

TO: **COUNCIL ASSESSMENT PANEL**  
 DATE: **28 APRIL 2021**  
 SUBJECT: **COUNCIL ASSESSMENT REPORT**  
 AUTHOR: **DEAN SPASIC**  
**DEVELOPMENT OFFICER PLANNING**

ATTACHMENTS: **1. LOCALITY PLAN**  
**2. PROPOSED PLANS**  
**3. STATEMENTS OF REPRESENTATIONS**  
**4. APPLICANT'S REPLY TO STATEMENTS OF REPRESENTATION**

HEARING OF REPRESENTORS: **JAMES AND DIANNE ROENNFELDT OF 35 MARLBOROUGH STREET, BRIGHTON**  
**CAMERON BAILEY OF 37 MARLBOROUGH STREET, BRIGHTON**  
**NGAIRE NAFFINE OF 7 SEAVIEW TERRACE, BRIGHTON**

HEARING OF APPLICANT: **BEN GREEN AND ASSOCIATES ON BEHALF OF HAYDEN AND DIMI DOAK**

---

DA NO.	:	<u>110/00587/20</u>
APPLICANT	:	<u>HAYDEN AND DIMI DOAK</u>
LOCATION	:	<u>5 SEAVIEW TERRACE, BRIGHTON</u>
DEVELOPMENT PLAN	:	<u>CONSOLIDATED 2 JUNE 2016</u>
ZONE AND POLICY AREA	:	<u>RESIDENTIAL ZONE</u>
NATURE OF DEVELOPMENT:		<u>MERIT</u>
PROPOSAL	:	<u>TWO STOREY DETACHED DWELLING WITH ASSOCIATED GARAGE ADJOINING SOUTHERN BOUNDARY AND SWIMMING POOL, VERANDAH AT REAR AND RETAINING WALLS UP TO 1 METRE IN HEIGHT</u>
EXISTING USE	:	<u>RESIDENTIAL</u>
CATEGORY	:	<u>TWO</u>
REPRESENTATIONS	:	<u>THREE</u>
RECOMMENDATION	:	<u>DEVELOPMENT PLAN CONSENT SUBJECT TO CONDITIONS</u>

## 1. Background

The proposed development was lodged in August 2020 and originally comprised the construction of a 1.5 metre high retaining wall on the side and rear boundaries in order to accommodate the fill of the rear portion of the land. The topography is such that the front of the site is 1.7 metres higher than the rear of the site, hence that applicant sought to achieve a flat level across the entire site.

The initial design was assigned as a category 3 development for public notification purposes (as retaining walls greater than 1 metre in height cannot be deemed minor). Following receipt of objections from neighbours and confirmation from Planning Administration that the proposed retaining could not be supported, the applicant submitted amended plans comprising up to 1 metre in height, hence demonstrating an attempt to address the topography of the land in a way that resulted in less impact in terms of earthworks, retaining and building mass. As a consequence of the reduction in retaining, the application was assigned as a category 2 development for public notification purposes, as per the Residential Zone Procedural Matters.

## **2. Site and Locality**

The subject site is located in the Residential Zone, to which the immediate locality contains a predominance of older original housing stock and infill development of single and two storeys.

## **3. Proposed Development**

The proposal comprises the construction of a two storey detached dwelling with associated garage located on the southern side boundary, a swimming pool, pavilion (verandah) and retaining up to 1 metre in height along the side and rear boundaries due to the fill of land at the rear of the site.

## **4. Public Consultation**

The proposed development is a merit proposal, and assigned as a category 2 development for public notification purposes, as per the Procedural Matters for Development in the Residential Zone (wall on boundary exceeding 2.75 metres in height).

Three statements of representation were received, summarised as follows:

Cameron Bailey of 37 Marlborough Street, Brighton:

- *The balcony on the front elevation will overlook private open space of our property (across the street). The objection would be overcome by way of balcony screening up to 1.5 metres in height.*

Ngairé Naffine of 7 Seaview Terrace, Brighton:

- *Pool pump, air conditioning unit and water tank located opposite bedroom*

James and Dianne Roennfeldt of 35 Marlborough Street, Brighton:

- *Amended plans fail to address any of the concerns raised in the initial public notification process from December 2020, besides the reduction in the retaining wall from 1.5 to 1 metre;*
- *The proposed retaining wall and fence height is excessive and impacts our side and rear boundaries;*
- *The pool will sit above the existing natural ground level at the rear of the site, requiring excessive retaining and fencing;*
- *Excessive built form along boundary; and*
- *Visual impacts.*

