

DEVELOPMENT NO.:	24009724
APPLICANT:	Alan Cooper
ADDRESS:	43A MARLBOROUGH ST BRIGHTON SA 5048
NATURE OF DEVELOPMENT:	Variation to DA: 21039035 - vary condition 5 to reduce height of balcony screening to southern and western elevations
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • General Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Affordable Housing • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy
VARIATION LODGEMENT DATE:	6 Dec 2023
RELEVANT AUTHORITY:	Council Assessment Panel
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Dean Spasic Development Officer - Planning

CONTENTS:

ATTACHMENT 1.0 RELEVANT P&D CODE POLICIES	ATTACHMENT B – VARIATION PLANS
ATTACHMENT A – APPLICANTS PLANNING REPORT	ATTACHMENT C – ERD COURT DECISION NOTIFICATION FORM AND STAMPED PLANS FOR EXISTING PLANNING CONSENT ASSOCIATED WITH DA 21039035

Background

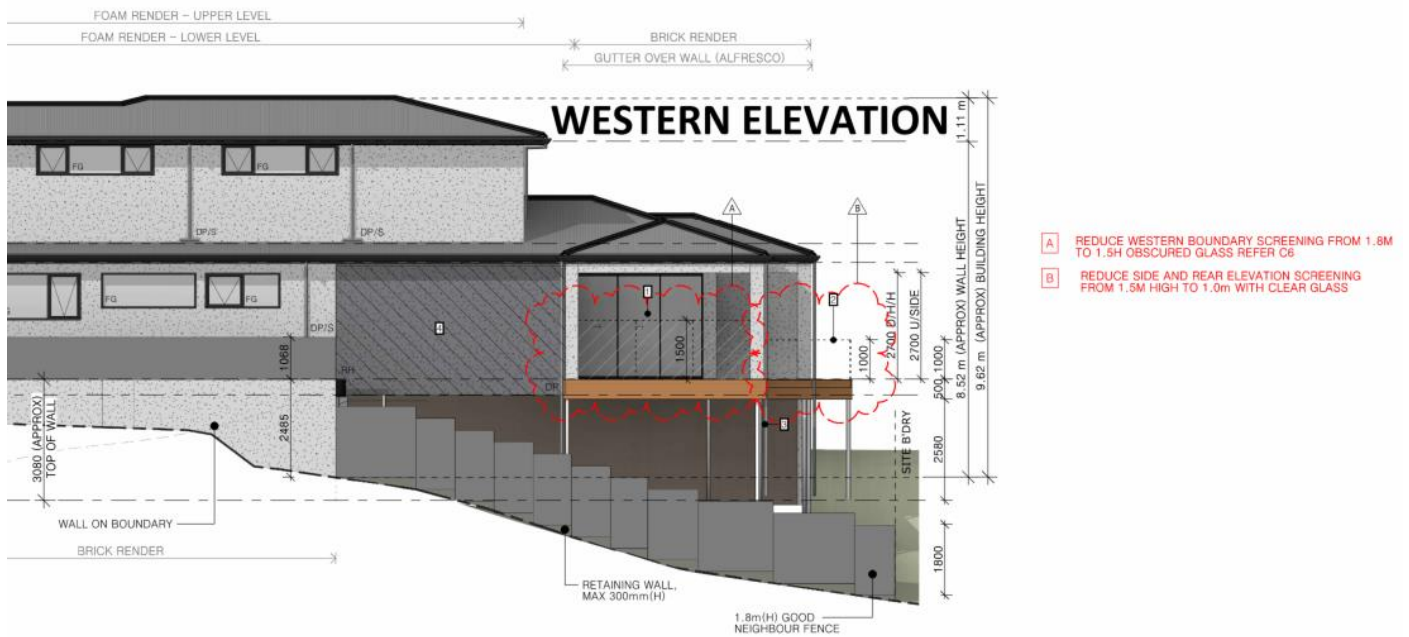
Development application 21039035 was originally refused by the CAP on the 24 August 2022, however following an appeal process and compromise plans received, the ERD Court resolved to grant planning consent on the 6 October 2022.

