Late Agenda

for the

Planning & Amenity Committee Meeting

To be held at the Council Chambers, Civic Centre, Boxshall Street Brighton

on

Tuesday, 30 October, 2018 at 7:00pm

Councillors: Cr Alex del Porto
Cr Laurence Evans (Mayor)
Cr Michael Heffernan
Cr James Long BM JP
Cr Clarke Martin
Cr Sonia Castelli
Cr Rob Grinter
Late Items

4. Matters of Decision

4.1 1/140 and 2/140 Esplanade Brighton Support the Grant of a Planning Permit (Consent Order) Application No. 5/2016/629/1
Ward: Northern.................................................................3
### 4. Matters of Decision

#### 4.1 1/140 AND 2/140 ESPLANADE BRIGHTON  
SUPPORT THE GRANT OF A PLANNING PERMIT (CONSENT ORDER)  
APPLICATION NO. 5/2016/629/1 WARD: NORTHERN

City Planning & Community Services - Development Services  
File No: PSF/15/8755 – Doc No: DOC/18/254825

**1. Application details**

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Support the Grant of a Planning Permit (VCAT consent order)</th>
</tr>
</thead>
</table>
| Applicant      | Trumen Corp (Vic) Pty Ltd  
C/O HWL Ebsworth Lawyers. |
| Title/Covenant/S173 Agreement | Lots 1 and 2 on Cluster Plan 001050  
The title is not subject to any restrictive covenants. |
| Date application received | 27th September 2016 |
| Current statutory days | N/A |
| Zoning | Neighbourhood Residential Zone (Schedule 3) |
| Overlays | Design and Development Overlay (Schedule 1)  
Development Contributions Plan (Schedule 1) |
| Site area | 848sqm |
| Number of outstanding objections | Three (3) |
| Is a Development Contribution Levy applicable? | Yes  
Catchment Area: 7 |
| Is the site located within an area of cultural heritage sensitivity? | Yes |

**Purpose**

The purpose of this report is to endorse a consent position reached by all parties at Compulsory Conference at the Victorian Civil and Administrative Tribunal (VCAT) on 24th October 2018.

**Proposal**

The application sought the Construction of two new dwellings, alteration of access to a road within a Road Zone, Category 1, construction of a roof deck in a Design and Development Overlay, Schedule 1 and removal of easements.
VCAT

An application for review against Council’s failure to Grant a Permit was lodged with VCAT on 16th January 2018 pursuant to Section 79 of the Planning and Environment Act 1987.

Council formed a view on the application on 14th May 2018 and determined to Not Support the application, with the reasons set out in the officer’s report and grounds of refusal included at Attachment 1.

Plans were formally substituted to VCAT by the applicant on the 8th June 2018. Council again resolved to not support the application as set out in the grounds of refusal (dated 19 July 2018) included at Attachment 2.

The appeal was scheduled for a hearing for one day on 26th July 2018. The application was then re-listed for a two day hearing on 20th September 2018. The hearing commenced on 20th September and continued into 21st September. Additional material was presented at this hearing by the applicant. In order to allow parties to review this material, the Tribunal adjourned the hearing and all parties agreed for the application to be listed for a Compulsory Conference.

The application was set down for a Compulsory Conference (mediation) on 12th October 2018. In attendance were representatives for the three objecting parties to the appeal, representatives of the applicant and Council. Further to discussions, the applicant and objectors requested additional time to resolve the matter. The application was subsequently set down for a further Compulsory Conference on 24th October 2018.

The applicant and objectors met informally on several occasions throughout the process to discuss outstanding concerns. ‘Without prejudice’ amended plans were circulated by the applicant on 18th October 2018. These plans are included at Attachment 3. The key changes to the ‘without prejudice’ amended plans included the following changes:

- Unit 1 setback from northern boundary between 1.2 and 1.7 metres at ground floor.
- First floor canopy feature element at Unit 1 to be reduced in height by 650mm.
- Internal reconfigurations including the location of entries to Units 1 and 2 from the front of the dwellings and the relocation of the stairs and lifts.
- New pedestrian gates and pathways to Units 1 and 2 from Esplanade.
- New ground floor entries and porches to the western elevation to Units 1 and 2.
- Rear ground floor pedestrian gates and pathways removed.
- Balcony to dining room at Unit 1 to be reduced in size to 15 square metres and planter box to be removed and replaced with 1.5 metre high screening to the east elevation.
- Planter box added to northern side of the balcony to Unit 1 formal living room.
- Sill height to eastern first floor window at Unit 2 dining room to be 1.7 metres in height.
- Roof terraces at Units 1 and 2 setback approximately 7 metres from the eastern edge of the roof below and 2 metres from the southern edge of the roof below.
- Air conditioning units to be screened to 1.7 metres in height.
• Screening to be provided to the north, east and south elevations of the roof terrace to 1.7 metres in height.

• Pools removed from roof terraces.

• Additional landscaping areas provided adjacent to the northern elevation and the eastern elevation of the building.

• Alternations to the proposed ramp to include curve to the eastern edge of the ramp where it joins the common driveway to ensure that vehicles turn left into the common driveway and removal of give way line marking.

• Changes to the basement to reflect the common property toilet and landscaping areas.

• Additional roof area to be provided over the basement ramp.

• 600mm trellis added to existing fence on eastern boundary adjacent to 3/140 Esplanade.

• Planter box added to eastern boundary adjacent to Unit 3/1540 Esplanade to allow landscaping.

• Landscaping changes within the front, side and rear setbacks.

• Wall added to northern boundary adjacent to common driveway.

The Compulsory Conference on 24th October was attended by representatives for the three objecting parties and representatives of the applicant and Council. At this Compulsory Conference, further to the without prejudice plans, the permit applicant agreed to:

• Screen the east and north elevation of the balcony to the dining room at Unit 1 to 1.7 metres in height and the west elevation to 1.2 metres in height.

• Reduce the height of the planting along the eastern boundary of the site, adjacent to the boundary with Unit 3/140 Esplanade to be at existing ground level.

• Include a note on the plans to state: ‘Common property planting subject to Owner’s Corporation consent’.

All parties in attendance agreed to a consent position in accordance with the recommendation below.

