

REPORT TO: COUNCIL ASSESSMENT PANEL

DATE: 27 NOVEMBER 2019

SUBJECT: APPEAL ITEM – 110/00487/19 - 41-43 MARLBOROUGH STREET,
BRIGHTON

WRITTEN BY: DEAN SPASIC – DEVELOPMENT OFFICER PLANNING

ATTACHMENTS:

- A. COMPROMISE DOCUMENTATION
- B. ORIGINAL REPORT
 - 1. LOCALITY MAP
 - 2. ORIGINAL PLANS
 - 3. STATEMENTS OF REPRESENTATIONS
 - 4. APPLICANT’S REPLY TO REPRESENTATIONS

1. Background

On the 25 September 2019, the Council Assessment Panel refused the proposal for the following reasons:

General Section Residential Development Principles 2, 10, 12, 20, 21, 22(a), 23 and 24(a), General Section Design and Appearance Principle 2 and Residential Zone Desired Character Statement. More specifically, the proposal displays the following non-compliances:

- Dwelling 1 is visually imposing and overbearing, contrary to seeking unobtrusive small scale development;
- Excessively high walls on boundaries pertaining to Dwelling 1;
- The upper level walls pertaining to Dwelling 1 are too high and too close to boundaries; and
- Insufficient sunlight access to the rear yard of the dwelling to the south.

The applicant has lodged an appeal with the Environment, Resources and Development Court. A compromise plan has been submitted for the Panel’s consideration.

2. Compromise proposal

The applicant has submitted a revised set of plans as a compromise to the plans which were previously refused by the Panel. A summary of the amendments are as follows:

1. Dwelling 1 has been reduced in length (east to west), resulting in a reduction in floor area;
2. Dwelling 1 garage parapet has been lowered by 500mm and now sits at a height of 3 metres;
3. The upper level ceiling of Dwelling 1 has been reduced to 3 metres (previously 3.3 metres), reducing the building height from 6.6 to 6.3 metres;
4. The roof form of Dwelling 1 has been amended from a hipped to low pitch skillion roof, reducing the total building height from 9.4 to 7.4 metres;

5. Permeable paving has been incorporated into the front driveways, assisting in the reduction of water run-off to the street table; and
6. Removal of paving between the front boundary to the front door, in order to accommodate additional landscaping.

3. Assessment

The amendments are considered to reflect a meaningful change to the proposal, with clear intent shown to address the reasons for refusal.

It is the view of the planning administration that the amendments have satisfactorily addressed the reasons for refusal, resulting in a built form outcome that meets the relevant provisions of the Development Plan.

Some additional bonus elements that the amendment provide is an improved outlook from the eastern adjacent neighbours balcony toward the view in the direction of the sea, which is achieved in the space between the forward-most dwellings and Dwelling 1. This is the result of the existing two storey dwelling at the rear being demolished, and the reduction in size of Dwelling 1.

It is important to reiterate the fact that the eastern adjacent property sits higher than the subject site, hence the impacts of Dwelling 1 are reduced to the scale of a 1.5 storey dwelling (with the garage wall on the eastern boundary siting lower than the buildings found on the eastern adjacent property along the common boundary, and thus a wall height of only 1.5 metres as viewed from the eastern adjacent site. *See Attachments A.5 & A.16*). Further, the land levels between Dwelling 1 and the southern adjacent property are the same, hence the proposal comprises a 3 metre high garage wall on the boundary, which is anticipated by the Development Plan.

Attachment A.9 provides a good visual demonstration of the extent of overshadowing cast on adjacent properties during the winter solstice (the absolute worst scenario over the course of the year). It clearly demonstrates that each of the adjacent properties will achieve adequate sunlight between 9am 3pm during the winter solstice.

4. RECOMMENDATION

That the ERD Court be advised that Council accepts the amended plans as a compromise in the Environment, Resources and Development Court appeal matter ERD-19-169 in the matter between Lares Homes Pty Ltd v City of Holdfast Bay and recommends the following conditions be included:

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, including those prepared by:**
 - a. **Lares Homes, Job No. LH123, LH126-128, Sheet 1 Amended Plan dated 07/11/2019;**
 - b. **Lares Homes, Job No. LH126-8, Sheet 7, Revision C dated 17.10.2019;**
 - c. **Lares Homes, Job No. LH123, Sheet 2 Amended Plan dated 07/11/2019;**
 - d. **Lares Homes, Job No. LH123, Sheet 3 Amended Plan dated 07/11/2019;**
 - e. **Lares Homes, Job No. LH123, Sheet 4 Amended Plan dated 07/11/2019;**

- f. Lares Homes, Job No. LH126, Sheet 2 dated May 19;
 - g. Lares Homes, Job No. LH126, Sheet 3 dated May 19;
 - h. Lares Homes, Job No. LH126, Sheet 4 dated May 19;
 - i. Lares Homes, Job No. LH126, Sheet 5 dated May 19;
 - j. Lares Homes, Job No. LH127, Sheet 2 dated May 19;
 - k. Lares Homes, Job No. LH127, Sheet 3 dated May 19;
 - l. Lares Homes, Job No. LH127, Sheet 4 dated May 19;
 - m. Lares Homes, Job No. LH127, Sheet 5 dated May 19;
 - n. Lares Homes, Job No. LH128, Sheet 2 dated May 19;
 - o. Lares Homes, Job No. LH128, Sheet 3 dated May 19;
 - p. Lares Homes, Job No. LH128, Sheet 4 dated May 19;
 - q. Lares Homes, Job No. LH128, Sheet 5 dated May 19;
2. A revised site works plan to be submitted prior to Development Approval, reflecting the amendments made to Dwelling 1.
 3. 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. 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.
 4. 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.
 5. Landscaping shall be established as per the plan prepared by Lares Homes, Job No. LH126-8, Sheet 7 Revision C dated 17.10.2019 and comprise fast growing tubestock. 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.
 6. All upstairs windows, balconies and terraces above natural ground level to the east, west and south elevations of all dwellings, and northern elevation of Dwelling 1, shall be designed in such a way that prevents a view into adjacent properties, to the reasonable satisfaction of Council.
 7. 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.

8. 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.
9. 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.
10. That all hard building materials, waste and litter on site be stored in a manner that secures it on site during the construction works.
11. That no solid or liquid trade wastes be discharged to the stormwater system.
12. 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.