

<b>APPLICANT:</b>	Mr John and Elisha Tsoutsikos
<b>ADDRESS:</b>	53 MARINE PDE SEACLIFF SA 5049
<b>NATURE OF DEVELOPMENT:</b>	<b>Appeal Report</b> Variation to Application ID 23037611 for the construction of a pair of two level detached dwellings, fences and retaining walls comprising the addition of a third level to both detached dwellings
<b>ZONING INFORMATION:</b>	<p><b>Zones:</b></p> <ul style="list-style-type: none"> <li>• Established 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>• Character Area</li> <li>• Local Heritage Place</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>• Minimum Frontage (Minimum frontage for a detached dwelling is 12m; semi-detached dwelling is 12m; row dwelling is 12m; group dwelling is 12m; residential flat building is 12m)</li> <li>• Minimum Site Area (Minimum site area for a detached dwelling is 450 sqm; semi-detached dwelling is 400 sqm; row dwelling is 350 sqm; group dwelling is 350 sqm; residential flat building is 350 sqm)</li> <li>• Maximum Building Height (Levels) (Maximum building height is 1 level)</li> </ul>
<b>LODGEMENT DATE:</b>	14 Oct 2024
<b>RELEVANT AUTHORITY:</b>	Assessment Panel at City of Holdfast Bay
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	P&D Code (in effect) Version 2024.18 10/10/2024
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Dean Spasic Development Officer - Planning

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## BACKGROUND:

A variation application comprising the construction of a third level to application ID 23037611 for the construction of a pair of two level detached dwellings, fences and retaining walls was considered by the CAP on the 26 February 2025 and refused for the following reasons:

1. Does not contribute to the predominant character of the neighbourhood nor complement the height of the nearby dwellings PO 4.1 ENZ;
2. Does not have the consideration to the values expressed in the character area statement PO 1.1 CO and does not consider, in particular, architectural style, scale and building height HOB1;
3. Does not sufficiently satisfy PO 8.1 ENZ side boundary setbacks. Does not complement the established character;
4. Does not sufficiently meet the prevailing wall heights in character overlay PO 2.1 and 2.2. The proposal is still higher than adjoining dwellings.

Following the refusal, the applicant lodged an appeal through the Environment, Resources and Development Court (ERD-25-000025) in the matter of John Tsoutsikos and Elisha Tsoutsikos v. Assessment Panel at City of Holdfast Bay. The applicant opted to submit a compromise plan with the aim of addressing the reasons for refusal. Amended plans presented to the 23 April 2025 meeting were not supported by the Panel.

Following this, the applicant has opted to present a second compromise plan, including further amendments, with the aim of addressing the reasons for refusal.



**Compromise Plans:**

The compromise plans submitted include a detailed supporting statement from Town Planning Advisors and comprise:

**53 MARINE PARADE****General Changes**

- Top of parapet height reduced, resulting in overall decrease in building height;
- Retaining wall added in new side yard at basement level, all other retaining elements remain unchanged;
- Minor window changes (additions/deletions) throughout;
- 53 Marine Parade total height reduced from the initial refused height of 10.5 to 9.90 metres (600mm reduction);
- 53A Marine Parade total height reduced from the initial refused height of 10.5 metres to 9.6 metres (900mm reduction).

**Level 1**

- Overall reduction of building footprint;
- Removal of powder room;
- Theatre room converted to storage;
- Rear access provide from garage to upper levels.

**Level 2**

- The main staircase from level 1 now terminates at level 2;
- A new staircase at the rear now provides access from level 2 to the master bedroom at level 3;
- This modification reduces the bulk and scale of level 3 and improves the southern boundary setback;
- Alfresco area pushed to the southern boundary, feature stairs added to alfresco to increase rear boundary offset and create more useable lawn area.

**Level 3**

- Footprint shifted closer to the rear to visually reduce building height from the northern and southern elevations;
- Bedroom 2 removed;
- Northern boundary slightly decreased, overall footprint and massing reduced to increase both northern and southern setbacks;
- Building height reduced to sit below the 'red line' as shown in the streetscape elevation;
- Balcony deleted.