If the consent order is not endorsed by the Planning and Amenity Committee, the application will proceed to resume the hearing on 16th November 2018 for one further day. At this stage, should the matter proceed to the hearing, the above-mentioned changes will be retracted. The Tribunal has set out in its order dated 21st September 2018, that the hearing will address only specified matters which have not already been put forward during the earlier hearing on 20th and 21st September 2018.
2. **Recommendation**

That Council resolve to:

Support the Grant of a Permit under the provisions of the Bayside Planning Scheme in respect of Planning application 5/2016/629/1 for the land known and described as 1/140 and 2/140 Esplanade, BRIGHTON, for the Construction of two new dwellings on a lot, and roof decks in a Design and Development Overlay, Schedule 1, alteration of access to a road within a Road Zone, Category 1, and removal of easements in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans prepared by Elevli Plus Project No: 16789, Issue Date 18/10/2018 but modified to show:
   a) Mail boxes to be provided adjacent to the pedestrian access gates fronting the Esplanade.
   b) A minimum 2.1m headroom to be provided at the basement access entrance and throughout the basement as per Design Standard 2 of Clause 52.06 of the Bayside Planning Scheme.
   c) Minimum head clearance over the roof deck access stair to be provided.
   d) The sight triangles on the right hand side of the ramp (where it intersects with the common driveway) should not encroach into the other properties. A minimum 2m x 2.5m sight tringle to be provided on both sides in accordance with AS2890.1, ideally without encroaching into neighbouring properties. Common areas may be utilised to achieve sight lines.
   e) Location of all plant and equipment, including hot water services and air conditioners etc. Plant and equipment is to be located in the designated area on the roof or within the basement level unless otherwise approved.
   f) Evidence that Storm water from Lot 1/140 and 2/140 can be discharged to council nominated legal point of discharge.
   g) Evidence that the Storm water from the main access can be discharged to council nominated legal point of discharge.
   h) Water Sensitive Urban Design measures in accordance with Condition 8.
   i) A Landscaping Plan in accordance with Condition 10.

All to the satisfaction of the Responsible Authority.

2. The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason (unless the Bayside Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.
3. Before the occupation of the site commences or by such later date as is approved in writing by the Responsible Authority, all buildings and works must be carried out and completed to the satisfaction of the Responsible Authority.

4. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building/s without the written consent of the Responsible Authority.

5. All pipes (excluding downpipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

6. Before the occupation of the site commences, screening of windows including fixed privacy screens be designed to limit overlooking as required by Standard B22 and be installed and maintained to the satisfaction of the Responsible Authority thereafter for the life of the building.

7. The walls on the boundary of the adjoining common property shall be cleaned and finished to the satisfaction of the Responsible Authority.

8. The plan of removal of easement must not be altered without the written consent of the Responsible Authority.

**Water Sensitive Urban Design**

9. Prior to the endorsement of plans pursuant to Condition 1, detailed plans to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be drawn to scale with dimensions and three copies must be provided. The plans must show:

   a) The type of water sensitive urban design stormwater treatment measures to be used.

   b) The location of the water sensitive urban design stormwater treatment measures in relation to buildings, sealed surfaces and landscaped areas.

   c) Design details of the water sensitive urban design stormwater treatment measures, including cross sections.

   These plans must be accompanied by a report from an industry accepted performance measurement tool which details the treatment performance achieved and demonstrates the level of compliance with the Urban Stormwater Best Practice Environmental Management Guidelines, CSIRO 1999.

10. The water sensitive urban design stormwater treatment system as shown on the endorsed plans must be retained and maintained at all times in accordance with the Urban Stormwater - Best Practice Environmental Management Guidelines, CSIRO 1999, to the satisfaction of the Responsible Authority.

**Landscaping**

11. Prior to the endorsement of plans pursuant to Condition 1, a detailed landscape plan to the satisfaction of the Responsible Authority must be submitted to and be endorsed by the Responsible Authority. The plan must be generally in accordance with the Landscape Plan prepared by John Patrick Landscape Architects, Job No 18-0422, VCAT01 Rev E, dated 32/10/2018, and be drawn to scale with dimensions and three copies must be provided. The plan must show:
a) Two canopy trees in the front setbacks to the Esplanade. The species selected must be tolerant of coastal conditions and have the capacity to reach a mature height of 10 metres with a spread of 6 metres at maturity.

b) A planting schedule of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.

c) Landscaping and/or planting within all areas of the site not covered by buildings or hard surfaces.

Details of surface finishes of pathways and driveways.

12. Before the occupation of the development, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.

13. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

Drainage

14. Before the development starts, the permit holder must apply to Council for the Legal Point of Discharge for the development from where storm-water is drained under gravity to the Council network.

15. Before the development, detailed plans indicating, but not limited to, the method of storm-water discharge to the nominated Legal Point of Discharge (and On-Site Detention System where applicable) must be submitted to and approved by Council's Infrastructure Assets Department.

Construction Management Plan

16. Before the commencement of works, a Construction Management Plan (CMP), to the satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit and shall thereafter be complied with. The CMP must specify and deal with, but not be limited to the following as applicable:

a) A detailed schedule of works including a full project timing.

b) A traffic management plan for the site, including when or whether any access points would be required to be blocked, an outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services, preferred routes for trucks delivering to the site, queuing/sequencing, excavation and swept-path diagrams.

c) The location for the parking of all construction vehicles and construction worker vehicles during construction.

d) Delivery of materials including times for loading/unloading, unloading points, expected frequency and details of where materials will be stored and how concrete pours would be managed.

e) Proposed traffic management signage indicating any inconvenience generated by construction.

f) Fully detailed plan indicating where construction hoardings would be located.
g) A waste management plan including the containment of waste on site, disposal of waste, stormwater treatment and on-site facilities for vehicle washing.

h) Containment of dust, dirt and mud within the site and method and frequency of clean up procedures in the event of build-up of matter outside the site.

i) Site security.

j) Public safety measures.

k) Construction times, noise and vibration controls.

l) Restoration of any Council assets removed and/or damaged during construction.

m) Protection works necessary to road and other infrastructure (limited to an area reasonable proximate to the site).

n) Remediation of any damage to road and other infrastructure (limited to an area reasonably proximate to the site).

o) An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced.


q) All contractors associated with the construction of the development must be made aware of the requirements of the Construction Management Plan.

r) Details of crane activities, if any.

South East Water

Potable Water

17. The owner of the subject land must enter into an agreement with South East Water for the provision of potable water supply and fulfil all requirements to its satisfaction.

Sewer

18. The owner of the subject land must enter into an agreement with South East Water for the provision of sewerage and fulfil all requirements to its satisfaction.

