

TO: **COUNCIL ASSESSMENT PANEL**  
 DATE: **23 OCTOBER 2019**  
 SUBJECT: **COUNCIL ASSESSMENT REPORT**  
 AUTHOR: **A STAMATOPOULOS**  
**DEVELOPMENT OFFICER - PLANNING**

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

HEARING OF REPRESENTORS: **BRIAN GOGLER AND MARIE WARMING**  
 HEARING OF APPLICANT: **REPRESENTATIVE OF FINESSE BUILT**

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DA NO.	:	<u>110/00493/19</u>
APPLICANT	:	<u>FINESSE BUILT</u>
LOCATION	:	<u>6 SHOREHAM ROAD, SOUTH 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>SINGLE STOREY DWELLING ADDITION, SWIMMING POOL AND GARAGE LOCATED ON NORTHERN BOUNDARY</u>
REFERRALS	:	<u>NIL</u>
CATEGORY	:	<u>TWO</u>
REPRESENTATIONS	:	<u>ONE</u>
RECOMMENDATION	:	<u>DEVELOPMENT PLAN CONSENT SUBJECT TO CONDITIONS</u>

## 1. Background

An application was lodged to Council on 26 June 2019 to construct a single storey dwelling addition to the existing dwelling, a swimming pool and garage located on the northern boundary. The application was subject to Category 2 notification according to the Procedural Matters of the Holdfast Bay Development Plan. One representation was received from the adjoining neighbour to the north of the subject land.

## 2. Site and Locality

The subject site contains a rectangular-shaped allotment located on the corner of Shoreham Road and George Street and includes a primary frontage of 18.2m and a depth/secondary frontage of 36.58m. Single-storey detached dwellings characterise the majority of the current locality. A group of three two-storey detached dwellings have been recently constructed on the eastern side of George Street to the north of the subject land.

*Refer to Attachment 1*

### 3. Proposed Development

The single-storey addition is located to the rear of the dwelling which steps down to open kitchen, meals and lounge rooms, bathroom, laundry and a bedroom with a walk-in wardrobe and ensuite. The alfresco looks over the proposed swimming pool to the south of the dwelling. The garage is located on the northern boundary gaining access from an established crossover on George Street. A portion of the existing dwelling will be reroofed.

*Refer to Attachment 2*

### 4. Development Data

DEVELOPMENT DATA			
Aspect	Proposed	Development Plan Requirement	Compliance
Site Coverage	310m <sup>2</sup> or 49%	50%	<u>Complies</u>
Private Open Space	145m <sup>2</sup> or 21%	20%	<u>Complies</u>
Side Setbacks			
- Dwelling	1.3m & 5m	1m & 2m	<u>Complies</u>
- Garage	900mm	2m	<u>1.1m shortfall</u>
Rear Setbacks	1m & 1.3m	4m	<u>3m &amp; 2.7m shortfall</u>
Wall Heights			
- Dwelling	3m	Complies	<u>Complies</u>
- Garage	3.28m	3m	<u>280mm variance</u>

### 5. Public Consultation

The proposed development was subject to Category 2 public notification, one representation was received. A summary of the representation is shown below:

#### **B Gogler and M Warming of 5 George Street, South Brighton:**

- The location of the swimming pool equipment is in close proximity to bedroom windows of the applicants dwelling.
- The noise and vibration from the equipment against the fence will impact on living amenity of the representors land.
- The location of the garage is unacceptable as it is at variance with the established setback pattern of George Street.
- The garage will be an imposing structure to view from the front of the representor's property.
- The cladding of the garage will pose a fire risk.
- The construction of the garage will impact on the landscaping of the representors land.

#### **Alan Cooper from Finesse Built responded to the representations with the following solutions:**

- The swimming pool equipment will be moved further to the south and house in a sound actuated store abutting the neighbour's garage wall.
- The garage boundary wall has been reduced in height to 3.248m from natural ground level.
- All components of the garage will be built in accordance with the National Construction Code alleviating any fire risk concerns.
- To minimise damage to the neighbours landscaping, the applicant is proposing at the clients cost to offset the on boundary footing 700-900mm and cantilever the slab to minimise damage to the plants roots.

