

DEVELOPMENT NO.:	21036964
APPLICANT:	George Moore
ADDRESS:	7 HIGH ST SOUTH BRIGHTON SA 5048
NATURE OF DEVELOPMENT:	Retrospective retaining wall up to 1.15 metres in height with 1.8 metre high fence on top along the side and rear boundaries
ZONING INFORMATION:	Zones: <ul style="list-style-type: none"> • General Neighbourhood Overlays: <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Affordable Housing • Hazards (Flooding - General) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Traffic Generating Development • Urban Tree Canopy
LODGEMENT DATE:	16 Nov 2021
RELEVANT AUTHORITY:	Assessment panel
PLANNING & DESIGN CODE VERSION:	4 November 2022
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Dean Spasic Development Officer - Planning

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APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 3:	Representations
ATTACHMENT 1:	Locality Map	ATTACHMENT 4:	Response to Representations
ATTACHMENT 2:	Proposed Plans		

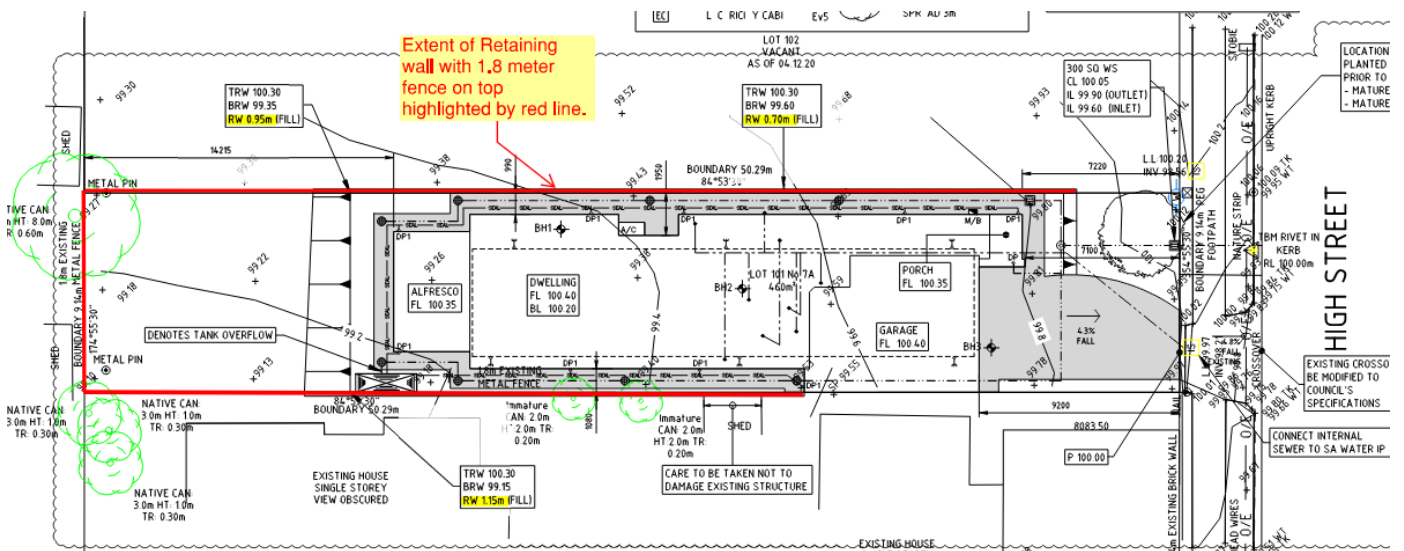
DETAILED DESCRIPTION OF PROPOSAL:

The proposal comprises the construction of a retaining wall along the side and rear boundaries, with the height varying between 700 and 1150mm. The highest point is along the northern side boundary. A 1800mm high fence is sought to be established on top of the retaining wall to facilitate security and visual privacy.



BACKGROUND:

Development Application 21009603 for the construction of a two storey detached dwelling was approved in 2021. This proposal comprised the build-up of land in order to accommodate gravity-feed stormwater flow from the rear of the site to the street. The site slopes downwards over a height of 1 metre toward the rear boundary, between the front and rear boundaries.



