

TO: **COUNCIL ASSESSMENT PANEL**
 DATE: **26 JUNE 2019**
 SUBJECT: **COUNCIL ASSESSMENT REPORT**
 AUTHOR: **A STAMATOPOULOS**
DEVELOPMENT OFFICER - PLANNING

ATTACHMENTS: **1. LOCALITY MAP**
2. PROPOSAL PLANS
3. REPRESENTATIONS
4. RESPONSE TO REPRESENTATIONS

HEARING OF REPRESENTORS: **GLORIA AND NICKOLAS DEMBOWSKI**
 HEARING OF APPLICANT: **ROKSOLID CONSTRUCTION**

DA NO.	:	<u>110/00175/19</u>
APPLICANT	:	<u>ROKSOLID CONSTRUCTION</u>
LOCATION	:	<u>5 STRICKLAND ROAD, KINGSTON PARK</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>VARIATION TO DEVELOPMENT APPLICATION 110/00416/17 (TWO STOREY GROUP DWELLING AND RESIDENTIAL FLAT BUILDING COMPRISING TWO DWELLINGS) – COMPRISING THE CONSTRUCTION OF AN UPPER ROOF TERRACE ON RESIDENCE ONE</u>
REFERRALS	:	<u>NIL</u>
CATEGORY	:	<u>THREE</u>
REPRESENTATIONS		<u>TWO</u>
RECOMMENDATION	:	<u>DEVELOPMENT PLAN CONSENT SUBJECT TO CONDITIONS</u>

1. Background

An application was lodged to Council on the 6th of March 2019 to vary the existing land use application by way of constructing a roof terrace to Residence 1. A land use application (DA 110/00416/17) was lodged and approved by the Council Assessment Panel on the 22 November 2017. The subject site is located in the Residential Zone at 5 Strickland Road, Kingston Park. The application is a Category 3 development as the nature of works is not captured as Category 1 or Category 2 subject to Schedule 9 of the Development Regulations 2008. Two representations were received during the consultation; one was in support of the proposal.

2. Site and Locality

The subject site is located on a rectangle shaped allotment which slopes up substantially from west to east. The majority of dwellings in the locality contain a two storey built form with few examples of single storey dwellings. The subject land overlooks the coast immediately to the west and is bounded by other residential sites to the east and west. A lane separates the allotment to the south and Strickland Road to the north.

New development in the locality is trending with the majority of dwellings being two storeys in height with the intent to capture views of the coast. The size of allotments within the locality is varied. There is a mixture of Torrens Title allotments, Community Title dwellings in the form of group dwellings and 1970s strata units.

Refer to Attachment 1

3. Proposed Development

The applicant proposes to construct a rooftop terrace to residence one which is the dwelling closest to Strickland Road. The rooftop deck contains a solid wall to the eastern rear of the dwelling which steps down to a 1m high balustrade which surrounds the remaining northern, western and southern sides. The terrace is located within the roof footprint as it contains setbacks to all boundaries.

4. Development Data

DEVELOPMENT DATA		
Aspect	Proposed	Compliance
<u>Terrace Setbacks</u>		
North	7.5m	Complies
South	5.5m	Complies
East	10m	Complies
West	7m	Complies
Wall Height	9.7m	Exceeds anticipated maximum by 2.7m

5. Public Consultation

The proposed development was subject to Category 3 public notification, two representations were received. A summary of the representations are shown below:

Mr and Mrs Dembowski of 4/7 Strickland Road, Kingston Park

- Concerns raised regarding overlooking from the terrace

L Ritchie of 3/3 Strickland Road, Kingston Park

- Representor resides in unit behind the subject land and is in favour of the proposed structure.

Refer to Attachment 3

A response was received from the applicant addressing the issues raised. Further documentation showing line of sight diagrams were provided which show that visual privacy of the units to west of the subject will not be compromised.