Applicant's reply to statement of representations

- *Upper level balcony has a floor area of 8 square metres and has an oblique angle from the representor's private open space, therefore overlooking is not unreasonable. The balcony accommodates passive surveillance, as encouraged by the Development Plan;*
- *The swimming pool was lowered 500mm following an initial objection during the previous public consultation. The extent of earthworks and finished floor levels are consistent with the Development Plan;*
- *The height of the retaining wall was lowered following concerns raised during the previous public consultation. The retaining wall, located at the rear of a sloping site is considered to be appropriate and reasonable in the context of the site and locality; and*
- *Pool equipment will be enclosed with a commercial grade pool cover and appropriate soundproofing. The applicant is prepared to relocate the infrastructure from the southern boundary to the southern side of the dwelling if the Panel considers necessary. The applicant is also willing to accept a condition to this effect, together with a condition pertaining to noise output.*

## 5. Development Assessment

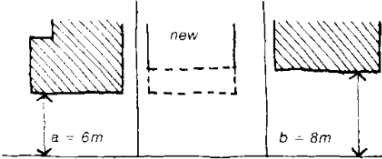
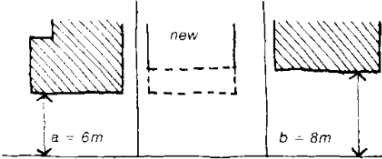
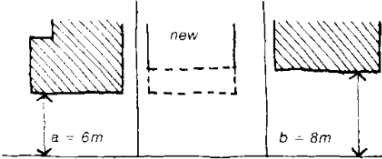
### HOLDFAST BAY (CITY) DEVELOPMENT PLAN ASSESSMENT TABLE

<b>Two storey dwelling</b>	<b>Development Plan</b>	<b>Proposed</b>	<b>Complies</b>
Site area	400 square metres	646 square metres	Existing
Site coverage	Max 50 percent	52%	No
Private open space	Min 20 percent	38 percent	Yes
Primary street setback	Average of neighbouring dwellings (6.4 metres)	4 metres to portico/balcony	No
Ground level side setback	Wall on boundary up to 3 metres in height over a maximum length of 8 metres  Where wall is not on a boundary, a wall height exceeding 3 metres and up to 6 metres above natural ground level should be setback 1.5 metres plus an additional 500mm for every metre in height above 4 metres	Wall on southern boundary between 3.1 and 3.3 metres above natural ground level  Northern elevation wall height between 3.8 to 4.8 metres in height above natural ground level setback as close as 1060mm from the northern side boundary	No  No
<b>Two storey dwelling</b>	<b>Development Plan</b>	<b>Proposed</b>	<b>Complies</b>
Upper level side setback	Where a wall height is up to 6 metres, a minimum setback of 2.5 metres  Where a wall height exceeds 6 metres, the 2.5 metres plus the additional wall height above 6 metres	Northern elevation wall height up to 6.1 metres above natural ground level setback between 2.5 and 3.5 metres from the northern side boundary	No
Ground level rear setback	4m	8.4m	Yes
Upper level rear setback	6m	11.7m	Yes

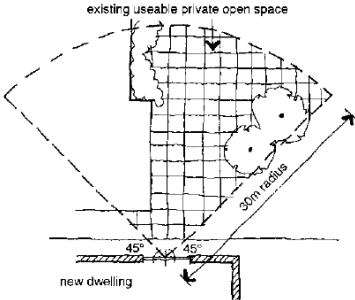
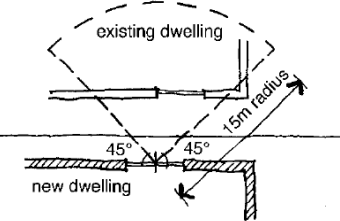
**CONSOLIDATED 2 JUNE 2016**