General

19. Prior to certification, the Plan of Subdivision must be referred to South East Water, in accordance with Section 8 of the Subdivision Act 1988.

20. South East Water has no objection to the proposed removal of easement/s as South East Water’s reticulation assets are external to the property.

VicRoads

21. The disused or redundant vehicle crossings must be removed and the area reinstated with kerb and channel to the satisfaction of Council and at no cost to the Roads Corporation, prior to the commencement of the use.
Permit Expiry

22. This permit will expire if one of the following circumstances applies:
   a) The development is not started within two years of the date of this permit.
   b) The development is not completed within four years of the date of this permit.

In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

23. This permit will expire if:
   a) The plan of removal of easement is not certified within two (2) years of the date of this permit.
   b) The registration of the plan of removal of easement is not completed within five (5) years of the date of certification of the plan.

The Responsible Authority may extend the time if a request is made in writing before the permit expires or within six months afterwards.

Permit Notes:

- This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.
- A permit must be obtained from Council for all vehicular crossings. These must be constructed under Council's supervision for which 24 hours' notice is required.
- Construction of any fence / wall / letterbox structures may necessitate removal / damage of some sections of footpath. If this is the case, a ‘Road Opening Permit’ must be obtained to facilitate such work.
- A ‘Road Opening / Stormwater Tapping Permit’ is to be obtained from the Infrastructure Department prior to the commencement of the connection to the Council Drain / kerb / channel.
- The owner of the subject land is required to obtain a ‘Notice of Agreement’ from South East Water. All requirements must be fulfilled to its satisfaction prior to South East Water consenting to the issuing of a Statement of Compliance.
- Subsurface water must be treated in accordance with Council’s Policy for “Discharge of Pumped Subterranean Water Associated with Basements or Below Ground Structures.

3. Assessment of Amended Plans

This report details how the without prejudice amended plans at Attachment 3 respond to the previous Grounds for Refusal and relevant planning policies.

Ground for Refusal 1

The proposed development of the land does not comply with the purposes of the Neighbourhood Residential Zone and fails to respond to the objectives of Clause 22.06 (Neighbourhood Character Policy, Precinct C1) of the bayside Planning Scheme, due to a failure to maintain the spacious garden settings and Bayside...
vegetation character of the area, and failure to ensure that new buildings are appropriate in the context of the street, on the following grounds:

a) It does not maintain and enhance the garden setting of the site.
b) The development does not enhance the bayside vegetation character of the area.
c) It does not retain a sense of spaciousness in the area and provide adequate space for front gardens.
d) It does not ensure that the buildings do not dominate the streetscape.
e) The development does not use building materials that complement the coastal setting.
f) The new buildings do not provide an interesting and attractive interface with the foreshore reserve.

The amended setback provides articulation to the north side of the building and additional planting areas along the northern and eastern property boundaries. Appropriate opportunities for landscaping are proposed that, subject to condition, will ensure that the development enhances the bayside vegetation character of the area. The additional landscaping proposed, in combination with the proposed articulation to the building will soften the presentation of the built form. The proposed reduction in the height of the canopy element at Unit 1 will also contribute to ensuring that the development does not appear overly dominant within the streetscape. On balance, the proposed building materials are considered to be appropriate within the surrounds such that the development will provide an appropriate interface with the foreshore reserve.

**Ground for Refusal 2**

The proposed development fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:

a) B1 – Neighbourhood Character
b) B5 – Integration to the Street
c) B6 – Front Setback
d) B8 – Site Coverage
e) B17 – Side and Rear Setbacks
f) B18 – Walls on Boundaries
g) B22 – Overlooking
h) B26 – Dwelling Entry
i) B31 – Design Detail
j) B33 – Common Property
k) B34 – Site Services

The amendments sought through the Without Prejudice plans and the agreed amendments at the Compulsory Conference, result in a built form which provides an improved design response to the immediate context (Standard B1).

The northern wall has been set back from the boundary with the common property which improves landscaping opportunities and provides further articulation to this elevation (Standards B17 and 18). Additional articulation has also been provided to the southern elevation. The west facing architectural feature to the front façade of Unit 1 has been
reduced in height such that this does not appear overly dominant within the streetscape (Standard B31).

Pedestrian gates have been provided to both Units 1 and 2 from The Esplanade with dedicated pedestrian pathways identifying the entries to each dwelling and integrating the development appropriately with the street (Standards B5, B6 and B26).

The changes to the setbacks result in an overall reduction in site coverage to approximately 51%, and this minor variation is considered to be acceptable (Standard B8). Screening to windows, balconies and roof terraces as well as a reduction in size of the roof terrace ensures that no unreasonable overlooking will occur to neighbouring properties (Standard B22).

To the rear, changes to the basement including an extension to the roof over the basement and inclusion of a curve in the ramp to ensure that vehicles enter and exit to the left as well as notes on the plan relating to the common landscaping address concerns in relation to the common areas (Standard B33).

Council has no objection to the removal of any of the easements if applicant can prove storm waste can be discharged to Council nominated legal point of discharge. This will be secured by condition (Standard B34).

**Ground for Refusal 3**

The application fails to ensure that vehicle safety, egress and manoeuvre within the site is in accordance with Clause 52.06 (Car Parking) of the Bayside Planning Scheme.

The plans have been amended to include alterations to the basement ramp to discourage users from turning right into the common driveway. Conditions have also been included to address the technical concerns relating to basement access / egress in accordance with Clause 52.06. This is considered to be acceptable in this instance.

**Ground for Refusal 4**

The application fails to ensure an appropriate post construction landscaping outcome.

The amended setbacks ensure that sufficient space is available around the buildings for the planting of vegetation to respond to the neighbourhood character guidelines for the precinct. Furthermore, appropriate canopy tree planting will be secured by condition. This is considered to be acceptable in this instance.

