

TO: **COUNCIL ASSESSMENT PANEL**
 DATE: **24 OCTOBER 2018**
 SUBJECT: **COUNCIL ASSESSMENT PANEL REPORT**
 AUTHOR: **CRAIG WATSON**
TEAM LEADER DEVELOPMENT ASSESSMENT
DEVELOPMENT OFFICER - PLANNING

ATTACHMENTS:

1. **LOCALITY PLAN**
2. **PROPOSED PLANS**
3. **SUPPORTING STATEMENT FROM MASTERPLAN ON BEHALF OF APPLICANT**

DA NO.	:	110/00680/18
APPLICANT	:	URBAN 3
LOCATION	:	25A, AND 25C ESPLANADE, SOMERTON PARK AND 25B WILKINSON AVENUE, SOMERTON PARK
DEVELOPMENT PLAN	:	CONSOLIDATED 2 JUNE 2016
ZONE AND POLICY AREA	:	RESIDENTIAL ZONE CENTRAL WEST POLICY AREA 3
NATURE OF DEVELOPMENT: PROPOSAL	:	VARIATION TO DA 110/00428/18 (THE CONSTRUCTION OF A PAIR OF THREE STOREY RESIDENTIAL FLAT BUILDINGS WITH THE EASTERN-MOST CONTAINING TWO DWELLINGS AND THE WESTERN-MOST CONTAINING THREE DWELLINGS WITH ROOF TOP TERRACES AND ONE ACCOMMODATING AN UNDERCROFT GARAGE COMPRISING REMOVAL OF CONDITION 5, AMENDMENT TO CONDITION 4 TO INCORPORATE THE SCREENING OF RELEVANT BALCONIES AND ROOF TOP DECKS AND AMENDMENTS TO CONDITION 3 WHEREBY FIXED UPPER LEVEL WINDOWS (INCLUDING ROOF TOP DECK) ARE SCREENED WITH OBSCURE FILM UP TO 1.7 METRES ABOVE THE ASSOCIATED FINISHED FLOOR LEVEL IN LIEU OF MANUFACTURED OBSCURE GLAZING AND AWNING WINDOWS WITH OPENINGS RESTRICTED TO 70MM AND POSITIONED LESS THAN 1700MM ABOVE THE ASSOCIATED FINISHED FLOOR LEVEL IN LIEU OF FIXED MANUFACTURED OBSCURED GLAZING TO ALL UPPER LEVEL WINDOWS EXCEPT FOR THE WESTERN ELEVATIONS OF DWELLINGS 1, 2 AND 3) BY REPLACING OBSCURE GLAZING TO SIDE SCREEN ROOF TOP BALCONIES OF APARTMENTS 1 AND 3 WITH CLEAR/OBSCURE GLASS TO 1.2 METRES AND REPLACING OBSCURE GLASS TO BALCONY AND DINING ROOM WINDOW ON SOUTH ELEVATION WITH CLEAR GLASS
EXISTING USE	:	RESIDENTIAL
REFERRALS	:	NOT APPLICABLE
CATEGORY	:	N/A THIS FORM OF VARIATION DOES NOT ENABLE A CATEGORY FOR PUBLIC NOTIFICATION PURPOSES TO BE ASSIGNED
RECOMMENDATION	:	DEVELOPMENT PLAN CONSENT SUBJECT TO CONDITIONS

1. Background

On the 27 January 2016, the Development Assessment Panel granted development plan consent for the construction of a pair of three storey residential flat buildings with the eastern-most containing two dwellings and the western-most containing three dwellings with roof top terraces and one accommodating an undercroft garage at what was then 25 Esplanade, Somerton Park (110/01039/15). Development Approval subsequently followed and the buildings are nearing completion.

Condition 3 of development plan consent sought the following:

All upper level windows on the side and rear elevations, as well as the front western facing upper level windows associated with Dwellings 4 and 5, shall have minimum sill heights of 1.7 metres above the associated finished floor level or where windows have sill heights under 1.7 metres above the associated finished floor level, the window is fixed and manufactured obscured up to a minimum height of 1.7 metres above the associated finished floor level in such a way as to avoid unreasonable overlooking into adjacent properties to the reasonable satisfaction of Council.

Condition 4 sought:

All side and rear balconies, as well as the west facing balconies associated with Dwellings 4 and 5, shall comprise fixed screening to a minimum height of 1.7 metres above the associated finished floor level in such a way as to avoid unreasonable overlooking into adjacent properties to the reasonable satisfaction of Council.