<b>GENERAL SECTION – DESIGN AND APPEARANCE</b>	
<b>OBJECTIVES</b>	<b>Assessment</b>
1 Development of a high design standard and appearance that responds to and reinforces positive aspects of the local environment and built form.	Complies
<b>PRINCIPLES OF DEVELOPMENT CONTROL</b>	
1 Buildings should reflect the desired character of the locality while incorporating contemporary designs that have regard to the following: (a) building height, mass and proportion (b) external materials, patterns, colours and decorative elements (c) roof form and pitch (d) façade articulation and detailing (e) verandahs, eaves, parapets and window screens.	Complies
2 Where a building is sited on or close to a side boundary, the side boundary wall should be sited and limited in length and height to minimise: (a) the visual impact of the building as viewed from adjoining properties (b) overshadowing of adjoining properties and allow adequate sun light to neighbouring buildings.	Does not comply
3 The external walls and roofs of buildings should not incorporate highly reflective materials which will result in glare to neighbouring properties or drivers.	Complies
10 The design and location of buildings should enable direct winter sunlight into adjacent dwellings and private open space and minimise the overshadowing of: (a) windows of habitable rooms (b) upper-level private balconies that provide the primary open space area for a dwelling (c) solar collectors (such as solar hot water systems and photovoltaic cells).	Complies
11 Development should minimise direct overlooking of habitable rooms and private open spaces of dwellings through measures such as: (a) off-setting the location of balconies and windows of habitable rooms with those of other buildings so that views are oblique rather than direct (b) building setbacks from boundaries (including building boundary to boundary where appropriate) that interrupt views or that provide a spatial separation between balconies or windows of habitable rooms (c) screening devices (including fencing, obscure glazing, screens, external ventilation blinds, window hoods and shutters) that are integrated into the building design and have minimal negative effect on residents' or neighbours' amenity.	Does not comply.
12 Development should ensure that ground-level open space of existing buildings receives direct sunlight for a minimum of two hours between 9 am and 3 pm on 21 June to at least the smaller of the following: (a) half of the existing ground-level open space (b) 35 square metres of the existing ground-level open space (with at least one of the areas dimensions measuring 2.5 metres). Development should not increase the overshadowed area by more than 20 per cent in cases where overshadowing already exceeds these requirements.	Complies
<b>GENERAL SECTION – DESIGN AND APPEARANCE</b>	
13 Buildings (other than ancillary buildings or group dwellings) should be designed so that their main façade faces the primary street frontage of the land on which they are situated.	Complies
<b>GENERAL SECTION – RESIDENTIAL DEVELOPMENT</b>	
<b>OBJECTIVES</b>	<b>Assessment</b>
1 Safe, convenient, pleasant and healthy-living environments that meet the full range of needs and preferences of the community.	Complies
2 A diverse range of dwelling types and sizes available to cater for changing demographics, particularly smaller household sizes and supported accommodation.	Complies
4 The revitalisation of residential areas to support the viability of community services and infrastructure.	Complies

PRINCIPLES OF DEVELOPMENT CONTROL (Cont)	Assessment
<p>1 Residential allotments and sites should maximise solar orientation and have the area and dimensions to accommodate:</p> <ul style="list-style-type: none"> <li>(a) the siting and construction of a dwelling and associated ancillary outbuildings</li> <li>(b) the provision of landscaping and private open space</li> <li>(c) convenient and safe vehicle, pedestrian and cycling access and parking</li> <li>(d) water sensitive design systems that enable the storage, treatment and reuse of stormwater.</li> </ul>	Complies
<p>4 Dwellings and accommodation at ground floor level should contribute to the character of the locality and create active, safe streets by incorporating one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) front landscaping or terraces that contribute to the spatial and visual structure of the street while maintaining adequate privacy for occupants</li> <li>(b) individual entries for ground floor accommodation</li> <li>(c) opportunities to overlook adjacent public space.</li> </ul>	Complies
<p>5 Residential development should be designed to ensure living rooms have an external outlook.</p>	Complies
<p>6 Entries to dwellings should be clearly visible from the streets that they front to enable visitors to identify a specific dwelling easily.</p>	Complies
<p>10 The design and location of buildings should ensure that direct winter sunlight is available to adjacent dwellings, with particular consideration given to:</p> <ul style="list-style-type: none"> <li>(a) windows of habitable rooms (all rooms excluding bathrooms, laundries and hallways), particularly living areas</li> <li>(b) ground-level private open space</li> <li>(c) upper-level private balconies that provide the primary open space area for any dwelling</li> <li>(d) access to solar energy.</li> </ul>	Complies
<p>11 Development should ensure that north-facing windows to habitable rooms (all rooms excluding bathrooms, laundries and hallways) of existing dwelling(s) on the same allotment, and on adjacent allotments, receive at least 3 hours of direct sunlight over a portion of their surface between 9am and 5pm on 21 June.</p>	Complies
<p>12 Development should ensure that ground-level open space of existing buildings receives direct sunlight for a minimum of two hours between 9 am and 3 pm on 21 June to at least the smaller of the following:</p> <ul style="list-style-type: none"> <li>(a) half of the existing ground-level open space</li> <li>(b) 35 square metres of the existing ground-level open space (with at least one of the areas dimensions measuring 2.5 metres).</li> </ul> <p>Development should not increase the overshadowed area by more than 20 per cent in cases where overshadowing already exceeds these requirements.</p>	Complies
<p>13 Garages, carports and outbuildings should have a roof form and pitch, building materials and detailing that complement the associated dwelling.</p>	Complies
<p>14 Garages and carports facing the street should not dominate the streetscape and should be designed in accordance with the following:</p> <ul style="list-style-type: none"> <li>(a) have a maximum total width of garage or carport openings of 6 metres or 50 per cent of the dwelling frontage width, whichever is the lesser</li> <li>(b) be located at least 0.5 metres behind the main face of the associated dwelling</li> <li>(c) where it is in the form of an enclosed double carport or garage, be setback at least 8 metres from the primary road frontage and incorporate one of the following: <ul style="list-style-type: none"> <li>(i) two individual doors with a distance of not less than 300 millimetres between them</li> <li>(ii) (ii) double tilt-up doors with moulded door panels having a maximum width of no more than 5 metres</li> </ul> </li> <li>(d) be constructed of materials that integrate with those of the associated dwelling, or pre-coloured treated metal.</li> </ul>	Complies