**Support Attachments**

1. Officer Report ↓
2. Addendum Report ↓
3. Without Prejudice Plans ↓
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Not Support the Grant of a Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal</td>
<td>Construction of two new dwellings with roof decks in Design and Development Overlay 1, alteration of access to a road within a Road Zone, Category 1, and removal of easements.</td>
</tr>
<tr>
<td>Application No.</td>
<td>5/2016/629/1</td>
</tr>
<tr>
<td>Address</td>
<td>1/140 Esplanade BRIGHTON, 2/140 Esplanade BRIGHTON</td>
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<td>Applicant</td>
<td>Trumen Corp (Vic) Pty Ltd</td>
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<tr>
<td>Title/Covenant/S173 Agreement</td>
<td>Lots 1 and 2 on Cluster Plan 001050</td>
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<td></td>
<td>The title is not subject to any restrictive covenants.</td>
</tr>
<tr>
<td>Date application received</td>
<td>22/09/2016</td>
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<tr>
<td>Current statutory days</td>
<td>513</td>
</tr>
<tr>
<td>Zoning</td>
<td>Neighbourhood Residential Zone (Schedule 3)</td>
</tr>
<tr>
<td>Overlays</td>
<td>Design and Development Overlay (Schedule 1)</td>
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<tr>
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<td>Development Contributions Plan (Schedule 1)</td>
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<td>Site area</td>
<td>848sqm</td>
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<tr>
<td>Number of outstanding objections</td>
<td>3</td>
</tr>
<tr>
<td>Is the site located within an area of cultural heritage sensitivity?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is a development contribution fee applicable?</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Catchment area: 7</td>
</tr>
<tr>
<td>Responsible officer</td>
<td>Rosie Nolan</td>
</tr>
<tr>
<td>Signature</td>
<td>[Signature]</td>
</tr>
<tr>
<td>Planning delegate</td>
<td>[Signature]</td>
</tr>
<tr>
<td>Signature and date</td>
<td>[Signature]</td>
</tr>
</tbody>
</table>
1. Application details

Site and Surrounds

The site has a total area of 848 square metres, comprising 2 unit titles (Units 1 and 2, 140 Esplanade) and currently contains two double-storey attached dwellings. The dwellings form the front half of a development of four attached double storey dwellings. A common accessway runs along the north of the site providing access to two further double storey properties to the rear of the site, Units 3 and 4, 140 Esplanade.

To the north of the site is a single double-storey duplex dwelling at 142 Esplanade. To the south of the site are two double-storey dwellings at No’s 1 and 3 Keith Court. The site is located directly opposite Brighton Beach.

Proposal

The application seeks Construction of two new dwellings with roof decks in Design and Development Overlay 1, alteration of access to a road within a Road Zone, Category 1, and removal of easements.

Key details of the proposal are as follows:

- Number of dwellings: 2
- Building height in metres and storeys: 9 metres, comprising two storeys (plus basement and roof deck)
- Site coverage: 53%
- Permeability: 20%
- Car spaces total number and reduction sought: 6 (six), no reduction sought.

An aerial image and photographs of the site and surrounds are provided at Attachment 1.

History

Planning Permit 5/2014/440/1 for Construction of two storey residential building with roof decks comprising 6 dwellings at 1/140 Esplanade, Brighton was received by Council on 18th June 2014.

An application for review was submitted to the Victorian Civil and Administrative Tribunal (VCAT) under Section 79 of the Planning and Environment Act (1987).

The Council formed a position on the application on 13th March 2015 and resolved not to support the proposal.

VCAT upheld Council’s decision and resolved to refuse the application on 13th April 2015. No permit was granted.

2. Planning controls

Planning Permit requirements

A planning permit is required pursuant to:

- Clause 32.09-6 (Neighbourhood Residential Zone) – Construction of two or more dwellings on a lot.
- Clause 43.02-2 (Design and Development Overlay Schedule 1) – Construction of a roof deck.
- Clause 52.02 (Easements, Restrictions and Reserves) – Removal of easements.
- Clause 52.29 (Land adjacent to a Road Zone Category 1) – Create or alter an access to a Road Zone Category 1.

Planning Scheme Amendments

Planning Scheme Amendment VC110 implements the government’s response to the recommendations of the Managing Residential Development Advisory Committee by
amending Clause 72 to introduce a new general term, "garden area" and amending the Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone, Mixed Use Zone and Township Zone. This application benefits from transitional provisions in relation to this planning scheme amendment.

3. **Stakeholder consultation**
   
   **External referrals**
   
The application was referred to the following authorities:

<table>
<thead>
<tr>
<th>Referral Authority</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>South East Water</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>VicRoads</td>
<td>No objection, subject to conditions.</td>
</tr>
</tbody>
</table>

   **Internal referrals**
   
The application was referred to the following Council departments for comment:

<table>
<thead>
<tr>
<th>Internal Referral</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arborist</td>
<td>Objection. Fails to include appropriate landscaping.</td>
</tr>
<tr>
<td>Drainage Assets Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
</tbody>
</table>
   | Traffic Engineer          | Objection. Insufficient information on the following:
   |                           | Width and grade of ramp to the basement,      |
   |                           | Garage opening widths,                       |
   |                           | Diameter and turntable manufacture           |
   |                           | specifications,                              |
   |                           | Dimensions of car spaces within the          |
   |                           | basement,                                    |
   |                           | Pedestrian sightlines to Esplanade.          |

**Public notification**

The application was advertised pursuant to Sections 52(1)(a) and (d) of the *Planning and Environment Act 1987* and 3 objections were received.

3 objections remain outstanding at the time of this report.

The following concerns were raised:

- Neighbourhood character;
- Built form;
- Height;
- Overlooking;
- Overshadowing;
- Noise;
- Removal of easements;
- Removal of vegetation;
- Construction damage;
• Impact on common property/owners corporation issues;
• Parking / Traffic.

The number of objections received for this application is consistent across Council’s record management systems.

Consultation meeting

A consultation meeting was held on 23rd October 2017 attended by the permit applicant and three objectors. As a result of this meeting no objections were withdrawn.

Permit Preamble

The application was advertised as follows: ‘Construction of two new dwellings, alteration of access to a road within a Road Zone, Category 1 and removal of easements’.

It is noted that a permit is required pursuant to Clause 42.02 of the Bayside Planning Scheme for the construction of roof decks within the Design and Development Overlay 1.

For the purposes of the officer’s report, the permit preamble has been amended accordingly as follows: ‘Construction of two new dwellings with roof decks in Design and Development Overlay 1, alteration of access to a road within a Road Zone, Category 1, and removal of easements.’

4. Council Policy

Council Plan 2017-2021

Relevant objectives of the Council plan include:

• Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.
• Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.
• Where a range of housing types is provided to accommodate the changing needs of the community, enabling people to age in place and providing opportunities for young adults and families to live and remain in the municipality.