SUBJECT LAND & LOCALITY:

Site Description:

Location reference: 7 HIGH ST SOUTH BRIGHTON SA 5048

Title ref.: CT 6243/616 Plan Parcel: D124798 AL101 Council: CITY OF HOLDFAST BAY

The site was recently subject to a torrens title land division creating two allotments from one allotment. The subject site relates to the northern-most allotment, which has dimensions of 50.29 metres x 9.14 metres, thus a site area of 459 square metres.

Locality

The locality comprises a predominance of detached dwellings, as well as some semi-detached dwellings, residential flat buildings and group dwellings. There is a reasonable amount of infill development, which appears to have occurred over the last few decades. The topography of the land in this locality is best described as having varying elevations, with the original site having a 1 metre fall toward the rear boundary prior to the site being filled to accommodate the new dwelling.



Green fill identifies subject site

Red outline identifies representors property

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:** Fences and walls
Fence: Code Assessed - Performance Assessed
Retaining wall: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
Length along boundary exceeds 11.5 metres

- **LIST OF REPRESENTATIONS**

Senem Sensan of Unit 3, 5 High Street, South Brighton

- **SUMMARY**

- Fence has been built and is not stable (*not a planning consideration*);
- Fence overshadows our property;
- Request for Council to review the approval for the dwelling (*Council does not have the legislative authority to review or rescind a previous approval*);
- Height of fencing on top of retaining wall should be reduced



Applicant's Reply to representation

- The height of the retaining wall is reflective of the approved site levels, which are required to be retained;
- For security and privacy, the 1800mm high fencing is sought;
- The concern relating to overshadowing is disputed by the Applicant based on photographs from realestate.com.au which demonstrate the floor plan and living room photos of Unit 3:
 - The front lounge has a west facing window;
 - The dining room is part of an open-plan layout, connected to the lounge room, therefore receives light from the lounge room;
 - One bedroom has a south facing window adjacent to the retaining wall and fence;
 - Critically, the subject site is orientated south of 5 High Street, therefore overshadowing is not possible.

PLANNING ASSESSMENT

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

Solar Access

The retaining wall and fence has a height up to 2.95 metres in height along the northern side boundary (adjacent to Unit 3, 5 High Street). Given the structure is on the northern side boundary, and south of the neighbouring property, it cannot physically overshadow the neighbouring property due to the orientation of the sun, although it can contribute to the loss of light.

The retaining wall and fence is up to 2.75 metres in height along the southern side boundary, however this is adjacent to a vacant site, which will be subject to the construction of a new dwelling, whereby it is likely that similar site levels will be adopted, hence overshadowing impacts would be negligible.

Visual Amenity

Performance Outcome 9.1 seeks to ensure that fences and retaining walls are of a sufficient height to maintain privacy and security without unreasonably impacting visual amenity and adjoining land's access to sunlight. The proposed structure is sought to be constructed with the fine balance of retaining approved land levels in association with a previous dwelling application, security and privacy (1800mm high fence), and will not compromise solar access by way of its orientation to the south of the Representor's property.

Given the height being 2.95 metres, there will no doubt be some visual impact, however the reality is that the dining room and bedroom windows are located some 1 to 2 metres from the side boundary, whereby the previous outlook was a fence, with perhaps some view of the sky above. The new retaining wall and fence, albeit taller, is effectively the same outlook, in that it comprises a fence structure. The reduction in visual amenity can be mitigated by plantings, to achieve a green wall along the new fence line.



CONCLUSION

The proposed retaining wall and fence is a retrospective proposal, primarily aimed at retaining the land build up associated with the new dwelling, in order to achieve the desired gravity fed stormwater. The dwelling and fill is approved and cannot be revisited, and critically, a retaining wall is required to retain the fill. The applicant has opted to install a 1800mm high fence for the purpose of security and privacy, leaving the visual impact as the only detrimental impact on the adjacent property. When considering the visual impact, it is reasonable to accept that the outlook to a side boundary fence of any height does not project a high level of visual amenity, and further, that impact can be mitigated by way of plantings or otherwise.

RECOMMENDATION

It is recommended that the Council Assessment Panel/SCAP 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 21036964, by George Moore 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.

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: 02/03/2022