PRINCIPLES OF DEVELOPMENT CONTROL (Cont)	Assessment												
<p>19 Except where specified in a particular zone, policy area or precinct or Residential High Density Zone, the main face of a building should be set back from the primary road frontage in accordance with the following table:</p> <table border="1" data-bbox="217 510 1118 943"> <thead> <tr> <th data-bbox="217 517 635 600">Setback difference between buildings on adjacent allotments with frontage to the same primary street</th> <th data-bbox="635 517 1118 546">Setback of new building</th> </tr> </thead> <tbody> <tr> <td data-bbox="217 613 635 642">Up to 2 metres</td> <td data-bbox="635 613 1118 667">The same setback as one of the adjacent building illustrated below:</td> </tr> <tr> <td colspan="2" data-bbox="735 674 1118 831">  </td> </tr> <tr> <td data-bbox="217 909 635 938">Greater than 2 metres</td> <td data-bbox="635 909 1118 938">At least the average setback of the adjacent build</td> </tr> </tbody> </table>	Setback difference between buildings on adjacent allotments with frontage to the same primary street	Setback of new building	Up to 2 metres	The same setback as one of the adjacent building illustrated below:			Greater than 2 metres	At least the average setback of the adjacent build	Does not comply				
Setback difference between buildings on adjacent allotments with frontage to the same primary street	Setback of new building												
Up to 2 metres	The same setback as one of the adjacent building illustrated below:												
													
Greater than 2 metres	At least the average setback of the adjacent build												
<p>20 Dwelling setbacks from side and rear boundaries should be progressively increased as the height of the building increases to:</p> <ul style="list-style-type: none"> <li>(a) minimise the visual impact of buildings from adjoining properties</li> <li>(b) minimise the overshadowing of adjoining properties.</li> </ul>	Does not comply												
<p>21 Residential development (other than where located on a boundary) should be setback from side and rear boundaries in accordance with the following parameters:</p> <table border="1" data-bbox="217 1137 1098 1509"> <thead> <tr> <th data-bbox="217 1144 715 1173">Parameter</th> <th data-bbox="715 1144 1098 1173">Value</th> </tr> </thead> <tbody> <tr> <td data-bbox="217 1182 715 1227">Side walls with a height up to (and including) 3 metres at any point above the natural ground level</td> <td data-bbox="715 1182 1098 1227">1 metre</td> </tr> <tr> <td data-bbox="217 1236 715 1281">Side walls with a height exceeding 3 metres and up to (and including) 6 metres at any point above the natural ground</td> <td data-bbox="715 1236 1098 1281">1.5 metres plus an additional 500 millimetres for every metre in height above 4 metres</td> </tr> <tr> <td data-bbox="217 1317 715 1361">Side walls greater than 6 metres at any point above the natural ground level</td> <td data-bbox="715 1317 1098 1361">2.5 metres plus the increase in wall height above 6 metres</td> </tr> <tr> <td data-bbox="217 1370 715 1415">Rear boundary setback for single storey buildings with a wall height 3 metres or less above natural ground level</td> <td data-bbox="715 1370 1098 1415">4 metres</td> </tr> <tr> <td data-bbox="217 1424 715 1469">Rear boundary setback for a building of two or more storeys with a wall height more than 3 metres above natural ground level</td> <td data-bbox="715 1424 1098 1469">6 metres</td> </tr> </tbody> </table>	Parameter	Value	Side walls with a height up to (and including) 3 metres at any point above the natural ground level	1 metre	Side walls with a height exceeding 3 metres and up to (and including) 6 metres at any point above the natural ground	1.5 metres plus an additional 500 millimetres for every metre in height above 4 metres	Side walls greater than 6 metres at any point above the natural ground level	2.5 metres plus the increase in wall height above 6 metres	Rear boundary setback for single storey buildings with a wall height 3 metres or less above natural ground level	4 metres	Rear boundary setback for a building of two or more storeys with a wall height more than 3 metres above natural ground level	6 metres	Does not comply
Parameter	Value												
Side walls with a height up to (and including) 3 metres at any point above the natural ground level	1 metre												
Side walls with a height exceeding 3 metres and up to (and including) 6 metres at any point above the natural ground	1.5 metres plus an additional 500 millimetres for every metre in height above 4 metres												
Side walls greater than 6 metres at any point above the natural ground level	2.5 metres plus the increase in wall height above 6 metres												
Rear boundary setback for single storey buildings with a wall height 3 metres or less above natural ground level	4 metres												
Rear boundary setback for a building of two or more storeys with a wall height more than 3 metres above natural ground level	6 metres												
<p>23 Side boundary walls in residential areas should be limited in length and height to:</p> <ul style="list-style-type: none"> <li>(a) minimise their visual impact on adjoining properties</li> <li>(b) minimise the overshadowing of adjoining properties.</li> </ul>	Does not comply												
<p>24 Walls associated with a dwelling located on a side boundary should be designed in accordance with the following parameters:</p> <ul style="list-style-type: none"> <li>(a) a height not exceeding 3 metres above natural ground level</li> <li>(b) a length not exceeding 8 metres</li> <li>(c) the wall, when its length is added to the length of any other relevant walls or structures located on that boundary: <ul style="list-style-type: none"> <li>(i) will not result in all such relevant walls and structures exceeding a length equal to 45 per cent of the length of the boundary</li> <li>(ii) will not be within 3 metres of any other relevant wall or structure located along the boundary, except where the side wall is located immediately abutting the wall of an existing or simultaneously constructed building on the adjoining site and is constructed to the same or to a lesser length and height.</li> </ul> </li> </ul>	Does not comply												