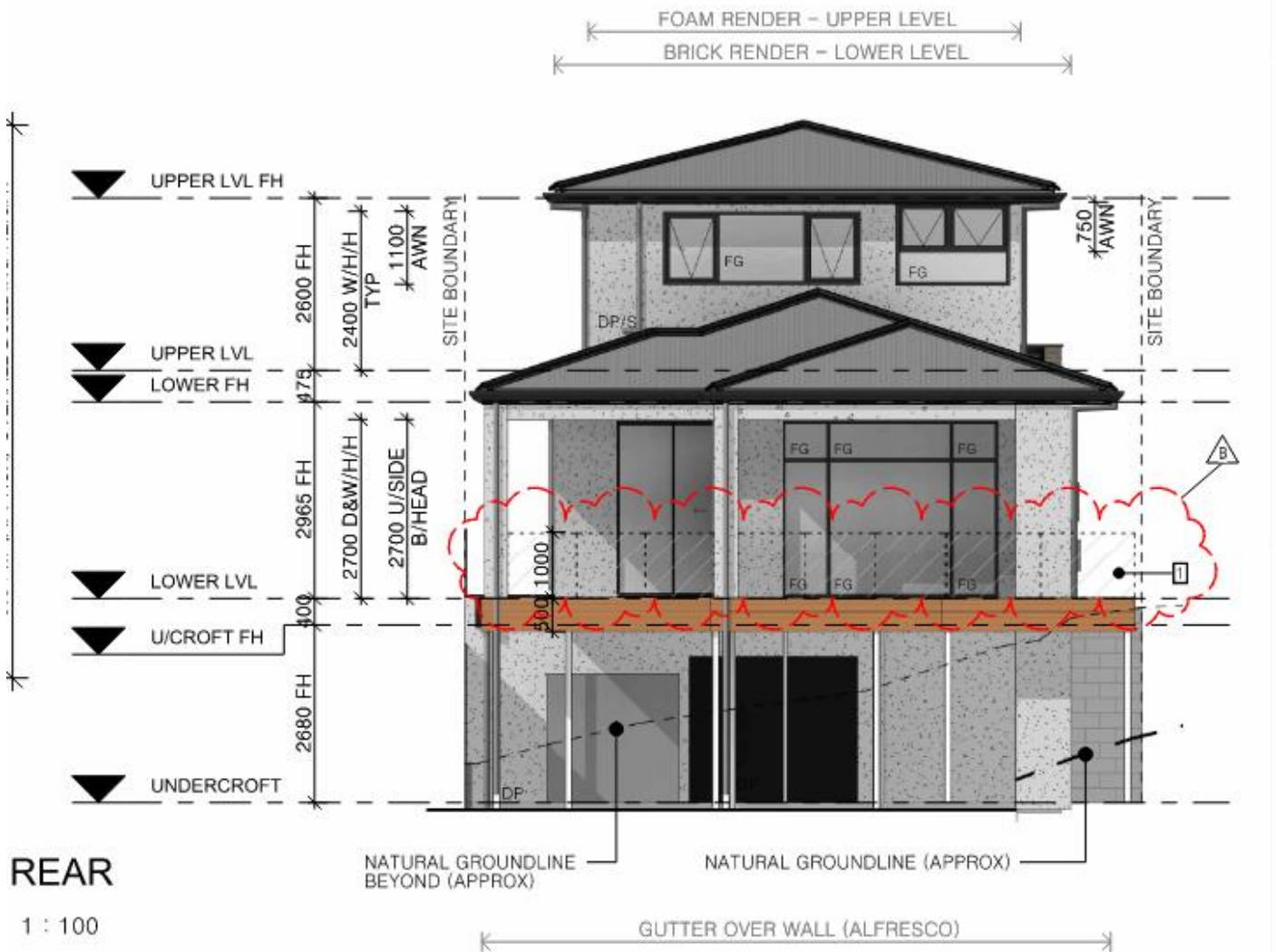
The building is currently under construction and the applicant has submitted a variation application with respect to the height and design of screening to the rear balcony.

Proposed Variation

The proposed changes to the balcony screen includes:

- The southern rear balcony elevation to comprise clear glass balustrade up to a height of 1.0 metre in lieu of the approved screen height of 1.5 metres; and
- The western side balcony to comprise fixed obscure glass up to a minimum height of 1.5 metres in lieu of the approved screen height of 1.8 metres.



