

TO: **COUNCIL ASSESSMENT PANEL**
 DATE: **22 JANUARY 2020**
 SUBJECT: **COUNCIL ASSESSMENT REPORT**
 AUTHOR: **ALEXANDER STAMATOPOULOS**
 ATTACHMENTS: **1. LOCALITY PLAN**
2. PROPOSAL PLANS
3. REPRESENTATION
4. RESPONSE TO REPRESENTATION
5. PHOTOGRAPHS

HEARING OF REPRESENTORS: **H AJDARI**
 HEARING OF APPLICANT: **SEACLIFF PARK FOODLAND**

DA NO.	:	<u>110/00821/19</u>
APPLICANT	:	<u>SEACLIFF PARK FOODLAND</u>
LOCATION	:	<u>226-230 SEACOMBE ROAD, SEACLIFF PARK</u>
DEVELOPMENT PLAN	:	<u>CONSOLIDATED 2 JUNE 2016</u>
ZONE AND POLICY AREA	:	<u>NEIGHBOURHOOD CENTRE ZONE</u>
NATURE OF DEVELOPMENT:		<u>MERIT</u>
PROPOSAL	:	<u>THE ERECTION OF AIR CONDENSING UNITS TO ROOF OF FOODLAND SUPERMARKET (RETROSPECTIVE APPLICATION)</u>
REFERRALS	:	<u>NOT APPLICABLE</u>
CATEGORY	:	<u>CATEGORY TWO</u>
REPRESENTATIONS	:	<u>ONE</u>
RECOMMENDATION	:	<u>DEVELOPMENT PLAN CONSENT</u>

1. Background

The application was lodged on 7 November 2019. The relevant Development Plan is the City of Holdfast Bay Development Plan consolidated on 2 June 2016. The application is retrospective in nature as the air condensing units were constructed without obtaining development approval. The owner of the land was advised of the unapproved structures and land use resulting in the lodgement of a development application. The air condensing units are associated with the Seacliff Park Foodland tenancy.

2. The Locality

The subject site is situated in the Neighbourhood Centre Zone at 226 to 230 Seacombe Road, Seacliff Park. The immediate locality contains a diverse range of land uses as the subject site is located in the Neighbourhood Centre Zone and also backs on to the Residential Zone. Directly to south of the property are residential dwellings and commercial uses are located to the east, north and west. The location of the shopping precinct is unique in nature as it is located within a predominant residential area when observing the wider locality.

3. Proposed Development

The application proposes to erect 7 air condensing units to the roof of the Foodland supermarket. The units contain a total height of 1.5m from the roof of the building and were erected to replace existing units.

4. Public Consultation

The proposed development underwent Category 2 public notification. One submission was received. The submission opposed the proposal and was received from:

- H Ajdari of 2/2 Davenport Terrace, Seacliff Park.

Representors concerns include:

- Visual appearance of units reduce amenity;
- Noise emissions from units are inappropriate;
- Elevation drawings are misleading; and
- The units obstruct views of the coast.

A response to the representations was received from the applicant. A summary of the response to representations is shown below.

- The units that are being replaced are going to be quieter than the old units, more environmentally friendly and all redundant units are being removed once the eco units have been replaced;
- The units are built on platforms to ensure they are up to code and comply with WHS standards that provide a safe passage for any contractors to avoid injury; and
- Drawings were supplied by Sims refrigeration as per our application submitted by an engineer to the scale of 1:40 as stated on the elevation plan, and not designed to be a false representation as accused by the tenant.

5. Development Plan Provisions

The proposed development is considered to meet the intent of the majority of relevant Objectives and Principles of the Holdfast Bay (City) Development Plan. The following tables contain a detailed assessment of the proposal against the provisions of the Development Plan:

HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT – NEIGHBOURHOOD CENTRE ZONE– OBJECTIVES AND PRINCIPLES OF DEVELOPMENT CONTROL

Objectives	
1. A centre providing a range of shopping, community, business, and recreational facilities for the surrounding neighbourhood.	Complies
2. A centre that provides the main focus of business and community life outside a district centre, and provides for the more frequent and regularly recurring needs of a community.	Complies
3. A centre accommodating residential development in conjunction with non-residential development.	Not applicable
4. Development that contributes to the desired character of the zone.	Complies

Desired Character	
<p>The zone seeks to accommodate a variety of uses, including supermarkets, shops, consulting rooms, offices, restaurants, cafes and hotels.</p> <p>A significant proportion of the zone shares an interface with residential areas. Activity in the zone will take account of adjacent residential development and development will use appropriate means of screening the activity of the centre from adjacent residential areas wherever possible.</p>	Complies
Principles of Development Control	
<p>1. The following forms of development are envisaged in the zone:</p> <ul style="list-style-type: none"> • bank • child care facility • consulting room • dwelling in conjunction with non-residential land use • library • health centre • office • petrol filling station • place of worship • playing field • pre-school • primary school • recreation area • restaurant • shop • supermarket 	Complies
2. Development listed as non-complying is generally inappropriate.	Complies
3. Development comprising a variety of residential and non-residential uses should only be undertaken if such development does not prejudice the operation of existing or future non-residential activity within the zone.	Complies
4. The existing gross leasable area used for retail purposes within the centre at Hove should not be extended.	Not Applicable
5. Development should not be undertaken unless it is consistent with the desired character for the zone.	Complies
6. Dwellings should be located only behind or above non-residential uses on the same allotment.	Not Applicable
7. Within the neighbourhood centre at Hove, existing dwellings converted to commercial uses should retain external residential scale, form and character.	Not Applicable
8. Land division in the zone is appropriate provided new allotments are of a size and configuration to ensure the objectives of the zone can be achieved.	Not Applicable

HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT – COUNCIL WIDE – INTERFACE BETWEEN LAND USES

Objectives	
1. Development located and designed to prevent adverse impact and conflict between land uses.	Complies
2. Protect community health and amenity and support the operation of all desired land uses.	Complies

Principles of Development Control	
Development should not detrimentally affect the amenity of the locality or cause unreasonable interference through any of the following: (a) the emission of effluent, odour, smoke, fumes, dust or other airborne pollutants (b) noise (c) vibration (d) electrical interference (e) light spill (f) glare (g) hours of operation (h) traffic impacts.	Complies
2. Development should be sited and designed to minimise negative impact on existing and potential future land uses considered appropriate in the locality.	Complies
3. Development adjacent to a Residential Zone should be designed to minimise overlooking and overshadowing of nearby residential properties.	Not applicable
4. Residential development adjacent to non-residential zones and land uses should be located, designed and/or sited to protect residents from potential adverse impacts from non-residential activities.	Complies
5. Sensitive uses likely to conflict with the continuation of lawfully existing developments and land uses considered appropriate for the zone should not be developed or should be designed to minimise negative impacts.	Complies
6. Non-residential development on land abutting a residential zone should be designed to minimise noise impacts to achieve adequate levels of compatibility between existing and proposed uses.	Complies
7. Development that emits noise (other than music noise) should include noise attenuation measures that achieve the relevant <i>Environment Protection (Noise) Policy</i> criteria when assessed at the nearest existing noise sensitive premises.	No noise attenuation measures have been proposed
8. Development with the potential to emit significant noise (e.g. industry) should incorporate noise attenuation measures that prevent noise from causing unreasonable interference with the amenity of noise sensitive premises.	Not applicable
9. Outdoor areas (such as beer gardens or dining areas) associated with licensed premises should be designed or sited to minimise adverse noise impacts on adjacent existing or future noise sensitive development.	Not applicable

Principles of Development Control (Cont)		
10. Development proposing music should include noise attenuation measures that achieve the following desired noise levels: Noise level assessment location Adjacent existing <i>noise sensitive development</i> property boundary Adjacent <i>land</i> property boundary	Desired noise level Less than 8 dB above the level of background noise (L90,15min) in any octave band of the sound spectrum and Less than 5 dB(A) above the level of background noise (LA90,15min) for the overall (sum of all octave bands) A-weighted level Less than 65dB(Lin) at 63Hz and 70dB(Lin) in all other octave bands of the sound spectrum or Less than 8 dB above the level of background noise (L90,15min) in any octave band of the sound spectrum and 5 dB(A) overall (sum of all octave bands) A-weighted level	Not applicable

HOLDFAST BAY (CITY) DEVELOPMENT PLAN - ASSESSMENT

6. Summary of Assessment

Noise

The air condensing units are a vital component of the Foodland supermarket to function optimally and service the local community. Existing units were removed from the roof and were replaced by those that are proposed. The applicant has confirmed that the amount of units located on the roof after the upgrades have been completed will be less than previous. The replacement upgrade of the units are considered to be of benefit to the immediate locality as the modern units emit less noise in comparison to its predecessors. The decibel rating of each unit is shown in the figure below:

Name		Inside Ambient		
188 Main Road		Outside Ambient		
Blackwood S.A.		Condensing Temp		
5051		SubCool/SuperHt		
FIXTURES		Condensing Unit		
Sys	Load	SST	Make & Model	DB Rating LpA 3m @100% fan Speed
1A	Display Freezer- 10 doors New	-28.0	PPS 205LMA 1-2	61.5
1B	Display Freezer- 8 doors New	-28.0	PPS 178 LMA 1-2	61
3A	Produce case 18' (6'+12') New	-6	PPS152 LMA 1-2	61
4A	Meat Case 18' (6'+12')	-6.5	Patton Pack PZB650 (existing)	60
4B	Meat Case 18' (6'+12')	-6.5	Pollar Pack PPS149 LMA1-2	61
5A	Dairy Case 48' (12'+12'+12'+6') NEW	-3	ZXD050BE	41
6A	Deli Case 16' (8'+8') NEW	-5.5	Self Contained	
7A	Drinks Fridges 20' (8' + 12') New	-3	PPS039LMA1-4	70
8A	Meat Coolroom	-5.0	ZX 030BE-TFD	40

Figure 1: Decibel rating of air condensing units

It is difficult to find data on the decibel ratings of the old units as some of them are 30 to 35 years old. In the case of the current condensing unit of the meat room it is an open drive belt driven unit that is emitting loud clanking sound. The new units are packaged type meaning the compressor and rest of the components are enclosed in a weather proof casing that also reduces sound emitting, contrary to the existing units that are mainly open base units with metal shade cover over them. The condensing units are fitted with variable speed fans that slow down as the load on the system decreases, this means at night when the ambient temperature decreases the fans will slow down reducing the sound emission even further.