PRINCIPLES OF DEVELOPMENT CONTROL (Cont)	Assessment						
<p>28 Site coverage (the proportion of a site covered by ground floor level buildings and structures including dwelling, garage, carport, verandas and outbuildings but excluding unroofed pergolas and unroofed balconies) should not exceed the following values:</p> <p><b>Site Coverage</b></p> <p>28 Site coverage (the proportion of a site covered by ground floor level buildings and structures including dwelling, garage, carport, verandas and outbuildings but excluding unroofed pergolas and unroofed balconies) should not exceed the following values:</p> <table border="1" data-bbox="248 577 1114 701"> <thead> <tr> <th>Parameter</th> <th>Value</th> </tr> </thead> <tbody> <tr> <td>Site with an area less than or equal to 300 square metres</td> <td>60 per cent</td> </tr> <tr> <td>Site with an area greater than 300 square metres</td> <td>50 per cent</td> </tr> </tbody> </table>	Parameter	Value	Site with an area less than or equal to 300 square metres	60 per cent	Site with an area greater than 300 square metres	50 per cent	Does not comply
Parameter	Value						
Site with an area less than or equal to 300 square metres	60 per cent						
Site with an area greater than 300 square metres	50 per cent						
<p>29 Site coverage should ensure sufficient space is provided for:</p> <ul style="list-style-type: none"> <li>(a) pedestrian and vehicle access and vehicle parking</li> <li>(b) domestic storage</li> <li>(c) outdoor clothes drying</li> <li>(d) rainwater tanks</li> <li>(e) private open space and landscaping</li> <li>(f) convenient storage of household waste and recycling receptacles.</li> </ul>	Complies						
<p>31 Private open space (land available for exclusive use by residents of each dwelling) should be provided for each dwelling (including a dwelling within a residential flat building) and should be sited and designed:</p> <ul style="list-style-type: none"> <li>(a) to be accessed directly from the habitable rooms of the dwelling</li> <li>(b) to be generally at ground level (other than for residential flat buildings) and to the side or rear of a dwelling and screened for privacy</li> <li>(c) to take advantage of, but not adversely affect, natural features of the site</li> <li>(d) to minimise overlooking from adjacent buildings</li> <li>(e) to achieve separation from bedroom windows on adjoining sites</li> <li>(f) to have a northerly aspect to provide for comfortable year-round use</li> <li>(g) to not be significantly shaded during winter by the associated dwelling or adjacent development</li> <li>(h) to be shaded in summer</li> <li>(i) to minimise noise and air quality impacts that may arise from traffic, industry or other business activities within the locality</li> <li>(j) to have sufficient area and shape to be functional, taking into consideration the location of the dwelling, and the dimension and gradient of the site.</li> </ul>	Complies						
<p>32 Dwellings and residential flat buildings at ground level should include private open space that conforms to the requirements identified in the following table:</p> <table border="1" data-bbox="209 1473 1114 1758"> <thead> <tr> <th>Site area of dwelling</th> <th>Minimum area of private open space</th> <th>Provisions</th> </tr> </thead> <tbody> <tr> <td>250 square metres or greater</td> <td>20 per cent of site area</td> <td>Balconies, roof patios, decks and the like, can comprise part of this area provided the area of each is 10 square metres or greater.  One part of the space should be directly accessible from a kitchen, lounge room, dining room or living room (excluding a bedroom) and have an area equal to or greater than 10 per cent of the site area with a minimum dimension of 5 metres and a maximum gradient of 1-in-10.</td> </tr> </tbody> </table>	Site area of dwelling	Minimum area of private open space	Provisions	250 square metres or greater	20 per cent of site area	Balconies, roof patios, decks and the like, can comprise part of this area provided the area of each is 10 square metres or greater.  One part of the space should be directly accessible from a kitchen, lounge room, dining room or living room (excluding a bedroom) and have an area equal to or greater than 10 per cent of the site area with a minimum dimension of 5 metres and a maximum gradient of 1-in-10.	Complies
Site area of dwelling	Minimum area of private open space	Provisions					
250 square metres or greater	20 per cent of site area	Balconies, roof patios, decks and the like, can comprise part of this area provided the area of each is 10 square metres or greater.  One part of the space should be directly accessible from a kitchen, lounge room, dining room or living room (excluding a bedroom) and have an area equal to or greater than 10 per cent of the site area with a minimum dimension of 5 metres and a maximum gradient of 1-in-10.					
<p>33 Private open space should not include driveways, front yards (except where it is a group dwelling that has no frontage to a public road and the private open space is screened from adjacent dwellings), effluent drainage areas, rubbish bin storage, sites for rainwater tanks and other utility areas and common areas such as parking areas and communal open space.</p>	Complies						