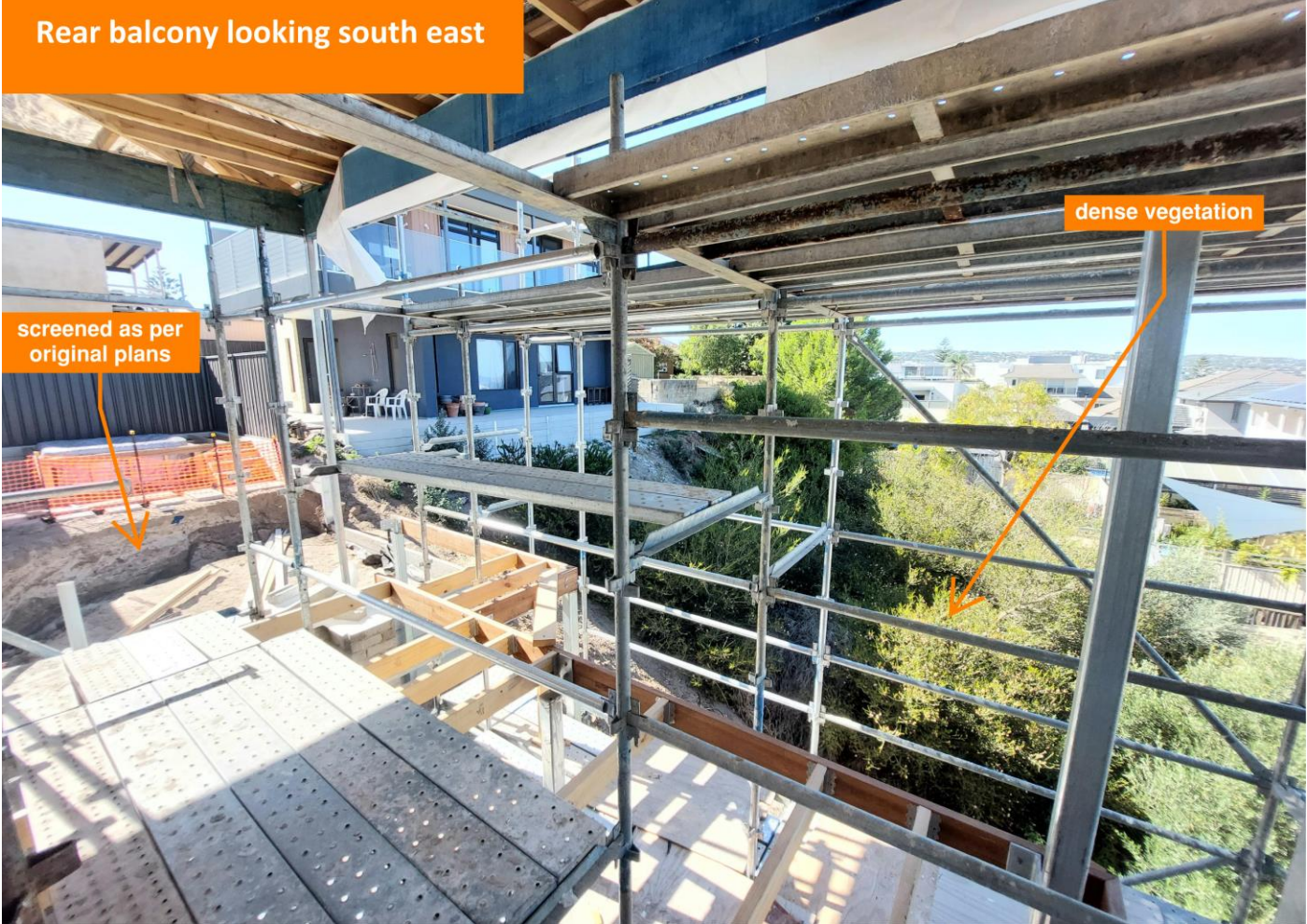


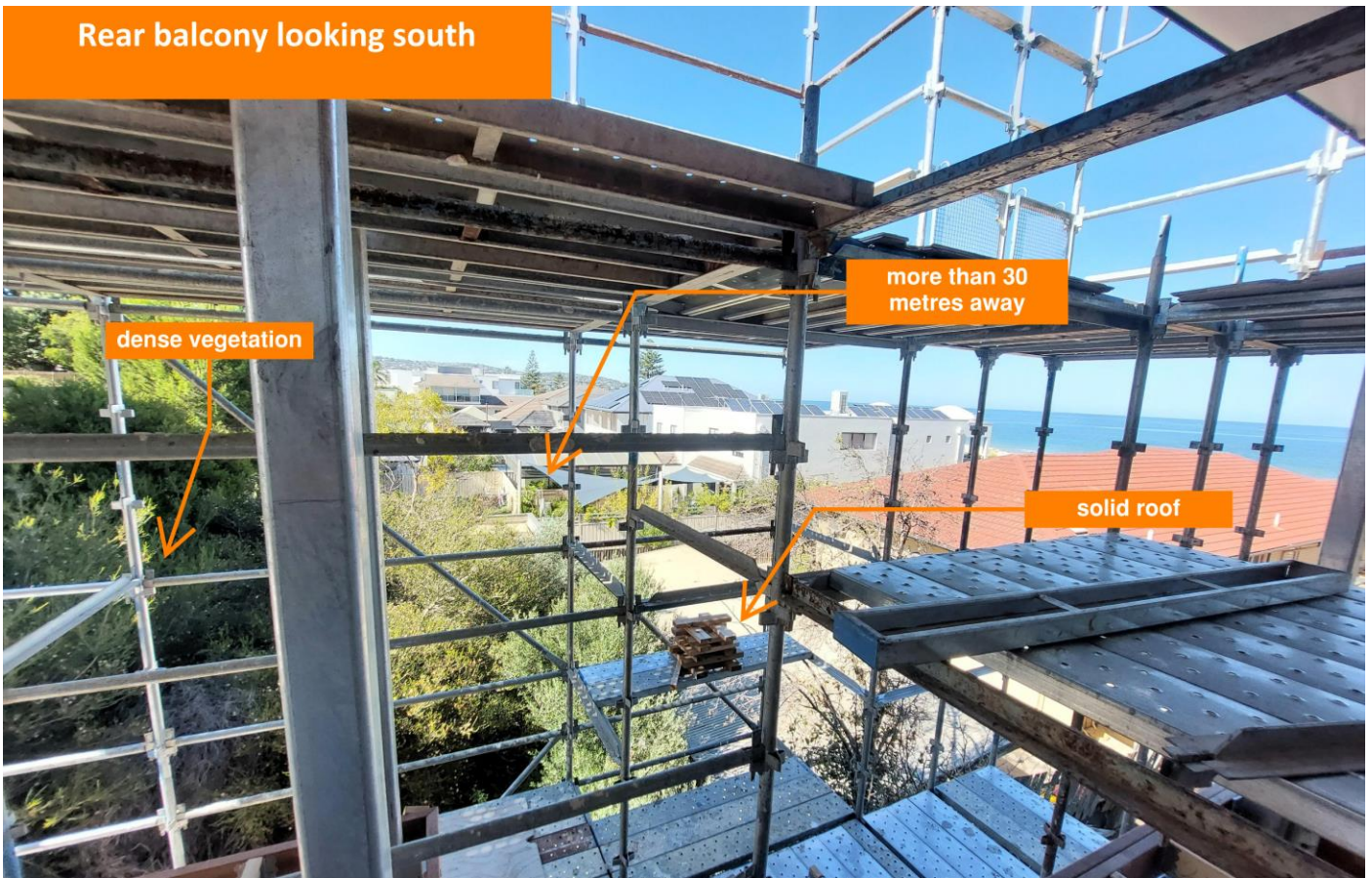
Assessment of Variation

Visual Privacy

The reduction in balcony screen height to the southern and western balcony elevations is sought to achieve a greater outlook to the sea, whilst balancing the existing built form, environmental and topographic character, which is defined by larger multi storey homes, dense vegetation and sloping land.