Relevant strategies of the Council plan include:

• Make discretionary planning controls stronger, by advocating for Council’s planning and urban design objectives to state government.
• Ensure new development responds to preferred neighbourhood character in activity centres.

Bayside Planning Scheme

• Clause 9 Plan Melbourne
• Clause 11 Settlement
• Clause 12 Environmental and Landscape Values
• Clause 15 Built Environment and Heritage
• Clause 16 Housing
• Clause 18 Transport
• Clause 19 Infrastructure
• Clause 21.02 Bayside Key Issues and Strategic Vision
• Clause 21.03 Settlement and Housing
• Clause 21.04 Environmental and Landscape Values
• Clause 21.06 Built Environment and Heritage
• Clause 21.09 Transport and Access
• Clause 21.10 Infrastructure
• Clause 22.06 Neighbourhood Character Policy (Precinct C1)
• Clause 22.08 Water Sensitive Urban Design
• Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
• Clause 43.02 Design and Development Overlay (Schedule 1)
• Clause 45.06 Development Contributions Plan Overlay (Schedule 1)
• Clause 52.02 Easements, Restrictions and Reserves
• Clause 52.06 Car Parking
• Clause 52.29 Land adjacent to a Road Zone Category 1
• Clause 55 Two or more dwellings on a lot
• Clause 65 Decision Guidelines

5. Considerations

In considering this application, regard has been given to the State and Local Planning Policy Frameworks, the provisions of the Bayside Planning Scheme, objections received and the individual merits of the application.

5.1. Neighbourhood character

The site is located within Neighbourhood Character Precinct C1. The proposal is considered to demonstrate an unacceptable level of compliance with the preferred future character statement and precinct guidelines as contained in Attachment 2.

The design of the new dwellings results in a built form which would not respond to the site or the surrounding streetscape. Large architectural treatments are proposed to the front façade, to shade and screen the front facing balconies. These elements result in the appearance of flat roofs, at odds with the immediate neighbouring properties and many of the surrounding properties which have pitched and hipped roofs. The proposal encroaches into the required front and side setbacks at ground and first floor level. The proposed built form and materials of concrete, render and cladding materials with gunmetal grey aluminium fins are a poor design response to the coastal setting, resulting in a dominant development that overwhelms the streetscape and the foreshore reserve. The site coverage reduces the area available on site for landscaping such that insufficient space for planting will be provided to the front and sides of the new dwellings. Furthermore, the application proposes tree removal and fails to provide for the planting of any indigenous trees, such that the application fails to maintain or enhance the bayside vegetation character or garden setting of the area.

The development fails to respect all of the precinct guidelines set out for the preferred future neighbourhood character. It is considered that it would not be appropriate to amend the proposal’s shortfalls by way of conditions of permit, as this would change the design fundamentally.

5.2. Design and Development Overlay (Schedule 1)

Pursuant to Clause 43.02 of the Bayside Planning Scheme, a permit is not required under Schedule 1 of the Design and Development Overlay to carry out works for a building with a building height of not more than 2 storeys, provided that each storey is less than 3.5 metres in height measured from the floor level to the finished floor level of the floor above, or if there is no floor above, to the ceiling (excluding staircases, architectural voids and light wells). Building height must not exceed 2 storeys (excluding an attic or a basement).

The overall height of the dwelling is 9 metres and two storeys. Each storey is less than 3.5 metres in height. The development proposes a basement.

A basement is identified as ‘a storey below ground level, or that projects no more than 1.2 metres above ground level.’
The proposed basement does not exceed a height of 1.2 metres above ground level at any point and as such, complies with the definition of a basement.

Pursuant to Clause 43.02, a permit is required for the construction of a roof deck.

The proposed roof decks are set back at least 2 metres from the roof edge on all sides and do not contain any structures exceeding 1.7 metres in height above finished floor level apart from access structures. The access structures themselves are less than 2.4 metres in height and are set-back appropriately from the front and sides of the site to ensure that they would have a minimal impact on the street and adjoining properties. Screening to a height of 1.7 metres is proposed to be provided on all sides to limit views towards neighbouring properties. The materials proposed would integrate with the architectural style of the building, whilst it is noted that this is not considered to be appropriate within the streetscape. This is discussed in further detail.

5.3. **Compliance with Clause 55 (ResCode)**

An assessment against the requirements of Clause 55 is provided at Attachment 3. Those non-compliant standards are discussed below:

**Integration with the Street and Dwelling Entry (Standards B5 and B26)**

The objectives of these standards seek to integrate the layout of development with the street and provide each dwelling with its own sense of identity.

The development fronts the Esplanade and makes use of the existing vehicle entry to the northern side of the site which is clearly identifiable. However, the proposed pedestrian entries are enclosed within the centre of the site and are not easily identifiable from the street. A long, narrow pedestrian entry flanked by two storey development on either side is proposed to the southern side of the site. The entries are therefore obscured from view from the street and are not easily identifiable. This is considered to be a poor design response and is not supported.

**Street setback (Standard B6)**

<table>
<thead>
<tr>
<th></th>
<th>Required</th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Esplanade</td>
<td>9m</td>
<td>8m</td>
<td>1m</td>
</tr>
</tbody>
</table>

A street setback from Esplanade Street of 8 metres is proposed, when a setback of 9 metres is required to achieve this standard. The objective of the street setback is to ensure the setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of a site.

As noted in the previous VCAT decision, the street setbacks along the Esplanade are relatively consistent, and whilst it is noted that the encroachment is to the southern part of the site only, the proposed encroachment into the street setback would reduce the amount of space given over to front gardens for the new dwellings and would fail to maintain the character of the neighbourhood. As such, the variation is not supported.

**Site coverage (Standard B8)**

<table>
<thead>
<tr>
<th></th>
<th>Proposed</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>53%</td>
<td>3%</td>
</tr>
</tbody>
</table>

The proposed site coverage exceeds the requirement for the zone set out in the standard. The proposed site coverage, in combination with the setback encroachments results in a visually bulky development which would be contrary to the preferred neighbourhood character.

**Side and rear setbacks (Standard B17)**

<table>
<thead>
<tr>
<th></th>
<th>Ground floor</th>
<th>First Floor</th>
<th>Roof Deck</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>Proposed</td>
<td>Required</td>
<td>Proposed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Required</td>
<td>Proposed</td>
</tr>
</tbody>
</table>
The objective of the standard is to ensure the height and setback of a building from a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.