PRINCIPLES OF DEVELOPMENT CONTROL (Cont)	Assessment
<p>34 Private open space at ground level should be designed to provide a consolidated area of deep soil (an area of natural ground which excludes areas where there is a structure underneath, pools and non-permeable paved areas) to:</p> <ul style="list-style-type: none"> <li>(a) assist with ease of drainage</li> <li>(b) allow for effective deep planting</li> <li>(c) reduce urban heat loading and improve micro-climatic conditions around sites and buildings.</li> </ul>	Complies
<p>40 Except for buildings of 3 or more storeys in the Minda Incorporated Brighton Campus, upper level windows, balconies, terraces and decks that overlook habitable room windows or private open space of dwellings should maximise visual privacy through the use of measures such as sill heights of not less than 1.7 metres or permanent screens having a height of 1.7 metres above finished floor level.</p>	Does not comply
<p>41 Where development is greater than single storey (excluding the Minda Incorporated Brighton Campus):</p> <ul style="list-style-type: none"> <li>(a) any upper storey window that directly overlooks the private open space of an adjoining residential property that is within 30 metres from the vertical centre line of the overlooking window and beyond a 45 degree angle from the plane of the wall containing the overlooking window (as illustrated by the figure below) should be glazed in fixed obscure glass or have window sills a minimum of 1.7 metres above the upper floor level:</li> </ul>	Does not comply
<div style="text-align: center;">  </div>	
<ul style="list-style-type: none"> <li>(b) any upper storey window that directly overlooks habitable rooms (all rooms excluding bathrooms, laundries and hallways) of residential buildings that are within 15 metres from the vertical centre line of the overlooking window and beyond a 45 degree angle from the plane of the wall containing the overlooking window (as illustrated by the figure below) should be glazed in fixed obscure glass or have window sills a minimum of 1.7 metres above the upper floor level:</li> </ul>	
<div style="text-align: center;">  </div>	
<ul style="list-style-type: none"> <li>(c) any upper storey balcony should be located and/or designed to avoid directly overlooking the private open space of adjoining residential properties and into habitable rooms (all rooms excluding bathrooms, laundries and hallways) of other dwellings.</li> </ul>	



<b>GENERAL SECTION – SLOPING LAND</b>	
<b>PRINCIPLES OF DEVELOPMENT CONTROL</b>	
1 Development and associated driveways and access tracks should be sited and designed to integrate with the natural topography of the land and minimise the need for earthworks.	Complies
2 Development and associated driveways and access tracks, including related earthworks, should be sited, designed and undertaken in a manner that: (a) minimises their visual impact (b) reduces the bulk of the buildings and structures (c) minimises the extent of cut and/or fill (d) minimises the need for, and the height of, retaining walls (e) does not cause or contribute to instability of any embankment or cutting (f) avoids the silting of watercourses (g) protects development and its surrounds from erosion caused by water run-off.	Complies
<b>ZONE SECTION – RESIDENTIAL ZONE</b>	
<b>OBJECTIVES</b>	<b>Assessment</b>
3 Development that contributes to the desired character of the zone.  DESIRED CHARACTER The zone contains the majority of the city’s living areas, which are of predominantly low-density suburban form, but within policy areas include medium-to-high density forms of housing on the coast, along key transport corridors and within Glenelg, as well as coordinated development opportunities within large institutional sites. The zone includes five policy areas, three of which cater for coastal development, one for the City’s residential institutions (including Minda and Masonic Homes) and one for medium density development along the key transit routes of Brighton Road, Anzac Highway, Tapleys Hill Road and along sections of the Seaford railway transit corridor.  Development outside of the policy areas will be suburban in nature and evolve in response to progressive infill development of existing individual sites and through consolidation of sites to form larger comprehensive redevelopment opportunities. Infill development outside of the Policy Areas will not compromise the suburban character but will progressively increase dwelling densities through unobtrusive small-scale developments. In this regard, infill development will have a comparable height, mass, scale and setbacks to that of existing dwellings in the relevant locality.  The zone’s primarily suburban character outside of the policy areas is defined by detached dwellings on individual allotments. Infill development in these suburban areas will contribute to the city’s housing diversity through development opportunities that (in order of preference):  (a) increase dwelling numbers on allotments that have dual road frontages (b) provide low scale dwellings at the rear of large allotments with street frontages wide enough to accommodate appropriate sited and sized driveway access and landscaping (c) semi-detached dwellings, where site considerations permit.	Complies

