

REPORT TO: COUNCIL ASSESSMENT PANEL

DATE: 24 OCTOBER 2018

SUBJECT: APPEAL ITEM – 110/00428/18 VARIATION DA 110/01039/15 (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 AT 25A, 25B AND 25C ESPLANADE, SOMERTON PARK AND 25A AND 25B WILKINSON AVENUE, SOMERTON PARK

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ATTACHMENTS: 1. COMPROMISE DOCUMENT
A. COMPROMISE REPORT DATED 25 JULY 2018 AND ATTACHMENTS
B. ORIGINAL REPORT DATED 27 JUNE 2018 AND ATTACHMENTS

1. Background

On 27 June 2018, the Council Assessment Panel issued Development Plan Consent for DA 110/00428/18 for the variation of 110/01039/15 at 25A, 25B and 25C Esplanade, Somerton Park and 25A and 25B Wilkinson Avenue, Somerton Park.

The applicant has lodged an appeal with the Environment, Resources and Development Court on the grounds of seeking to amend Condition 1, as it does not provide allowance for the use of obscure film to be applied to upper level windows that require screening for visual privacy.

Additional information and a sample was submitted to the Panel for its further consideration on 25 July 2018. At that meeting the Panel resolved that there is not sufficient reason to reconsider its decision with respect to Development Application 110/00428/18.

A second compromise proposal has now been submitted for the Panel's consideration prior to a Hearing on 12 November 2018. Additional information in this compromise relates to the west facing balconies of apartment 4. Screening of those balconies will include a 1.7 metre glass balustrade with obscure film to 1 metre above floor and clear glass above that. On the inside of the balustrade fixed and angled aluminium louvres with 30mm spacing will be attached to the top of a 900mm high handrail. As previously film in lieu of manufactured glass is still proposed to the west facing windows of apartments 4 and 5.

2. Assessment

Conditions 1 and 2 of 110/00428/18 read as follows:

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.

It is arguable that the alterations to the balcony screenings as proposed are consistent with condition 2 and do not require any further development approval. Although the bottom half of the glass balustrade will be obscured by a film, there is no reference in the condition requiring manufactured obscure glass. The condition requires only that the screens be fixed to 1.7 metres and avoid unreasonable overlooking into adjacent properties. Both the proposed film and louvre screen will be fixed. Given the angle of the louvres, their width and spacing, views from the balconies will be directed horizontally rather than downwards as depicted by the sightline diagrams (attachment 1) and as such will avoid unreasonable overlooking into adjoining properties.

Detailed information regarding the merits of obscure film versus manufactured obscure glazing in relation to condition 1 and relevant Development Plan provisions were provided in report number 520/18. Rather than repeat them here members are referred to attachment 2. At that time the Panel resolved that there was insufficient reasons to reconsider its previous decision. No further information has been provided. The Panel could therefore resolve once again not to amend its previous decision or alternatively in light of the upcoming Court Hearing and in conjunction with the proposed balcony screen amendments advise the Court that it agrees to amend the wording of conditions 1 and 2 as per the recommendation below.

3. Recommendation

That should the Council Assessment Panel consider there are sufficient reasons to reconsider its decision the following conditions may be applied.

PLANNING CONDITIONS

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 obscure film is attached to the window up 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 obscure film is attached to the window up to 1.7 metres above the associated finished floor level prior to the occupation of the dwellings. The obscure film used shall comprise Llumar® illusions® Decorative Window Film Frost Services – Frost (NRM PS 2) or equivalent.
2. All balconies (excluding the west facing balconies of Dwellings 1, 2 and 3) and roof top decks shall comprise glass balustrades with obscure film to 1 metre above floor level and angled aluminium louvre screens above the film to a height of 1.7 metres above floor. The obscure film used shall comprise Llumar® illusions® Decorative Window Film Frost Services – Frost (NRM PS 2) or equivalent and the louvre blades shall be 900mm deep with not more than 30mm spacing.
3. Conditions 1 to 2 and 6 to 16 still apply, as follows:
 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 storm water 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 storm water 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:

Storm water 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. Any change in levels along external site boundaries of 200mm or more shall be retained to suitable engineering standards and any fencing shall be erected on top of such retaining walls. Construction of all retaining walls shall be undertaken and completed prior to the commencement of construction of the dwelling(s) herein approved.

- 7. That landscaping shall comprise where practicable, trees and shrubs that are indigenous to the local area and are semi mature or of fast growing tube stock. 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.**
- 8. All roof mounted mechanical plant and equipment shall be aesthetically screened so as not to be viewed from surrounding land. Details of proposed screening shall be provided to Council for assessment prior to the issue of Development Approval.**
- 9. That all domestic mechanical plant and equipment, including air conditioners, should be selected, designed, and installed to comply with the following mandatory criteria:**
 - (a) Noise level not to exceed 52dB(A) between the hours of 7am and 10pm when measured and adjusted at the nearest residential zone interface in accordance with the Environment Protection (Noise) Policy 2007*; and**
 - (b) Noise level not to exceed 45dB(A) between the hours of 10pm and 7am when measured and adjusted at the nearest residential zone interface in accordance with the Environment Protection (Noise) Policy 2007*; and**
 - (c) Where marked with an * the above noise levels must include a penalty for each characteristic where tonal/modulating/impulsive/low frequency characteristics are present in accordance with the Environment Protection (Noise) Policy 2007.**
- 10. That construction shall take place between 7am and 7pm Monday to Saturday and not on Sundays or public holidays. All such work shall be undertaken in such a manner so as not to, in the reasonable opinion of Council, cause any nuisance or annoyance to any of the occupiers of buildings within the locality. Any work outside of these hours requires the written approval of Council.**
- 11. That dust emissions from the site shall be controlled by a dust suppressant or by watering (subject to any relevant water restrictions) regularly to the reasonable satisfaction of Council.**
- 12. That the builder shall at all times provide and maintain a waste receptacle to the reasonable satisfaction of Council on the site in which and at all times all builder's waste shall be contained for the duration of the construction period and the receptacle shall be emptied as required.**
- 13. That all hard building materials, waste and litter on site be stored in a manner that secures it on site during the construction works.**
- 14. That no solid or liquid trade wastes be discharged to the stormwater system.**
- 15. A dilapidation report shall be prepared including photographs and video footage to document the pre-development structural condition of all buildings on adjoining land. The dilapidation report shall be prepared prior to the commencement of construction, with copies provided to affected adjoining landowners and Council.**

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16. All hard surfaced ground areas, including common driveway, shall be treated with permeable paving to reduce the amount of runoff and maximise recharge of the aquifer. Details of the paving selection shall be provided to Council prior to the issue of Development Approval.