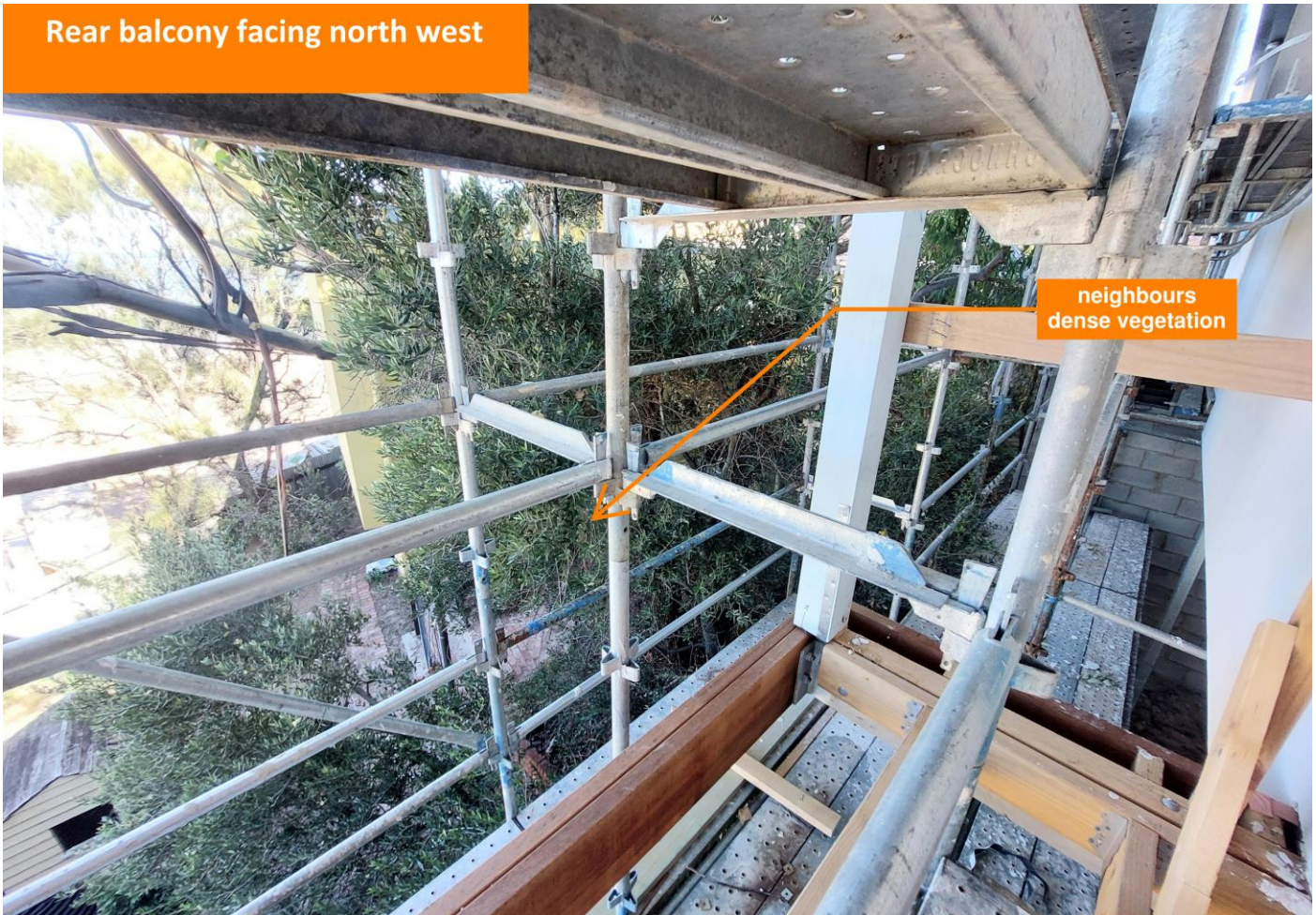
The southern elevation looks out toward mature and dense vegetation in the yard of 41 Marlborough Street. This vegetation is situated on heavily sloping land. The view beyond this is the sea.





The western elevation looks out toward the roof tops, rear yard and the sea beyond.





DESIGN CODE

DESIGN IN URBAN AREAS

OVERLOOKING / VISUAL PRIVACY (low rise buildings)

Performance Outcome 10.2:

Development mitigates *direct overlooking* from balconies to habitable room windows and private open space of adjoining residential uses in neighbourhood type zones.

Direct overlooking is defined by the Code as –

In relation to direct overlooking from a deck, balcony or terrace, is limited to an area that falls within a horizontal distance of 15 metres measured from any point of the overlooking deck, balcony or terrace.