Refer to Attachment 4

6. Development Plan Provisions

HOLDFAST BAY (CITY) DEVELOPMENT – ASSESSMENT – RESIDENTIAL ZONE AND POLICY AREAS – OBJECTIVES AND PRINCIPLES OF DEVELOPMENT CONTROL

RESIDENTIAL ZONE	
Objectives	
1. A residential zone comprising a range of dwelling types, including a minimum of 15% affordable housing.	N/A
2. Increased dwelling densities in close proximity to centres, public transport routes and public open spaces.	N/A
3. Development that contributes to the desired character of the zone.	Complies
Desired Character	
<p>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.</p> <p>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):</p> <p>(a) increase dwelling numbers on allotments that have dual road frontages</p>	Complies
Development outside of the policy areas will comprise:	
<ul style="list-style-type: none"> • Single storey in areas east of Brighton Road, and up to two storeys in areas west of Brighton Road. 	Complies
<ul style="list-style-type: none"> • Buildings 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. 	Complies
<ul style="list-style-type: none"> • 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. 	Complies
<ul style="list-style-type: none"> • Architectural design and detailing that responds to localised character by way of fenestration, doorways, windows, eaves and roof forms. 	Complies
<ul style="list-style-type: none"> • Development will be setback and be orientated to minimise impacts of the privacy of neighbouring residents. 	Complies

RESIDENTIAL ZONE (Cont)			
Development outside of the policy areas will comprise:			
1. The following forms of development are envisaged in the zone: <ul style="list-style-type: none"> • affordable housing • domestic outbuilding in association with a dwelling • domestic structure • dwelling • dwelling addition • small scale non-residential use that serves the local community, for example: <ul style="list-style-type: none"> • child care facility • health and welfare service • open space • primary and secondary school • recreation area • supported accommodation. 	Complies		
3. Except where specified in a particular policy area, vacant or underutilised land should be developed in an efficient and co-ordinated manner to increase housing choice by providing dwellings at densities higher than, but compatible with adjoining residential development.	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:			
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	Does not comply
East of Brighton Road or Tapleys Hill Road	3.5 metres	One storey, or two storeys if the second storey is incorporated within the roof space and the floor area of the second storey does not exceed 40 percent of the ground floor footprint of the dwelling, including attached garages.	

HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT – RESIDENTIAL - COUNCIL WIDE – PRINCIPLES OF DEVELOPMENT CONTROL

Siting and Visibility - Objectives	
2. Development that recognises significant views and vistas of the coast and the Southern Mount Lofty Ranges.	Complies
Siting and Visibility – Principles of Development Control	
1. Development should be sited and designed to minimise its visual impact on: (b) areas of high visual or scenic value, particularly rural and coastal areas	Complies

Residential Development																				
<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> <p>(a) windows of habitable rooms (all rooms excluding bathrooms, laundries and hallways), particularly living areas</p> <p>(b) ground-level private open space</p> <p>(c) upper-level private balconies that provide the primary open space area for any dwelling</p> <p>(d) access to solar energy.</p>		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 9 am and 5 pm on the 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> <p>(a) half of the existing ground-level open space</p> <p>(b) 35 square metres of the existing ground-level open space (with at least one of the area's dimensions measuring 2.5 metres)</p> <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>20. Dwellings should be set back from allotment or site boundaries to:</p> <p>(a) contribute to the desired character of the area</p> <p>(b) provide adequate visual privacy by separating habitable rooms (all rooms excluding bathrooms, laundries and hallways) from pedestrian and vehicle movement.</p>		Complies																		
<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" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Parameter</th> <th style="text-align: left;">Value</th> <th></th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">Side walls with a height up to (and including) 3 metres at any point above the natural ground level</td> <td style="vertical-align: top;">1 metre</td> <td style="vertical-align: top;">N/A</td> </tr> <tr> <td style="vertical-align: top;">Side walls with a height exceeding 3 metres and up to (and including) 6 metres at any point above the natural ground</td> <td style="vertical-align: top;">1.5 metres plus an additional 500mm for every metre in height above 4 metres</td> <td style="vertical-align: top;">N/A</td> </tr> <tr> <td style="vertical-align: top;">Side walls greater than 6 metres at any point above the natural ground level</td> <td style="vertical-align: top;">2.5 metres plus the increase in wall height above 6 metres</td> <td style="vertical-align: top;">Complies</td> </tr> <tr> <td style="vertical-align: top;">Rear boundary setback for single storey buildings with a wall height 3 metres or less above natural ground level</td> <td style="vertical-align: top;">4 metres</td> <td style="vertical-align: top;">N/A</td> </tr> <tr> <td style="vertical-align: top;">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 style="vertical-align: top;">6 metres</td> <td style="vertical-align: top;">Complies</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	N/A	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 500mm for every metre in height above 4 metres	N/A	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	Complies	Rear boundary setback for single storey buildings with a wall height 3 metres or less above natural ground level	4 metres	N/A	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	Complies		<p style="text-align: center;">N/A</p> <p style="text-align: center;">N/A</p> <p style="text-align: center;">Complies</p> <p style="text-align: center;">N/A</p> <p style="text-align: center;">Complies</p>
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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	Complies																		