## 6. Development Plan Provisions

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

<b>RESIDENTIAL ZONE</b>	
<b>Objectives</b>	
1. A residential zone comprising a range of dwelling types, including a minimum of 15% affordable housing.	Complies
3. Development that contributes to the desired character of the zone.	Complies
<b>Desired Character</b>	
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	Complies
<b>Development outside of the policy areas will comprise:</b>	
<ul style="list-style-type: none"> <li>• Single storey in areas east of Brighton Road, and up to two storeys in areas west of Brighton Road.</li> </ul>	Complies
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	Complies
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	Complies
<ul style="list-style-type: none"> <li>• Architectural design and detailing that responds to localised character by way of fenestration, doorways, windows, eaves and roof forms.</li> </ul>	Complies
<ul style="list-style-type: none"> <li>• Development will be setback and be orientated to minimise impacts of the privacy of neighbouring residents.</li> </ul>	Complies

<b>RESIDENTIAL ZONE</b>			
<b>Desired Character (Cont)</b>			
<b>Development outside of the policy areas will comprise:</b>			
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>• dwelling</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> <li>• supported accommodation.</li> </ul> </li> </ul>	Complies		
<b>Principles of Development Control</b>			
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:			
<b>Location of the dwelling</b>	<b>Maximum wall height above natural ground level</b>	<b>Maximum height above natural ground level</b>	
West of Brighton Road or Tapleys Hill Road East of Brighton Road or Tapleys Hill Road	7 metres  3.5 metres	Two storeys  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.	Complies
9. Dwellings and/or residential flat buildings should be setback a minimum of 1 metre from one side boundary to incorporate pedestrian access.	Complies		

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

<b>Residential Development</b>	
5. Residential development should be designed to ensure living rooms have an external outlook.	Complies
10. The design and location of buildings should ensure that direct winter sunlight is available to adjacent dwellings, with particular consideration given to: (a) windows of habitable rooms (all rooms excluding bathrooms, laundries and hallways), particularly living areas (b) ground-level private open space (c) upper-level private balconies that provide the primary open space area for any dwelling (d) access to solar energy.	Complies
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.	Complies
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 area's 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
13. Garages, carports and outbuildings should have a roof form and pitch, building materials and detailing that complement the associated dwelling	Complies
14. Garages and carports facing the street should not dominate the streetscape and should be designed in accordance with the following: (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 (b) be located at least 0.5 metres behind the main face of the associated dwelling (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: (i) two individual doors with a distance of not less than 300 millimetres between them (ii) double tilt-up doors with moulded door panels having a maximum width of no more than 5 metres (d) be constructed of materials that integrate with those of the associated dwelling, or pre-coloured treated metal.	(a) Complies (b) Does not comply (faces secondary street) (c) N/A (d) Complies
16 Residential outbuildings, including garages and sheds, should not be constructed unless in association with an existing dwelling.	Complies

Residential Development (Cont)					
17. Garages, carports and outbuildings should be designed within the following parameters:					
<b>Parameter</b>	<b>Total floor area (maximum)</b>	<b>Wall height above natural ground level</b>	<b>Wall length</b>	<b>Maximum height</b>	<b>Setback from any existing structure on the site located on the same boundary</b>
Within 3 metres of a side or rear boundary	Sites 600 square metres or more: 60 square metres  Sites 400-600 square metres: 40 square metres  Sites less than 400 square metres: 30 square metres	3 metres	9 metres	4.5 metres	n/a
On a side or rear boundary	Sites 600 square metres or more: 60 square metres  Sites 400-600 square metres: 40 square metres  Sites less than 400 square metres: 30 square metres	3 metres	8 metres, provided the total length of all existing and proposed boundary walls does not exceed 30 per cent of the total common boundary length	4.5 metres	6 metres
Floor Area – Complies Wall Height – 280mm Variance Wall Length – Complies Maximum height – Complies					
18. An outbuilding should not reduce the area of useable private open space by less than 80 per cent of that required by the relevant zone, policy area or precinct.					
Complies					
21. Residential development (other than where located on a boundary) should be setback from side and rear boundaries in accordance with the following parameters:					
<b>Parameter</b>	<b>Value</b>				
Side walls with a height up to (and including) 3 metres at any point above the natural ground level	1 metre				Complies
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				N/A
Rear boundary setback for single storey buildings with a wall height 3 metres or less above natural ground level	4 metres				2.7m and 3m shortfall
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				N/A
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					

