

REPORT TO: COUNCIL ASSESSMENT PANEL

DATE: 24 OCTOBER 2018

SUBJECT: APPEAL ITEM – 110/00136/18 A PAIR OF TWO STOREY DWELLINGS WITH INTEGRAL GARAGES ON A HAMMERHEAD CONFIGURATION AT 39 HOLDER ROAD, HOVE

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**ATTACHMENTS: A. COMPROMISE PLANS
B. ORIGINAL REPORT
1. LOCALITY MAP
2. ORIGINAL PLANS
3. STATEMENTS OF REPRESENTATIONS
4. APPLICANT'S REPLY TO STATEMENTS OF REPRESENTATIONS**

1. Abstract of Report

On the 27 June 2018, the Council Assessment Panel refused Development Plan Consent for DA 110/00136/18 for the construction of a pair of two storey detached dwellings with integral garages on a hammerhead configuration.

The applicant has lodged an appeal with the Environment, Resources and Development Court, and as part of this process, has sought to submit a set of amended plans aimed at addressing the reasons for refusal.

The reasons for refusal are as follows:

The proposal does not satisfactorily satisfactorily adhere to the following provisions in the Development Plan: General Section Residential Development Principles 2, 19, 21, 22, 24, 27, 28 and Residential Zone Principles 7 and 9. More specifically, the proposal:

- Does not achieve minimum allotment and site area requirements;
- Presents a two-storey built form where single-storey is prescribed;
- Does not achieve the minimum setback distance to the front boundary, with respect to both the dwelling façade and garaging;
- Does not achieve the minimum setback distance to a side boundary;
- Presents an excessive length of wall to a side boundary; and
- Exceeds the maximum site coverage requirement.

1. **Compromise Considerations**

The applicant has sought to provide compromise plans to the Panel with the aim of addressing the reasons for refusal. The amendments, relative to the reasons for refusal, are summarised as follows:

Dwelling 1 – Forward-most dwelling:

- A reduction in building floor area from 277 to 250 square metres;
- Increase in garage setback from 6 to 7.2 metres;
- Increase in dwelling front setback from 5.9 to 6.1 metres;
- Garage wall height on boundary reduced from 3.36 metres to 2.76 metres above the natural ground level; and
- Increase upper level from eastern side boundary from 2.4 to 5.9 metres;

Dwelling 2 – Rear-most dwelling:

- Reduction in building floor area from 285 to 250 square metres;
- Increase in eastern side upper level setback from 2.5 to 4 metres;
- Increase in western side upper level setback from 3 metres to 6 metres;
- Increase rear boundary ground level setback from 940mm to between 3.9 and 4.2 metres; and
- Significant reduction in upper level bulk

Refer to Attachment A

2. **Assessment of the Compromise**

The compromise has managed to address 2 of the six reasons for refusal, those being with respect to achieving adequate side boundary setbacks for the upper level components and excessive length of wall on a side boundary. The failure to satisfy all of the reasons for refusal however do not mean that the compromise is without planning merit.

The rear-most dwelling fails to satisfy the maximum site coverage of 50 percent of the site area (52 percent). The 2 percent variance is considered negligible and importantly, the fundamental objectives of site coverage controls are achieved, which focus on achieving pedestrian and vehicle access, adequate boundary setbacks and sufficient private open space.

The minimum allotment and site area requirements have not been addressed. The site does not have sufficient area to satisfy the minimum site area requirements as anticipated by the Development Plan. The applicant's intent is to mitigate this variance with a design that otherwise reasonably satisfies the relevant provisions of the Development Plan.

The proposal continues to reflect two storey built form albeit a noticeable reduction in the upper level bulk of the rear-most dwelling. With respect to two storey built form at the rear of sites, the Development Plan both discourages as well as offers design guidelines for the design of two storey buildings. With respect to the design guidelines, it references *minimum side boundary setbacks of 4 metres*, it also references *low scale built form*. The compromise plan achieves one of those design guidelines, in that the upper level component of the building is setback 4 and 6 metres from the respective side boundaries. In the case of the western side setback, the 6 metre setback exceeds the minimum setback requirement. The consideration

to *low scale built form* is subjective and therefore difficult to measure with certainty. When comparing the proposed building scale to development which can occur as of right within the Zone, the proposed building scale is less than what would be otherwise possible in the case of even a single detached dwelling of two storeys as opposed to a pair of dwellings. The Zone guidelines effectively allow for the construction of a large two storey building setback 2.5 metres from the side boundaries and spanning from the façade back to 6 metres from the rear boundary (hence located in a similar position to the proposed rear-most dwelling), provided that site coverage and private open space are not compromised. Furthermore, the site is located within a prescribed Residential Code area to which the side boundary setbacks can be as close as 1.9 metres from the side boundaries at the upper levels. In comparison, the proposed buildings reflect a lower scale of built form, as they present a physical and visual break between the forward-most and rear-most buildings.

With respect to the front setback, the eastern adjacent building is setback 7.6 metres and the western adjacent building is setback 8.46 metres from the primary street boundary. The Development Plan anticipates a primary street setback that would match the eastern adjacent building (7.6 metres). The forward-most dwelling has been amended to achieve a setback of 6.1 metres to the building façade and 7.2 metres to the garage. This presents a shortfall of 1.5 metres to the dwelling façade and 400mm to the garage. Although the proposal fails to satisfy the Development Plan with respect to the front setback, it is reasonable to consider the fact that the land is located within a prescribed Residential Code area to which a substantial two storey dwelling could be built on the land with a front setback which is up to 1 metre forward of the neighbouring building. The proposed setback is still 500mm forward of that mark however the merit assessment allows for better controls with façade articulation and front landscaping, whereas a Residential Code designed house could accommodate a very bland and visually unappealing façade and scale as presented to the streetscape. Furthermore, it is important to have regard to the street setback character within the immediate locality. The southern side of Holder Road generally contains building setbacks in the range of 7 to 8 metres however the northern side of Holder Road (immediately across from the subject land) contains three properties in a row in which the rear boundary is Holder Road. These sites are visually defined by solid fencing and a row of 5 garages, which offer little visual amenity to the streetscape.

With respect to the reason for refusal identified as *presents excessive length of wall to a side boundary*, the compromise plan contains garages located on side boundaries however the lengths do not exceed 7.25 metres. The Development Plan anticipates walls located on allotment boundaries up to 8 metres in length. The wall heights do not exceed 2.76 metres above the natural ground level to which the Development Plan anticipates a maximum height of 3 metres.

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. That the design and siting of all buildings and structures and site works shall be as shown on the plans prepared by Mirage Homes dated 18/09/2018 '39 Holder Road, Hove' Forward-most Dwelling Sheets 18-33 and Rear-most Dwelling Sheets 19-35 submitted to and approved by Council unless varied by any subsequent conditions imposed herein.
2. 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.

3. That landscaping shall comprise where practicable within the front, side and rear yards and each side of the access driveway, trees and shrubs that are indigenous to the local area and are semi mature or of fast growing tubestock. All such landscaping shall be established within three months of substantial completion of the development and any such vegetation shall be replaced if and when it dies or becomes seriously diseased.
4. That all upstairs windows on the side and rear elevations of the forward-most dwelling and all upstairs windows of the rear-most dwelling 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.
5. 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.
6. 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.
7. 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.
8. That all hard building materials, waste and litter on site be stored in a manner that secures it on site during the construction works.
9. That no solid or liquid trade wastes be discharged to the stormwater system.

- 10. 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.**