## 53A MARINE PARADE

### General Changes

- Top of parapet height reduced, resulting in overall decrease in building height;
- Retaining wall added in new side yard at basement level, all other retaining elements remain unchanged;
- Minor window changes (additions/deletions) throughout.

### Level 1

- Gym, bathroom, study and bedroom 4 removed;
- Rear layout reconfigured to include storage, wine room and mudroom;
- No additional windows; this level remains non habitable;
- Ceiling height reduced to 2.7 metres, resulting in a 300mm height saving.

### Level 2

- Floorplate widened by 500mm at the rear only;
- Alfresco narrowed to accommodate bedroom 4 on level 3;
- Ceiling height reduced to 2.7 metres.

### Level 3

- Overall footprint reduced;
- Balcony removed.

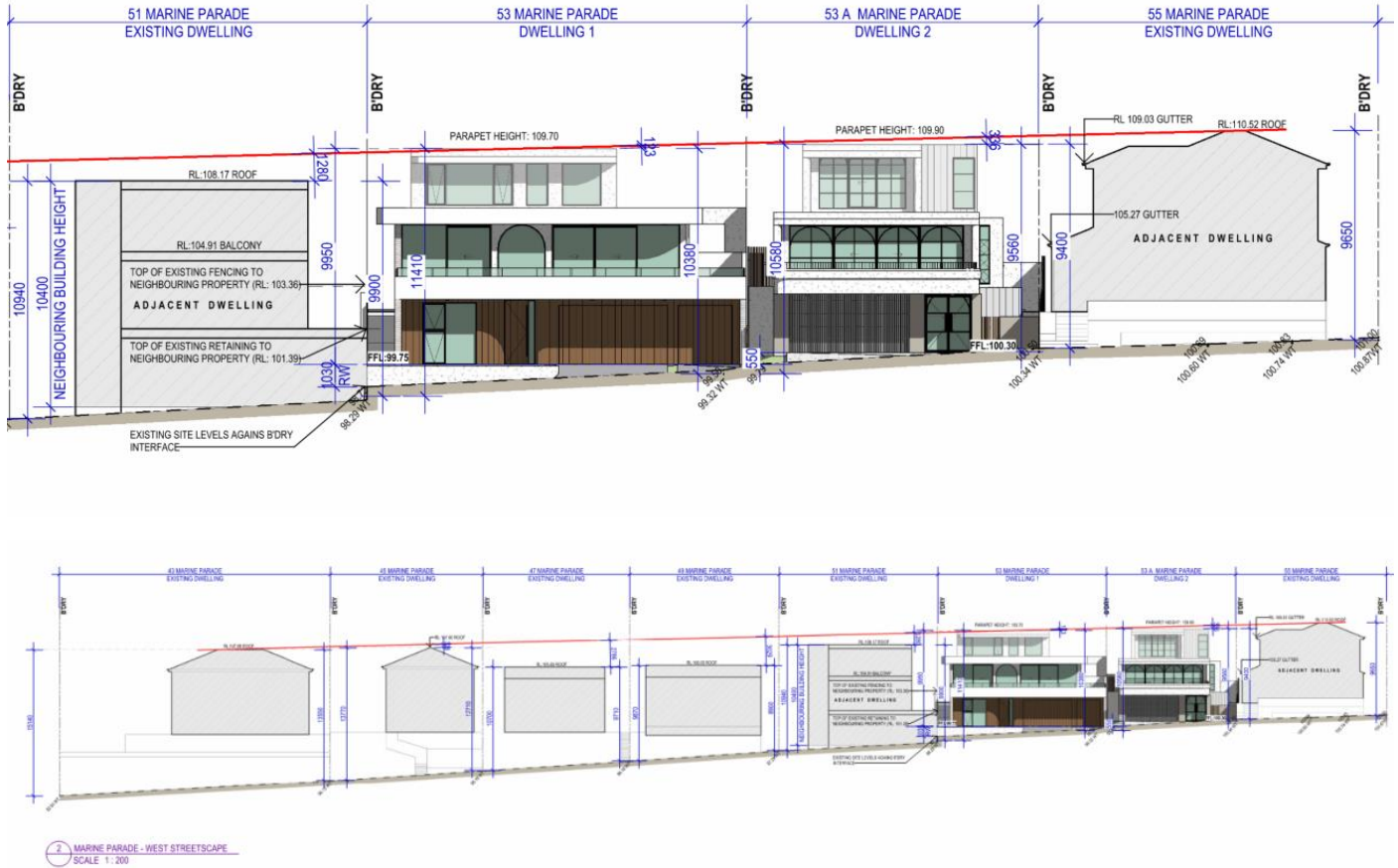




### INITIAL REFUSED PLANS



## CURRENT COMPROMISE



## PLANNING ASSESSMENT

### Reason for Refusal 1

Does not contribute to the predominant character of the neighbourhood nor complement the height of the nearby dwellings PO 4.1 ENZ