The proposal involves encroachments into the side setbacks of both dwellings at first floor and roof level and to the north at dwelling one at ground floor level. The combination of these setback encroachments would mean that the development appears dominant when viewed from neighbouring properties. In addition, the proposed screened and shades to the front facing balconies encroach into the prescribed setbacks at the front of the site, resulting in an overly dominant development when viewed from the street. Furthermore, insufficient space will be retained on either side of the new dwellings to maintain visual separation between buildings. The variation is not supported.

Walls on Boundaries (Standard B18)

The standard seeks to ensure that the location, length and height of walls on a boundary respect the existing or preferred neighbourhood character and limit the impact on the amenity of existing dwellings.

The northern wall of Dwelling 1 extends for approximately 22 metres along the northern site boundary at an average height of approximately 3.4 metres with a maximum overall height of approximately 3.5m.

The wall exceeds the standard based on its maximum average height. The standard calls for the maximum average height of walls on boundaries to be 3.2 metres and therefore a variation of approximately 0.3 metres is sought.

It is noted that the wall is separated from the neighbouring site at No. 142 Esplanade by the common accessway. However, the wall extends for a continuous length of 22 metres. The variation to the required average height for such a length results in an overly dominant built form which fails to respect the existing and preferred neighbourhood character and limit impacts on the neighbouring site to the north. The variation is not supported.

Overlooking (Standard B22)

The standard calls for development to limit views into existing secluded private open space and habitable room windows of neighbouring properties.

All habitable room windows at the proposed new dwellings have been screened to a minimum height of 1.7 metres above finished floor level or have been sited appropriately in accordance with this Standard.

In addition, the proposed roof deck has been appropriately screened to limit views into neighbouring properties in accordance with this Standard.

The proposal includes north facing balconies at Unit 1 at first floor level that are within 9 metres of the secluded private open space (SPOS) and habitable room windows at No.142 Esplanade to the north of the site. If the application was otherwise acceptable, conditions would be required to screen views into this neighbouring property in accordance with the standard.

Design Detail (Standard B31)

The standard requires design detail to respect the existing or preferred neighbourhood character. As discussed above, the application fails to provide an appropriate design response to the preferred neighbourhood character statement.

The development, by virtue of the proposed setback encroachments, built form and overwhelming articulation, would appear as a visually dominant addition to the streetscape.
The proposal fails to provide an appropriately articulated roof form, such that the new building would appear at odds with the neighbouring properties along this stretch of Esplanade. The front façade of the new dwellings is not proposed to be constructed of traditional coastal materials and the buildings fail to reflect the bayside setting. It is therefore considered that this standard has not been met.

**Common Property (Standard B33)**

Concerns were raised by neighbours in relation to the impact of the proposed development on the use of the common property. The application has failed to demonstrate that the common property to Units 1, 2, 3 and 4 will remain functional and capable of efficient management.

**Site Services (Standard B34)**

Mailboxes, bins, air conditioning, hot water systems and clothes lines have not been indicated on the plans. The application has failed to demonstrate that there is sufficient space around the two dwellings to accommodate the required services to ensure that they are accessible, adequate and attractive.

### 5.4. Landscaping

The application plans show the removal of seven trees from the site, two of which are subject to a Local Law.

Council’s Arborist in their referral response advised that the proposed Eucalypt (Corymbia maculata) and Desert Ash (Fraxinus angustifolia) are in poor health and have low amenity values. Their removal is considered to be acceptable subject to appropriate replacement planting in accordance with the Bayside Landscape Guidelines (2016).

The submitted landscape plan fails to accord with the Bayside Landscape Guidelines (2016) which set out that low density developments such as the proposed should provide 1 large canopy tree or two smaller canopy trees in the front setback and 1 large canopy tree or two smaller canopy trees in the rear setback. No canopy trees have been shown on the advertised landscape plan.

Furthermore, the proposal is considered to be a poor design response to the preferred neighbourhood character as the landscaping would not maintain or enhance the garden setting of the site nor would it reflect the bayside vegetation character of the area. The proposal is therefore contrary to Clause 22.06 of the Bayside Planning Scheme and the proposed landscaping is not supported.

### 5.5. Street trees

One Street tree is located within the nature strip and is proposed for retention. If the application was otherwise acceptable conditions would be recommended requiring protection of this tree during construction.

### 5.6. Car parking and traffic

Pursuant to the car parking requirements at Clause 52.06, a dwelling requires car parking to be provided at a rate of 1 car space per one or two bedroom dwellings and 2 car spaces per three or more bedroom dwellings.

Dwellings 1 and 2 comprise four bedrooms and are each afforded three car parking spaces in the form of basement parking. The proposed on site car parking meets the requirements of Clause 52.06-6.

The application was referred to Council’s Traffic Engineer who raised concerns with the development as insufficient information was provided in relation to the width and grade of the ramp to the basement, garage opening widths, diameter and turntable manufacture specifications, dimensions of car spaces within the basement and sightlines to Esplanade. If the application was otherwise acceptable, permit conditions could be included relating to vehicle access, driveway gradients, pedestrian sightlines and internal parking dimensions.

Concerns have been raised in relation to increased car parking congestion however it is considered that the proposed development will not unreasonably impact on the car parking network in the street. In addition, car parking congestion was not raised as a concern by
Council’s Traffic Engineer.

The application proposes to alter the access to Esplanade, a Road Zone Category 1. VicRoads as the Referral Authority have reviewed the proposal and raised no objection subject to Council ensuring that visibility splays are provided in accordance with Clause 52.06 of the Bayside Planning Scheme and with the inclusion of the following condition:

The disused or redundant vehicle crossings must be removed and the area reinstated with kerb and channel to the satisfaction of Council and at no cost to the Roads Corporation, prior to the commencement of the use.

If the application was otherwise acceptable, traffic conditions would be required.

5.7. Cultural Heritage Management Plan

The site is located within an area of Cultural Heritage Sensitivity.

The proposal is for just two dwellings and therefore a Cultural Heritage Management Plan (CHMP) is not required pursuant to Regulation 8A of the Aboriginal Heritage Regulations 2007.

5.8. Development Contributions Levy

The subject site is located within catchment area 7.

As the application is not supported by Council, a development contribution payment is not required.

If the application was to be supported, a development contribution would not be required as there are two existing dwellings on the site and two dwellings proposed, the number of dwellings would remain the same.

5.9. Removal of Easements

Pursuant to Clause 52.02 of the Bayside Planning Scheme, a permit is required before a person process to create, vary or remove an easement.