<b>ZONE SECTION – RESIDENTIAL ZONE (Cont)</b>							
<b>OBJECTIVES</b>	<b>Assessment</b>						
Development outside of the policy areas will generally be single storey in height in the areas east of Brighton Road, and up to two storeys in height in the areas west of Brighton Road. Buildings will be both domestic and contemporary in design and character to support and reinforce the essentially suburban character through typical domestic design forms, low front fencing and landscaping. Landscaping will help define the public realm and private property boundaries, and substantial landscaped front yards will contribute to the locality, with the retention of mature trees. Development will have side and rear building setbacks that incorporate an access path on one side, with on-boundary built form limited in height, length and location to the equivalent of typical open carports or garaging. Vehicle garaging will be set back clearly behind the immediately adjacent part of the front building facade. Development will enhance and protect streetscape character by minimising driveway access points and width of crossovers and driveways. Undercroft car parking will also be avoided on flat sites and sites that slope down from the street level. Buildings will be stepped and articulated at the front elevation to achieve visual relief and architectural interest as viewed from the street.							
Residential development outside of the policy areas will utilise materials and finishes that respond to the character of the immediate locality and utilise brick, stone and rendered finishes to provide visual interest to facades. Development will also incorporate architectural design and detailing that responds to localised character by way of fenestration, doorways, windows, eaves and roof forms. Development will be setback and orientated to minimise impacts of the privacy of neighbouring residents.							
1 The following forms of development are envisaged in the zone: <ul style="list-style-type: none"> <li>▪ affordable housing</li> <li>▪ domestic outbuilding in association with a dwelling</li> <li>▪ domestic structure</li> <li>▪ <b>dwelling</b></li> <li>▪ dwelling addition</li> <li>▪ small scale non-residential use that serves the local community, for example: <ul style="list-style-type: none"> <li>- child care facility</li> <li>- health and welfare service</li> <li>- open space</li> <li>- primary and secondary school</li> <li>- recreation area</li> </ul> </li> <li>▪ supported accommodation</li> </ul>	Complies						
2 Development listed as non-complying is generally inappropriate.	Complies						
5 The use and placement of outbuildings should be ancillary to and in association with a dwelling or dwellings.	Complies						
6 Development should not be undertaken unless it is consistent with the desired character for the zone	Complies						
8 Dwellings and residential flat buildings, except where specified in a particular policy area or precinct, should not exceed the maximum heights shown in the following table: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr> <th style="text-align: left;">Location of the dwelling</th> <th style="text-align: left;">Maximum wall height above natural ground level</th> <th style="text-align: left;">Maximum height above natural ground level</th> </tr> </thead> <tbody> <tr> <td style="color: green;">West of Brighton Road or Tapleys Hill Road</td> <td style="color: green;">7 metres</td> <td style="color: green;">Two storeys</td> </tr> </tbody> </table>	Location of the dwelling	Maximum wall height above natural ground level	Maximum height above natural ground level	West of Brighton Road or Tapleys Hill Road	7 metres	Two storeys	Complies
Location of the dwelling	Maximum wall height above natural ground level	Maximum height above natural ground level					
West of Brighton Road or Tapleys Hill Road	7 metres	Two storeys					
9 Dwellings and/or residential flat buildings should be setback a minimum of 1 metre from one side boundary to incorporate pedestrian access.	Complies						

## **6. Summary of Assessment**

### **Land fill and retaining walls**

The original plans comprised retaining up to 1.5 metres in height along the side and rear boundaries in order to accommodate the fill of the rear of the site, in an attempt to level it from front to rear.

The amended plans have sought to reduce retaining to not more than 1 metre in height, hence a reduction in fill at the rear of the site.

Site fill to a maximum of 1 metre is typically anticipated for new residential development, reflective of the fact that retaining walls up to 1 metres in height does not constitute development.

The topography of the land is such that the rear boundary is 1.7 metres lower than the top of kerb level, hence a balance is sought in terms of on-site stormwater management, designing in regard to the existing slope of the land and construction costs.

### **Boundary Setbacks**

The proposal fails to satisfy the Development Plan with respect to front and side boundary setbacks.

The building should be setback a distance that is the average setback of the two adjacent dwellings (6.4 metres). The proposed building is setback 4 metres from the primary street boundary. It is noted that the general setback pattern is mixed, with some dwellings (such as 11, 13, 15 and 17, 21 and 22 Seaview being in the range of 4 metres or closer).