*The compromise plans do not change the built form character, other than reducing the height and scale. However, in the context of the existing built form at the edge of the Character Area Overlay, and with the reduced height now proposed, they are considered to be acceptably contribute to the predominant character of the neighbourhood and complement the height of the nearby dwellings. The further reduction in overall building heights and reduced third level result in the approved lower building levels visually obstructing the amended third level.*

### Reason for Refusal 2

Does not have the consideration to the values expressed in the character area statement PO 1.1 CO and does not consider, in particular, architectural style, scale and building height HOBC1

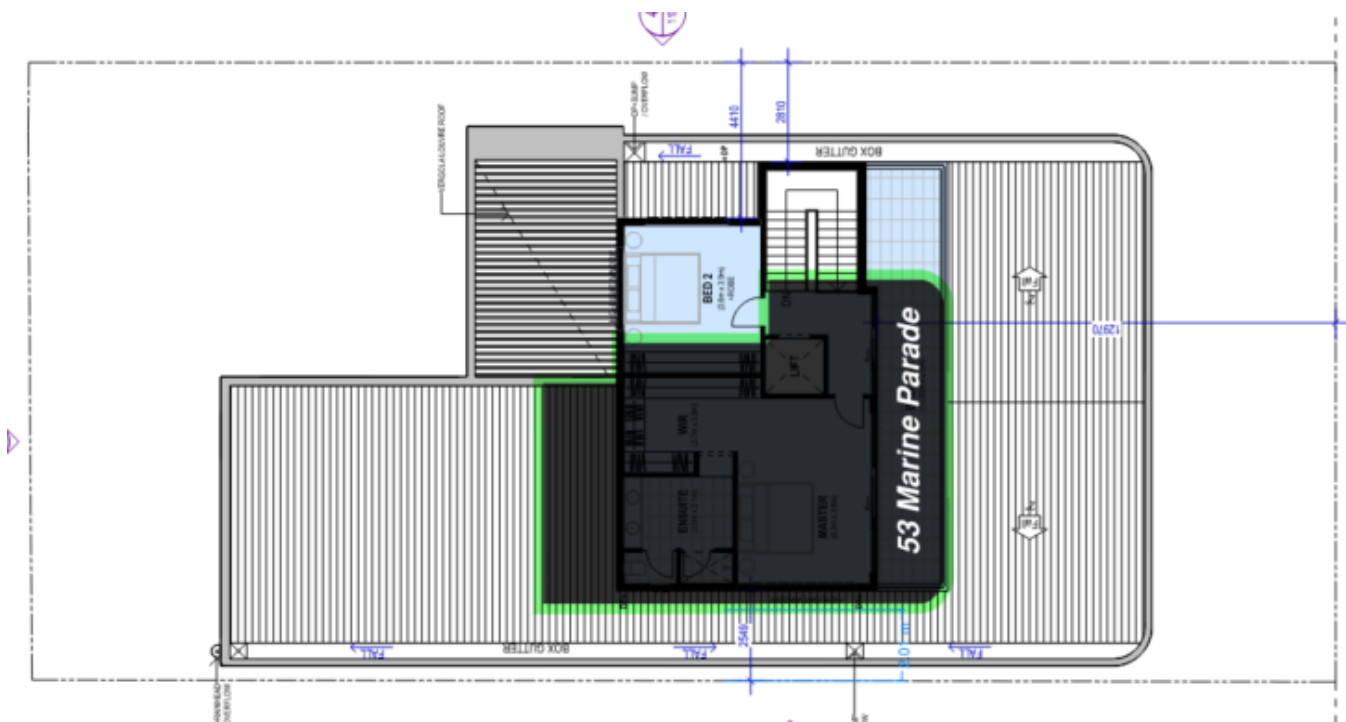
*The compromise plans do not change the architectural style in relation to the Character Area Statement. However, the reduction in overall building height does consider the building scale and height.*