Residential Development (Cont)	
23. Side boundary walls in residential areas should be limited in length and height to: (a) minimise their visual impact on adjoining properties (b) minimise the overshadowing of adjoining properties	Complies
40. Development should protect privacy by minimising direct overlooking from upper level windows and external balconies, terraces and decks to habitable rooms (all rooms excluding bathrooms, laundries and hallways) windows and useable private open spaces of other dwellings.	Complies
41. Where development is greater than single storey: (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: (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: (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.	Complies

7. Summary of Assessment

The application complies with a majority of the quantitative objectives and principles of the Holdfast Bay Development plan. The following assessment will touch on aspects of the application which requires further discussion.

Built Form

The roof terrace will comprise a stairwell leading to the decked living area, which is 5m by 5.4m. In total the upper area measures 5.4m by 6.7m, a total area of 36sqm and the wall height adjacent to the stairwell measures 2.6m. The area is set in 7.5m from the northern boundary, 5.5m from the southern, 10m from the eastern and 7m from the western boundary. Given the substantial setbacks, concerns of visual privacy loss are alleviated. The roof terrace is substantially setback from the west side boundary which results in the roof of the dwelling acting as a screen to restrict overlooking into the adjacent units. This is reflected in the roof deck overlooking plan (attachment 2.7).

Any impacts of the additional level will be from a visible perspective. Given the minimal size of the terrace, the modest built form with the majority comprised of 1m high balustrading and the fact that it is set significantly back from each boundary and the second level, the visual impact is considered to be minor and will not unreasonably impact on the streetscape or the amenity of the locality. Furthermore, a letter of support from an eastern adjoining unit owner was lodged to Council who would be subject to the most significant effect of the terrace wall from all adjacent landowners.

Views

Regard has to be given to the potential loss of views of the dwellings to the adjoining east. 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.”

Siting and visibility Objective 2 states that development should recognise significant views and vistas of the coast and the Southern Mount Lofty Ranges. Design and Appearance Principle 5 requires buildings to not unreasonably restrict existing views from neighbouring properties.

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. It can be argued that the views from the eastern units are not a *clear view of the sea and horizon* given it is interrupted by existing vegetation and dwellings. As this is the case whether there is an *obliteration* of views or not becomes irrelevant as the view in the first instance it is not considered as *clear* and therefore does not result in *an extreme loss of the view*.

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 Council Assessment Panel resolves to grant Development Plan Consent to Development Application 110/00175/19 subject to the following conditions:**

PLANNING CONDITIONS

1. **That the design and siting of all buildings and structures and site works shall be as shown on the plans submitted to and approved by Council unless varied by any subsequent conditions imposed herein.**
2. **That adequate provision be made for the disposal of stormwater to the reasonable satisfaction of Council. Where possible, stormwater should be retained on site by the use of natural drainage methods.**