The application seeks to remove easements E1, E2 and D4, running north to south through the centre of the application site. These easements are listed as Party Wall and Sewerage easements on the certificates of title (Lots 1 and 2 on Cluster Plan 001050).

The Council’s Drainage Engineer has been consulted and has raised no objection to the removal of easements. South East Water have been consulted and raised no objection to the removal of easements.

It is considered that the removal of these easements would accord with the decision guidelines as set out in Clause 52.02 and Clause 65 of the Bayside Planning Scheme.

5.10. Objector issues not already addressed

Construction damage

The potential for damage arising to property during construction is outside the scope of the planning process. An owner who is proposing building work has obligations under the Building Act 1993 to protect adjoining property from potential damage from their work.

6. Recommendation

That Council resolve to:

Not Support the Grant of a Permit under the provisions of the Bayside Planning Scheme in respect of Planning application 5/2016/629/1 for the land known and described as 1/140 Esplanade BRIGHTON, 2/140 Esplanade BRIGHTON, for the Construction of two new dwellings, alteration of access to a road within a Road Zone, Category 1, and removal of easements for the following reasons:

1. The proposed development of the land does not comply with the purposes of the Neighbourhood Residential Zone and fails to respond to the objectives of Clause 22.06 (Neighbourhood Character Policy, Precinct C1) of the Bayside Planning Scheme, due to a failure to maintain the spacious garden settings and bayside vegetation character of the area, and failure to ensure that new buildings are appropriate in the context of
the street, on the following grounds:

a) It does not maintain and enhance the garden setting of the site.
b) The development does not enhance the bayside vegetation character of the area.
c) It does not retain a sense of spaciousness in the area and provide adequate space for front gardens.
d) It does not ensure that the buildings do not dominate the streetscape.
e) The development does not use building materials that complement the coastal setting.
f) The new buildings do not provide an interesting and attractive interface with the foreshore reserve.

2. The proposed development fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:

a) B1 – Neighbourhood Character
b) B5 – Integration to the Street
c) B6 – Front Setback
d) B8 – Site Coverage
e) B17 – Side and Rear Setbacks
f) B18 – Walls on Boundaries
g) B22 – Overlooking
h) B26 – Dwelling Entry
i) B31 – Design Detail
j) B33 – Common Property
k) B34 – Site Services

3. The application fails to ensure that vehicle safety, egress and manœuvre within the site is in accordance with Clause 52.06 (Car Parking) of the Bayside Planning Scheme.

4. The application fails to ensure an appropriate post construction landscaping outcome.
Figure 1 Aerial overview of the site and surrounds.

Legend

<table>
<thead>
<tr>
<th>Subject site</th>
<th>*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectors</td>
<td>⬤</td>
</tr>
</tbody>
</table>

Note: One further objection was received from 3 Duncombe Avenue, Brighton, located outside of the map area.
Figure 2 View towards the site from the west

Figure 3 View towards the site and neighbouring site No. 142 Esplanade from the northwest
Figure 4 View towards the site and neighbouring site, No. 1 Keith Court from the southwest

Figure 5 View towards the site from the shared accessway
Neighbourhood Character Precinct C1

Preferred Future Character Statement

The mix of dwelling styles, including a substantial presence of pre WWII dwellings, sit within spacious gardens and do not dominate or overwhelm the streetscape. Garden plantings, and well-articulated façades and roof forms, assist in minimising the dominance of buildings from within the street space, as well as providing visual interest. Front setbacks allow planting of substantial trees and shrubs and side setbacks on both sides maintain a sense of spaciousness in the area. Trees are a mixture of exotic and natives, with an increasing frequency of traditional coastal and indigenous species, strengthening the visual connection of the area with the coast. Open style front fences retain an ability to view buildings from the street. Buildings fronting the foreshore reflect their setting and provide a visually attractive built form interface with the reserve.

Precinct Guidelines

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>To encourage the retention of dwellings that contribute to the valued character of the Precinct in the design of development proposals.</td>
<td>- Attempt to retain wherever possible intact and good condition dwellings that contribute to the valued character of the Precinct in designing new development.</td>
<td>Demolition of dwellings that contribute to the valued character of the Precinct.</td>
<td>Responds The existing dwellings on the site do not require a planning permit for demolition.</td>
</tr>
<tr>
<td>To maintain and enhance the spacious garden settings of the dwellings.</td>
<td>- Prepare a landscape plan to accompany all applications for new dwellings that includes substantial trees and shrubs.</td>
<td>Lack of landscaping and substantial vegetation.</td>
<td>Does not respond The proposal fails to demonstrate that the buildings have been sited to allow space for planting of trees and shrubs. Insufficient space has been provided along the sides and to the rear of the proposed new dwellings for the planting of substantial vegetation. The application proposes to remove trees at the front and sides of the site. No trees are proposed to be planted and the development would fail to maintain or enhance the garden setting of dwellings.</td>
</tr>
<tr>
<td>To enhance the bayside vegetation character of the area.</td>
<td>- Retain large trees and established native and traditional coastal vegetation and provide for the planting of new indigenous coastal trees where possible.</td>
<td>Removal of large native and coastal trees. Planting of environmental weeds.</td>
<td>Does not respond The application fails to demonstrate that sufficient space will be retained around the dwellings for the planting of trees. Two large trees are proposed to be removed. The submitted landscape plan fails to include the planting of new indigenous canopy trees.</td>
</tr>
<tr>
<td>To retain the sense of spaciousness in the area and provide adequate space for front gardens.</td>
<td>- Buildings should be sited to allow space for the planting of trees and shrubs.</td>
<td>Does not respond The proposed street setback encroaches into the prescribed setback and reduces the space available within the front garden for the planting of canopy trees.</td>
<td></td>
</tr>
</tbody>
</table>