With respect to the side boundaries, the garage wall has a height of between 3.1 and 3.3 metres on the southern side boundary, resulting in a 300mm height variance, which is not considered a serious concern, particularly as this was not referenced in the representation by the owner of 7 Seaview Terrace.

The remaining side boundary setbacks are predominately appropriate, however the northern elevation has a wall height between 3.8 and 4.8 metres above the natural ground level and setback as close as 955mm from the northern side boundary. It is noted that none of the representations referenced this as a concern.

A portion of the upper level wall on the northern elevation is 6.1 metres in height and setback 2.5 metres from the northern side boundary in lieu of the minimum anticipated setback of 2.6 metres (wall height exceeds 6 metres above the natural ground level), this is considered negligible.

### **Visual Privacy**

The side and rear elevations contain upper level windows that are obscured up to 1.7 metres, which satisfy the Development Plan.

The front elevation comprises upstairs windows and an 8 square metre balcony, which have an outlook to Seaview Terrace, as is typically expected on a front façade.

It is noted that a representation was received from the owner of 37 Marlborough Street with concerns that the upstairs windows will overlook their private open space (located to the eastern side and rear of the dwelling).

On reviewing the building façade of the proposed dwelling, the front balcony is accessible from a 'retreat', which is effectively a 4<sup>th</sup> lounge, hence is not considered to be a room that will have a use rate the same as a dwelling that only has 1 or 2 lounges. The size of the balcony (8 square metres) is considered small, and thus is unlikely to be used for entertaining. It is unlikely that the retreat and balcony will be subject to frequent use, hence visual privacy is likely to be achieved much of the time. Similarly, the upstairs bedroom (bed 4) is likely to be used for its purpose, where it would be expected that window furnishings would be closed over extended periods (to block out afternoon sun as well as facilitate privacy for the occupant).

The Development Plan anticipates some level of passive surveillance over the public realm, hence development should achieve a balance of passive surveillance and visual privacy. The nature of the upstairs rooms is such that visual privacy is likely to be predominately achieved. Even in the case where upstairs windows and balconies were to be screened up to 1.7m in height, it would not prevent the occupant from standing on an elevated platform, such as a bed, chair or the like. The purpose of achieving visual privacy is to ensure it is reasonable achieved, in balance with satisfying other provisions such as passive surveillance.

## **7. Conclusion**

Despite some technical shortcomings and concerns from adjacent neighbours, the proposed development is not seriously at variance with the Development Plan. Some of the shortcomings are forced through the pre-existing topographic conditions, although design solutions have been applied to assist with mitigating the negative impacts to neighbours. On balance therefore, the proposal satisfies the relevant provisions of the Development Plan and is therefore recommended for consent.

## **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 - 110/00587/20 for the construction of a two storey detached dwelling with associated garage adjoining southern boundary and swimming pool, verandah at rear and retaining walls up to 1 metre in height, subject to the following conditions:**

**PLANNING CONDITIONS**

- 1. That the development shall be implemented in accordance with the plans and documentation prepared by MLEI Consulting Engineers, Drawing A2020-10718 Sheet C01 Rev D; and Anthony Donato Architects, Job 4745'20, Sheets DD01 Rev F, DD02 Rev C, DD03 Rev B, DD04 Rev C, DD05 Rev C & A submitted to and approved by Council unless varied by any subsequent conditions imposed herein.**
- 2. That all upstairs windows on the side and rear elevations shall have minimum window sill heights of 1.7 metres above finished floor level, or any glass below 1.7 metres shall be manufactured obscure glass and fixed shut or as otherwise approved by Council. Further details of this requirement shall be provided at Building Rules Assessment stage.**
- 3. Landscaping shall be established in the front and rear yards and comprise trees, shrubs and grasses. All such landscaping shall be established within 3 months of substantial completion of the development and any such vegetation shall be replaced if and when it dies or becomes seriously diseased.**
- 4. The stormwater disposal system shall cater for a 5 year rainfall event with discharge to the street not to exceed 10 litres per second. Any excess above this flow is to be detained on site to the reasonable satisfaction of Council.**
- 5. That stormwater from each dwelling shall be collected and connected to a 1000 litre (minimum) rainwater tank with a sealed system over flow connection to the street water table. Final details of the location and size of the tank(s) shall be submitted to Council for approval prior to the issue of full Development Approval. Furthermore, all stormwater from the dwelling and the site shall be collected and disposed of in a manner that does not adversely affect any properties adjoining the site or the stability of any building on adjacent sites.**

**NOTE: Stormwater shall not be disposed of over a vehicle crossing place and any connection to the street water table, including remedial works to footpaths, verges or other Council infrastructure, is subject to any necessary approvals from Council and will be at the applicant's cost.**

- 6. That the associated filter pump be enclosed in such a way that noise levels do not exceed 45db(a) measured at adjoining property boundaries.**