<b>Residential Development (Cont)</b>							
<p>24 Walls associated with a dwelling located on a side boundary should be designed in accordance with the following parameters:</p> <p>(a) a height not exceeding 3 metres above natural ground level            (b) a length not exceeding 8 metres            (c) the wall, when its length is added to the length of any other relevant walls or structures located on that boundary:</p> <p>(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            (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.</p>	<p>(a) 280mm variance            (b) Complies            (c) Complies</p>						
<p>25. Walls with a height of up to (and including) 3 metres above natural ground level (excluding veranda, porch and balcony structures) should be setback 2 metres from the secondary street frontage.</p>	<p>Dwelling wall complies            Garage wall does not comply</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" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Parameter</th> <th style="text-align: left;">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	<p>Complies</p>
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 be limited to ensure sufficient space is provided for:</p> <p>(a) vehicle parking            (b) domestic storage            (c) outdoor clothes drying            (d) a rainwater tank            (e) private open space and landscaping            (f) front, side and rear boundary setbacks that contribute to the desired character of the area            (g) <i>convenient storage of household waste and recycling receptacles</i></p>	<p>Complies</p>						
<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> <p>(a) to be accessed directly from the internal living areas of the dwelling            (b) generally at ground level to the side or rear of a dwelling and screened for privacy            (c) to take advantage of but not adversely affect natural features of the site            (d) to minimise overlooking from adjacent buildings            (e) to achieve separation from bedroom windows on adjoining sites            (f) to have a northerly aspect to provide for comfortable year-round use            (g) to not be significantly shaded during winter by the associated dwelling or adjacent development            (h) to be shaded in summer.</p>	<p>Complies</p>						
<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" style="width: 100%; border-collapse: collapse;"> <tr> <td><b>Site area of dwelling</b> - 250 square metres or greater.</td> </tr> <tr> <td><b>Minimum area of private open space</b> – 20% of site area.</td> </tr> <tr> <td><b>Provisions</b>            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> </table>	<b>Site area of dwelling</b> - 250 square metres or greater.	<b>Minimum area of private open space</b> – 20% of site area.	<b>Provisions</b> 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>Complies</p>			
<b>Site area of dwelling</b> - 250 square metres or greater.							
<b>Minimum area of private open space</b> – 20% of site area.							
<b>Provisions</b> 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>	<p>Complies</p>						

Residential Development (Cont)	
50. Swimming pools, outdoor spas and associated ancillary equipment and structures should be sited so as to protect the privacy and amenity of adjoining residential land.	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 require further discussion.

### Location of Garage

It is essential to consider that the subject land is within an area 'designated' for assessment against Schedule 4, Clause 1 of the Development Regulations. The relevance of this designation is that an outbuilding in the form of a garage has the potential to either be assessed according to the provisions of the Development Plan or Clause 1 of Schedule 4 ('complying development'). Put another way; if the garage was lodged separately to the additions and swimming pool, it would satisfy the relevant criteria to be constructed in its proposed location.

Specifically, Schedule 4, Clause 2A allows for a garage:

- To be constructed a minimum of 900 millimetres of a boundary of the allotment with a secondary street (if the land has boundaries on 2 or more roads);
- Situated on a boundary of the allotment (not being a boundary with a primary street or a secondary street - to have a wall length not exceeding 8 metres;
- A wall height not exceeding 3 metres (measured as a height above the natural surface of the ground and not including a gable end);
- A roof height where no part of the roof is more than 5 metres above the natural surface of the ground;
- If situated on a boundary of the allotment (not being a boundary with a primary street or a secondary street)— the development will not result in all relevant walls or structures located along the boundary exceeding 45% of the length of the boundary;
- Will not be within 3 metres of any other relevant wall or structure located along the boundary, unless on an adjacent site on that boundary there is an existing wall of a building that would be adjacent to or abut a proposed relevant wall or structure (in which case this subparagraph does not apply); and
- The total roofed area of all existing or proposed buildings on the allotment will not exceed 60% of the area of the allotment.