Condition 5 sought:

That southern, northern and eastern facing screens, balustrades and windows associated with the roof top decks of all dwellings, as well as the front western facing screens, balustrades and windows associated with Dwellings 4 and 5, shall be fixed and manufactured obscured up to a minimum height of 1.7 metres above the associated finished floor level in such a way as to avoid unreasonable overlooking into adjacent properties to the reasonable satisfaction of Council.

DA 110/00428/18 to remove condition 5, amend condition 4 to incorporate screening of relevant balconies and top decks and amend condition 3 to replace manufactured obscure glass with film for all upper storey windows except the western elevations of dwellings 1, 2 and 3 was granted development plan consent by the Panel on 27 June 2018 subject to:

1. *All upper level windows (except for the western elevations of Dwellings 1, 2 and 3) shall have minimum sill heights of 1.7 metres above the associated finished floor level or where windows have sill heights less than 1.7 metres above the associated finished floor level, the windows are fixed and manufactured obscure to a minimum height of 1.7 metres above the associated finished floor level or where the windows are not fixed (awning), the opening is restricted to not more than 70mm and manufactured obscure to 1.7 metres above the associated finished floor level prior to the occupation of the dwellings.*
2. *All balconies (excluding the west facing balconies of Dwellings 1, 2 and 3) and roof top decks shall comprise fixed screening to a minimum height of 1.7 metres above the associated finished floor level in such a way as to avoid unreasonable overlooking into adjacent properties to the reasonable satisfaction of Council prior to the occupation of the dwellings.*

The above decision is the subject of an appeal to the ERD Court.

2. Site and Locality

The subject site is located on the north eastern corner of the Esplanade and Whyte (with the access via Wilkinson Avenue) and currently contains a pair of three storey residential flat buildings with the eastern-most containing two dwellings and the western-most containing three dwellings with roof top terraces and one accommodating an undercroft garage under construction.

The surrounding locality comprises substantial buildings along the Esplanade, as anticipated by the Zone it is situated. East of the subject site comprises dwellings in the range of single and two storey built form, as anticipated by the Residential Zone. The site is directly adjacent to the coast, immediately west of the subject site.

Refer to Attachment 1

3. Proposed Development

The proposed development seeks to:

- Resolve a perceived inconsistency between Condition 2 of 110/00428/18 and the associated stamped plans by replacing obscure glazing to the roof top side screen balconies of apartments 1 and 3 as shown on the plans with clear glass other than for 2 panels closest to the roof top enclosure for apartment 3, which will comprise obscure glass to 1.2 metres high.
- Replace the obscure glass to the balcony and dining room on the southern elevation of apartment 5 as required by conditions 1 and 2 of 110/00428/18 with clear glass.

Refer to Attachment 2 and 3

4. Public Notification

As per legal advice previously received the proposed variation cannot be assigned a category for public notification purposes and is not subject to category 2 or 3.

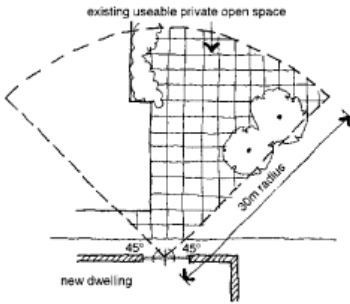
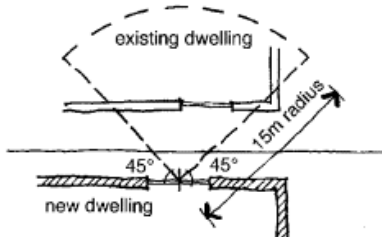
5. Development Plan Provisions

The following tables contain a detailed assessment of the proposal against the provisions in the Holdfast Bay (City) Development Plan consolidated 2 June 2016:

The assessment of this application is limited to provisions associated with visual privacy.

HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT

General Section – Design and Appearance	
Principles of Development Controls	Assessment
Visual Privacy	
<p>11 Development should minimise direct overlooking of habitable rooms and private open spaces of dwellings through measures such as:</p> <ul style="list-style-type: none"> (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. 	<p>Complies. No significant overlooking from adjacent windows and private open space due to location of roof top decks, balcony and window relative to windows and private open space on adjoining sites.</p>
General Section – Residential Development	
Principles of Development Controls	Assessment
<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>	<p>Not required given nature of windows and location of private open space on adjoining properties relative to subject balconies and window.</p>

General Section – Residential Development	
Principles of Development Controls (Cont)	Assessment
<p>41 Where development is greater than single storey (excluding the Minda Incorporated Brighton Campus):</p> <p>(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:</p>  <p>(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:</p>  <p>(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.</p>	<p>Complies. Private open space on adjoining property are outside the 45 degree viewing angle from apartment 5 dining room window.</p> <p>Complies. Windows in adjacent western dwelling are outside the 45 degree viewing angle from apartment 5 dining room and are also high level.</p> <p>Complies. West facing roof decks for apartments 1, 2 and 3 do not directly overlook private open space or rooms on adjoining properties.</p>

6. Summary of Assessment

Condition 2 and top balconies for apartments 1 and 3

Condition 2 is worded as follows:

2. All balconies (excluding the west facing balconies of Dwellings 1, 2 and 3) and roof top decks shall comprise fixed screening to a minimum height of 1.7 metres above the associated finished floor level in such a way as to avoid unreasonable overlooking into adjacent properties to the reasonable satisfaction of Council prior to the occupation of the dwellings.

The applicant's understanding of the condition is that the roof top decks associated with apartments 1, 2 and 3 are excluded from the requirement for 1.7 metre screens. It is considered however that there is a clear distinction in the condition, whether intended or not, between the balconies on the lower levels and the roof top deck with the former only being excluded from the screening requirement. Nevertheless the intent of this application is to remove any requirement for obscure screening on the sides of the roof top decks for apartments 1 and 3.

No significant views over the adjoining northern site occur from the roof top deck of apartment 1. Such views are only over the roof or front (non-private) yard. The rear private open space is largely screened by the associated building. No habitable room windows will be impacted.

The applicant has agreed to retain obscure glass to two panels on the southern side of apartment's 3 roof deck but only to 1.2 metres. Views from the roof top deck of apartment 3 to the south are primarily over the front portion of the adjoining site. Only oblique, but not direct overlooking of the deck is possible. The two 1.2 metre high obscure glass panels will restrict views to the neighbour's deck from most portions of the roof top deck. Without solid balustrading the neighbour's deck can also be viewed from the Esplanade. A private courtyard to the rear of the dwelling will not be impacted. Having regard to Residential Development Principle 41 (c) of the Development Plan, which places more importance on direct overlooking the amendments as proposed are considered reasonable.

Apartment 5 window and balcony

The application also seeks the removal of any requirement for obscure glass, either by film or manufactured obscure glass, to the south facing dining room window and balcony for apartment 5. In support a diagram has been submitted demonstrating compliance with Residential Development Principle 41(a) and (b) of Council's Development Plan. That Principle places more weight on views from the mid-point of a window beyond a 45 degree angle from its plane. The submitted diagram shows that windows in the neighbouring dwelling to the west (which also appear to be high level) are outside of the prescribed view angle and are not therefore directly overlooked. Although the Principle does not prescribe view angles from balconies the same view angle is shown on the submitted diagram as a guide. It is apparent from the supporting information that primary views from the subject window and balcony will be over the garage and driveway associated with the dwelling to the west and the open front yard of the property to the east and no private open space or windows on the adjoining properties will be impacted. Small projections on the eastern and western side of the dining room window will assist in restricting acute viewing angles.

Conclusion

The proposal to remove/alter the screening requirements are specific to apartments 1, 3 and 5. No direct views to windows and private open space are available from those areas, particularly from the window and balconies for apartments 1 and 5. While some downward view to an adjacent deck is possible from the apartment 3 roof top deck such a view is oblique rather than direct and the proposed obscuring of two balustrade panels albeit to 1.2 metres will assist in minimising that view.

The proposal is not considered to be seriously at variance with the Development Plan and sufficiently compliant with Design and Appearance Principle 11 and Residential Development Principle 41 to warrant approval.

7. 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 110/00680/18 by deleting the requirement for 1.7 metre high obscure glass to side balustrades for roof top decks for apartments 1 and 3 and to the dining window and balcony on the southern elevation of apartment 5 subject to the following condition:**
 - 1. That obscure balustrades to the southern side of the roof top deck associated with apartment 3 be as shown on the drawing U3-211 WD-12 dated 19/09/18.**