### Reason for Refusal 3

Does not sufficiently satisfy PO 8.1 ENZ side boundary setbacks. Does not complement the established character.

53 Marine Parade has increased side boundary setbacks at the 3rd level, from 2.8 to 4.4 metres to 6 to 8.9 metres.

This is considered to reflect a positive improvement in further reducing the visibility of the 3rd level. As per the illustration below, the black envelope with green border highlights the new 3rd level envelope above the refused envelope, which is substantially closer to the southern side boundary. Bedroom 2, the stair case and part of the front balcony have been deleted:



There is no change to side boundary setbacks proposed for 53A Marine Parade. However, these side setbacks are considered to satisfy ENZ PO 8.1 with sufficient separation between buildings in a way that complements the established character of the locality and provides access to natural light and ventilation for neighbours.

On balance, the upper level setbacks at the 2nd and 3rd levels are considered to be sufficiently setback from the southern side boundaries so as to reasonably address overshadowing onto the southern adjacent property, which as expressed in the original report, contains 1 habitable room window, which in itself is setback from the side boundary, with the remaining windows being heavily obstructed by trellis and trees. There is sufficient sunlight access to the southern adjacent property between 9am and 12pm during the winter solstice.

### Reason for Refusal 4

Does not sufficient meet the prevailing wall heights in character overlay PO 2.1 and 2.2.

*The compromise plans do not physically match the prevailing wall heights in the Character Area Overlay, however the third level is not particularly visible from most relevant vantage points. It is noted that the compromise now results in a building height that is the reasonably the same or lower than adjoining dwellings. From a visual perspective at pedestrian level, the highest point of the proposed building will be difficult to view from most streetscape vantage points.*



## CONCLUSION

Although the general architectural form has not altered significantly from the original and previous plans that were refused, the reduction in building height of some 600 to 900mm, and the reduced third levels, are considered to sufficiently address the concerns of the Panel, which in effect were the visual impacts of 3 level dwellings on the streetscape.

A decrease in building height of 600 to 900mm is considered to reflect a meaningful change to address the concerns, as this height reduction impacts the actual appearance of the proposed building from key vantage points.

When considering actual site lines from various vantage points around the proposed buildings, it is determined that the second level walling generally obstructs views to the third levels. This is a result of the third levels being stepped in further from the second level building envelopes.



## RECOMMENDATION

It is recommended that the Council Assessment Panel advise the Environment, Resources and Development Court in the matter of Case Number ERD 25-000025 John Tsoutsikos and Elisha Tsoutsikos v. Assessment Panel at the City of Holdfast Bay, that it supports Application ID 24034779 as amended, subject to the conditions below:



**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. All previous stamped plans and documentation, including conditions previously granted approval for Development Application ID No. 23037611 are still applicable, except where varied by this application and conditions.

**OFFICER MAKING RECOMMENDATION**

**Name:** Dean Spasic

**Title:** Development Officer - Planning

**Date:** 14/07/2025