A variance concerning the wall height of the garage located on the boundary is evident. The proposed wall height exceeds the 3m anticipated maximum of Schedule 4, Clause 1 by 280mm. Despite this, the Council can either deem the departure minor according to Section 35(1b) of the Development Act or be assessed on merit according to Section 35(1c) of the Development Act. Given the circumstances of the departure and its associated impact, it would not be unreasonable for the Council to consider either avenues for consent.

The relevance of the complying status was considered in the matter of *Dunning & Anor v District Council of Copper Coast* [2010] SAERDC 47 (extract provided).

*“41 Thirdly, as I remarked in the decision in the second appeal, when assessing the proposal against the relevant provisions appropriate regard should be had to the conditions that apply to complying development such as those expressed in Zone Principle 5. In the present appeal the regime of complying development in the Plan has, by virtue of Schedules 1A and 4, changed materially. It might be said therefore that their terms are an expression of the strategic intent of the Zone simply because they have introduced into the planning scheme in the nature of “as of right” developments...The relevant passages would support a view that developments that are permissible by virtue of Schedules 1A and 4 are relevant considerations.”*

*“45 When these factors are considered against the backdrop of the recently introduced “as of right” development and aspects of Schedule 1A and the influence those provisions have on the policy intent for residential development in the Zone, I have reached the conclusion that the design, location and appearance of the balcony roof has struck the appropriate balance to which earlier reference was made. That the proposed development, as Mr Heynen said, “is commensurate with or of a lesser scale than development activities that can be reasonably anticipated as of right” is a fact that supports such a conclusion.”*

The approach of the Court in the abovementioned matter was entirely consistent with the decision in the matter of *Juczenko v City of Mitcham* [2006] SAERDC 91 (extract provided below):

*“26 I consider that “as of right” complying development must be taken as a conservatively acceptable form of development in the applicable zone. Counsel for the Council is not correct therefore in saying that such a position or outcome does not mean that it is a good development.”*

The above case law states that what can be constructed as complying development must be taken into consideration during a merit assessment. As this is the case, the garage in its current location contains substantial merit to be considered as an appropriate location on the subject land.

### **Amenity**

A numerical shortfall of the rear setback was noted during the assessment of the application. The Development Plan anticipates a 4m setback to the rear. The addition is located 1m and 1.3m from the rear boundary. Although this is the case, impacts to the amenity of the neighbouring properties are not considered to be adverse. A portion of the rear of the addition will be screened as it is located adjacent to the garage wall of the neighbouring northern property. A small part of the rear wall, 3.6m, is exposed to the northern neighbour. However, it is adjacent to the side of the dwelling, which is typically not a commonly used space. Overshadowing will not occur as the addition is to the south of the neighbouring dwelling. The private open space of the dwelling is located to the east of the allotment and is compliant with the development plan.

The representor raised concerns regarding the location of the swimming pool equipment. When initially lodged, the swimming pool equipment sat adjacent to bedroom 1 of the addition. As concerns were raised during public consultation, the applicant submitted amended plans showing the pool equipment located further south adjacent to the ensuite. The pool equipment shown on the revised plan is located adjacent to the garage of the neighbouring dwelling, well away from any habitable rooms. The amended location will significantly reduce any impacts of noise emissions. A condition regarding noise emission is recommended to be associated with planning consent.

## 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 Development Assessment Panel resolves to grant Development Plan Consent to Development Application 110/00493/19 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 storm water from the additions 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.**

3. **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.**
4. **That the filter pump associated with the pool be enclosed in such a way that noise levels do not exceed 45db(a) measured at adjoining property boundaries.**