The Environment Protection Authority (EPA) has not produced any information regarding suitable noise emissions for commercial plant equipment. It does however provide insight on to what decibel levels are considered to be appropriate from domestic plant equipment as shown below.

The operation of a fixed domestic machine results in noise with an adverse impact on amenity if it generates noise greater than 45 dB(A) between 10 pm and 7 am the next day, or greater than 52 dB(A) between 7 am to 10 pm when measured at the receivers premises in accordance with the requirements of the Noise Policy.

When referencing the figures of the EPA guidelines and the relative decibel emissions shown in figure 1 of the proposed plant equipment, it is not conclusive as to whether noise emissions will be of nuisance. While some of the units are erected not all that are proposed have been installed. As this is the case the Council is not able to conduct a decibel measurement of units in their current form.

The decibel ratings shown in figure 1 are measured from the source of the unit and not from the receivers premise. It is noted that there is adequate separation of 12m from the location of the units to the zone boundary to the south and 20m to the dwelling wall. Taking into account the separation, the decibel levels are anticipated to be significantly reduced at the receivers premise. Furthermore, during sensitive hours of the night the decibel levels of the units will drop as they are fitted with variable speed fans that slow down as the load on the system decreases when temperatures are cooler.

Loss of Views

In assessing the importance of views guidance can be taken from the ERD Court judgement *HUTCHENS & ANOR v CITY OF HOLDFAST BAY & ANOR* [\[2007\] SASC 238](#). This case was for an Esplanade Development of three storeys at Seacliff where consent was issued and an appeal was lodged by the rear adjoining neighbours. I have underlined parts of the case which is relevant to the current proposal.

“As they (the dwellings of the appellant) look directly west between the Seacliff Hotel and the three storey residential flat building to the north of the proposed development, the appellants enjoy a view of the coast. They have a clear view of the sea and the horizon. The view is available from the upper level at the front of their dwellings. It is a notorious fact that coastal and sea views are highly regarded and are in keen demand. The proposed development will affect the view that the appellants now enjoy. If the proposed building is erected, they will have nothing but the barest glimpse of the sea and the horizon on either side of the proposed building. Instead of a pleasant view, they will look directly at the rear walls and roof of the proposed building. To all intents and purposes, they will lose their view to the west. It will be an extreme loss of the view they currently enjoy.”

The proposed development complies with the Development Plan in that the Plan states that three storey residential accommodation is appropriate in this zone. However, it is appropriate only if it also complies with relevant principles of development control. Notwithstanding that the proposed building is of a height which may be permitted in an appropriate part of the Residential D Zone and notwithstanding the fact that in other respects it complies with the Development Plan, the proposal effectively obliterates the appellants’ view. It does not, therefore, comply with all relevant principles of development control. It offends the principles relating to views to such an extent that development consent must be refused.

In addition, it does not preserve the existing land form contrary to Principle 19. Conformity with Principle 19 can be effected by reducing the height of the proposed building to two storeys. That will give the appearance of buildings being stepped down the slope. The existing buildings on either side of the proposal are likely to remain for the foreseeable future. The height of the roof of the three storey flats is to all intents and purposes the same as the height of the roof of the Seacliff Hotel. The height of the roof of the proposal is noticeably higher than both. The proposal is such a complete obliteration of the views enjoyed by the appellants and so adversely affects their amenity that it is entirely inconsistent with those provisions of the Development Plan which protect views. No one has a

monopoly upon views. At the same time, that does not entitle the proponents of a new building to obstruct the views currently enjoyed by others especially where, as here, it is possible to construct a new building at a level which will permit those behind to continue to enjoy the views at present available to them. Development consent should not, therefore, be permitted.

For these reasons, the appeal will be allowed. The decision of the Environment Court will be set aside. There will also be an order setting aside the decision of the Council made on the 16 August 2005 granting development consent and in lieu thereof there will be an order refusing development consent."

It is stated in the *Hutchens* case that the appellants contained a "clear view of the sea and the horizon" as the appellants dwelling was located directly behind buildings that fronted the Esplanade. Without making reference to photos of the roof before the erection of the new condensing units it can be argued that the views from the representors land are not "obliterated" and nor an "extreme loss of views". The submitted photos from the representors window show that extended views of the coast to the north and north-west are still visible.

7. 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.

8. 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 110/00821/19 subject to the following conditions:**

PLANNING CONDITIONS

- 1. That the design and siting of the air condensing units shall be as shown on the plans submitted to and approved by Council unless varied by any subsequent conditions imposed herein.**