The rear balcony has a line of sight toward neighbouring private open space areas that is within 15 metres, however the nature of the spaces visible from the balcony mostly reflect dense vegetation, roof tops and car parking spaces.

The diagram below references the 15 metre mark associated with the definition of *direct overlooking* as sourced from the Design Code, in relation to the proposed balcony and neighbouring properties.

As you can see, the line of sight within 15 metres of the balcony is within the dense vegetation at the rear of 41 Marlborough Street and carport roof of the residential flat building at 164 Esplanade.

The line of sight continues into 45 Marlborough Street, however the proposal includes 1.5 metre high screening along the western elevation of the balcony in order to mitigate overlooking.



Southern section of rear balcony

When standing on the southern section of the balcony, the prominent view within the span of 15 metres is the dense vegetation which sits on the heavily sloped private open space associated with 41 Marlborough Street. As you look toward south-west, the view is over the carport and blank rear wall of the residential flat building at 164 Esplanade. Given the nature of the actual view looking south and south westerly, it is considered that an absence of screening is reasonable, as the actual view within 15 metres does not include any typically usable private open space areas.



Western elevation of rear balcony

When standing on the western section of the balcony, the prominent view is into the rear yard of 45 Marlborough Street, which is partially covered by dense vegetation. Although there is a view into the neighbours rear yard, this is proposed to be obstructed with a 1.5 metre high fixed obscure glass screen, which is consistent with the height of screening typically established for upper level windows.



Designated Performance Feature (DPF) 10.2 (which cannot be used as a means for refusing a development application, as is a design guideline, not a Performance Outcome), references a minimum screen height of 1.7 metres for balconies, where the balcony is positioned less than 15 metres from an adjacent habitable room window:

DPF 10.2:

One of the following is satisfied:

- (b) all side of balconies or terraces on upper building levels are permanently obscured by screening with a maximum 25% transparency / openings to a minimum height of:
 - a. 1.5m above finished floor level where the balcony is located at least 15 metres from the nearest habitable room window of a dwelling on adjacent land or;
 - b. 1.7 meters above the finished floor level in all other cases.

The western side of the balcony is less than 15 metres from the nearest habitable room window, however the windows associated with 45 Marlborough Street are heavily obscured by dense vegetation, hence the proposed screen height of 1.5 metres is considered satisfactory in that it is considered to satisfy Performance Outcome 10.2 by way of appropriately mitigating direct overlooking from balconies to habitable rooms and private open space of adjoining properties.

This further demonstrates that the proposal therefore satisfies Performance Outcome 10.2.



It is also reasonable to note that in the case of an upstairs window, the relevant DPF 10.1 references a minimum obscured height of 1.5 metres irrespective of the distance between the upper level window and habitable room window of private open space of the neighbouring property, hence the proposed 1.5 metre high screen is consistent with any appropriate upper level window for the purpose of achieving visual privacy recognised by the Design Code.

CONCLUSION

The proposed amendments to the rear balcony are reflective of now having an accurate perspective of the nature and extent of overlooking from the now constructed balcony. It is evident when looking south and south-easterly, that the dense vegetation associated with 41 Marlborough Street heavily obstructs views into usable private open space areas. There are no habitable room windows or usable private open space areas within 15 metres of the southern elevation of the rear balcony. For this reason, the removal of screening on the southern elevation of the rear balcony is considered reasonable as it satisfies Performance Outcome 10.2 in sufficiently mitigating direct overlooking into neighbouring private open space areas or habitable room windows.

It is critical to note that the photos which reference the westerly and north-westerly views depict the current view, without screening. Once a 1.5 metre high screen is established, the downward view into the private open space of 45 Marlborough Street would be heavily obstructed, and consistent with the level of screening required by upstairs windows.

RECOMMENDATION

It is recommended that the Council Assessment supports the variation to Application ID 24009724, as amended, subject to the following conditions:

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); and
2. The rear balcony shall be constructed in accordance with plans prepared by Finesse Built, Job No FB156, Eng No 210936 which comprises a 1-metre-high clear glass balustrade along the southern rear balcony elevation and a 1.5 metre high obscure glass screens on the eastern and western elevations of the rear balcony.

OFFICER MAKING RECOMMENDATION

Name: Dean Spasic

Title: Development Officer - Planning

Date: 08/04/2024