to 7.7 metres at the highest point relative to natural ground level. When considering the resulting built form and scale against the Performance Outcomes, it is considered that the proposal reasonably satisfies the fundamental objectives of achieving low-rise built form. This is further highlighted by the fact the top of the building matches the top of the eastern adjacent two storey buildings.

The applicant indicated that they had considered the potential for stepping the building levels, however when determining engineering requirements and costing of achieving this against the actual impacts, which have been reasonably mitigated, stepping the building on a heavily sloping downward site was not considered a feasible option.



## Boundary Setbacks

The building is setback 6.7 metres from the front balcony, and up to 11 metres at the furthest point, which is consistent with the setbacks of neighbouring buildings. The front setback is actually behind the setbacks of the neighbouring buildings (6 metres to the east and 4 metres to the west).



The garage wall is located on the western side boundary with a height ranging from 1.5 to 2.7 metres above the natural ground level, over a length of 11 metres, and therefore within the Design Code parameters of 3 metres in height and 11.5 metres in length.

On the western side, the ground level wall is 3 metres above the top of the footing and setback 1 metre from the side boundary, as required by the Design Code.

The upper level wall has a height of 6.5 metres above the top of the footing, and is setback 1.8 metres from the side boundary. According to the Design Code, the wall should be setback 2 metres. The 200mm setback variance is considered negligible, particularly when having regard to the nature of the western adjacent property which contains a carport on the common boundary, mature vegetation, large rainwater tanks and small, high-set living room windows setback some 2.5 metres from the common boundary.

On the eastern side, the ground level wall ranges in height between 3 and 3.8 metres. The ground level wall is setback 1 metre from the side boundary. The 3.8 metre high portion of walling should be setback 1.1 metres, however a 100mm shortfall is considered negligible.

The upper level wall has a height of 6.1 metres and is setback 1.8 metres from the eastern side boundary. The Design Code requires a minimum setback of 1.9 metres, which has per the ground level wall, the 100mm setback shortfall is negligible.

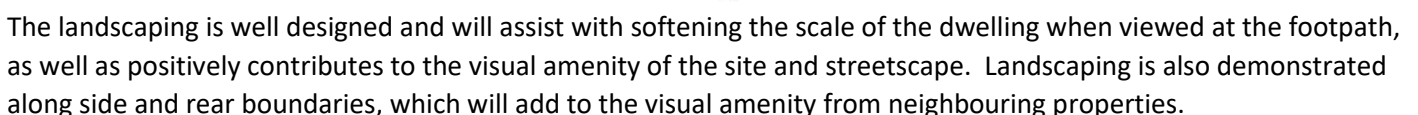
The ground level wall is setback 4.55 and the upper level wall is setback 9.45 metres from the rear boundary. The Design Code requires a minimum ground level wall setback of 4 metres and minimum upper level wall setback of 6 metres. Much of the rear elevation will be visually obstructed by the dense mature vegetation found at the rear of 41 Marlborough Street, which has a heavy downward slope and has limited usability, as well as the high level of landscaping proposed along the rear boundary.

## Site Coverage

## Private Open Space

## Landscaping

Soft landscaping amounts to 89 square metres, which is 24 percent of the site area. The Design Code requires a minimum of 20 percent, hence the proposal exceeds this. In addition, the site requires the planting of at least one small tree. The proposal will result in the planting of 8 trees, those being 7 *Banksia Integrifolia*, which grows up to 15 metres in height and 1 *Eucalyptus Diversifolia*, which grows to a height of up to 8 metres, thus far exceeding the minimum requirements.





### Solar Access

As per the shadow plans presented by the applicant, the shadow cast over adjacent properties will predominately impact on the western adjacent property, whereby north facing windows will receive sunlight all day on the 21 June. The east facing windows are demonstrated to receive more than 3 hours of direct sunlight between 9am and 3pm during the winter solstice.

It is noted that the shadow cast over the western adjacent dwelling between 9am and up until approximately 1pm is also the result of existing vegetation found on the western adjacent property, hence the proposed building is not the only source of shadowing.



The shadowing impacts are considered to reasonably satisfy General Neighbourhood Zone, Part 4, Performance Outcome 3.1, in that the proposal fails to accommodate a reasonable level of natural light to the western adjacent property.



The photos below demonstrate the setbacks of the neighbouring windows relative to the common boundary and their setting behind dense vegetation, which contributes to existing shadowing:



### Visual Privacy

The side elevations have high-set windows to a minimum height of 1.5 metres, which meet the standard to prevent overlooking, however the rear elevation comprises a balcony, with obscure glass balustrades up to 1.5 metre in height.

Overlooking is considered not to be a significant concern in the context of this proposal, predominately as a result of the general characteristics of the site and surrounding locality, whereby the natural topography results in existing overlooking amongst the neighbouring properties, and from the existing, vacant site.

Existing mature vegetation on neighbouring properties contributes to a good amount of screening. In addition to this, the applicant has referenced the planting of vegetation along the western side and southern rear boundaries, which will further add to screening. The installation of 1.5 metre high obscure glass balustrade will further contribute to preventing overlooking.

The proposal is considered to sufficiently satisfy General Neighbourhood Zone, Design in Urban Areas, Performance Outcome 10.2:

*Development mitigates direct overlooking from upper level windows to habitable rooms and private open spaces of adjoining residential uses in neighbourhood-type zones.*

In that the 1.5 metre obscure glass balustrade is demonstrated on the side and rear elevations of the rear balcony and mostly more than 15 metres from the nearest habitable room window on a dwelling on an adjacent site. The western adjacent dwelling is located closer than 15 metres, however on balance, the prevailing objective of PO 10.2 is satisfied.

*Current views to the South and South-West*



**CONCLUSION**

The primary aspect of the proposal that fails the Design Code is the number of building levels exceeding 2, however as outlined in the report, the overall design, existing site characteristics and constraints and implementation of quality landscaping are such that are considered to sufficiently mitigate the numerical reference to building levels. The overall building height does not exceed 9 metres (8.9 metres), the building height matches the eastern adjacent two storey buildings, the additional level is mostly below natural ground level and front landscaping assists with visually softening that element from the streetscape.

## 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 21039035, by Alan Cooper is GRANTED Planning Consent subject to the following conditions:

### CONDITIONS

#### Planning Consent

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. The rear balcony shall comprise obscure glass balustrade up to a minimum height of 1.5 metres above the finished floor level on the side and rear elevations.
6. 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:** 29/06/2022