The image contains a table with rows and columns outlining objectives, design responses, and planning officer assessments related to the Neighbourhood Character Precinct C1. The text describes the preferred future character statement, which includes retaining existing dwellings, maintaining spacious garden settings, enhancing vegetation, and preserving a sense of spaciousness. The table details specific design responses and planning officer assessments.
<table>
<thead>
<tr>
<th>Objectives</th>
<th>Design Responses</th>
<th>Avoid</th>
<th>Planning Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>To minimise the dominance of car parking facilities, driveways and crossovers.</td>
<td>* Locate garages and car ports at or behind the line of the dwelling.</td>
<td>Car parking facilities that dominate the façade or view of the dwelling.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td>* Minimise hard paving in front yards.</td>
<td>Loss of front garden space.</td>
<td>Car parking is located at basement level, accessed from the existing common driveway. The front setback area is proposed to be landscaped.</td>
</tr>
<tr>
<td></td>
<td>* Underground car parking accessed from the front of the site should only be provided where other options are not possible due to site constraints, the garage doors do not dominate the façade and the front setback area is retained as predominantly garden space.</td>
<td></td>
<td>Responds</td>
</tr>
<tr>
<td>To ensure that new buildings and extensions do not dominate the streetscape.</td>
<td>* Recess upper level elements from the front façade.</td>
<td>High pitched roof forms with dormer windows.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>It is noted that the first floor living areas are set-back from the ground floor bedrooms at Dwellings 1 and 2. However, a large, overwhelming, feature is proposed to be provided to screen and shade the first floor balconies facing Esplanade. This, in combination with the proposed materials and setback encroachments results in a dominant façade to the streetscape.</td>
</tr>
<tr>
<td>To respect the identified heritage qualities of adjoining buildings.</td>
<td>* Where adjoining an identified heritage building, respect the height, building forms, siting and materials, of the heritage building/s in the new building design.</td>
<td>Buildings that dominate heritage buildings by height, siting or massing.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>There are no heritage buildings immediately adjoining the site.</td>
</tr>
<tr>
<td>To encourage the use of a variety of building materials, finishes and design detail that complement the coastal setting.</td>
<td>* Use a mix of materials including timber or other non-masonry wall materials in building design.</td>
<td>Large, poorly articulated external wall surfaces of one material only. Heavy materials and design detailing (e.g. large masonry columns and piers).</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td>* Use simple building details and articulate roof forms.</td>
<td></td>
<td>The proposed external finishes of exposed concrete, render and cladding materials with gunmetal grey aluminium fins, fail to respond appropriately to the coastal setting. The use of materials, in combination with the proposed large columns and balcony screen and shade features result in a front façade that appears to be heavy and dominant.</td>
</tr>
<tr>
<td>To encourage the openness of the streetscape.</td>
<td>* Provide open style fencing, other than along heavily trafficked roads.</td>
<td>High, solid front fencing.</td>
<td>Responds</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>The proposed front fence would be solid, however, given that Esplanade is a heavily trafficked road this is considered to be acceptable.</td>
</tr>
<tr>
<td>To create a visually</td>
<td>* Articulate the form of buildings and</td>
<td>Buildings that</td>
<td>Does not respond</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Objectives</td>
<td>Design Responses</td>
<td>Avoid</td>
<td>Planning Officer Assessment</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------</td>
</tr>
</tbody>
</table>
| Interesting and attractive built form interface with the foreshore reserve, on properties fronting the reserve and visible from the reserve. | Elements, particularly front facades, and include elements that lighten the building form such as balconies, verandas, non-reflective glazing and light-transparent balustrading.  
- Use a mix of contemporary and traditional coastal materials, textures and finishes, including render, timber, non-masonry sheeting, glazing, stone and brick.  
- Provide a fence or landscaping treatment to delineate the property boundary fronting the foreshore reserve.  
- Provide articulated roof forms to create an interesting skyline when viewed from the beach. | Have no relationship to the foreshore setting.  
Poorly articulated roof and building forms.  
Highly reflective materials or glazing.  
Blank walls facing the foreshore.  
Lack of distinction between public and private spaces along the foreshore. | Whilst it is noted that balconies have been included on the front façade of the dwellings, the proposed materials fail to relate to the foreshore setting.  
Furthermore, the lack of landscaping within the front setback and around the dwellings results in a dominant built from facing the foreshore reserve. |
Attachment 3

ResCode Clause 55 (Two or More Dwellings on a Lot and Residential Buildings)

<table>
<thead>
<tr>
<th>Application type</th>
<th>Applicable clauses</th>
</tr>
</thead>
<tbody>
<tr>
<td>To construct or extend a dwelling (other than a dwelling in or forming part of an apartment development); or To construct or extend a residential building.</td>
<td>All of Clause 55 except Clause 55.07-1 to 55.07-15 (inclusive).</td>
</tr>
</tbody>
</table>

CLAUSE 55.02 NEIGHBOURHOOD CHARACTER AND INFRASTRUCTURE

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>B1 Neighbourhood Character</td>
<td>No</td>
<td>Refer to Attachment 2.</td>
</tr>
<tr>
<td>Design respects existing neighbourhood character or contributes to a preferred neighbourhood character. Development responds to features of the site and surrounding area.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B2 Residential Policy</td>
<td>Complies</td>
<td>The subject site is appropriately located with regard to services and facilities to support the construction multiple dwellings on a lot of this size.</td>
</tr>
<tr>
<td>Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies. Support medium densities in areas to take advantage of public transport and community infrastructure and services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B3 Dwelling Diversity</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Encourages a range of dwelling sizes and types in developments of ten or more dwellings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B4 Infrastructure</td>
<td>Complies</td>
<td>The proposal will make use of existing infrastructure servicing the site. The developer will be responsible for upgrading this infrastructure if necessary to accommodate the development. Council’s drainage engineers have reviewed the application and raise no issues with infrastructure capacity in the area. It is noted that the developer will be required to pay a development contributions levy in accordance with the requirements of Clause 45.06 of the Bayside Planning Scheme.</td>
</tr>
</tbody>
</table>
### B5 Integration with the Street
Integrate the layout of development with the street

| B5 Integration with the Street | No | Whilst the proposed dwellings will have windows overlooking the street, the entries to both dwellings are located in the centre of the site, obscured from view from the street. See Section 5.3 of the report for further discussion. |

### CLAUSE 55.03 SITE LAYOUT AND BUILDING MASSING

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B6 Street Setback</strong></td>
<td>No</td>
<td>Requirement: 9m. Proposed: 8m – 10.2m at ground floor and 8.4m to 10.3m at first floor.</td>
</tr>
<tr>
<td><strong>B7 Building Height</strong></td>
<td>Complies</td>
<td>Maximum: 9m. Design and Development Overlay, Schedule 3 also identifies a height of 2 storeys excluding an attic and basement. Proposed: 8.9 metres (2 storeys + basement + roof deck) It is noted that the basement rises above natural ground level, however, the extent of the basement located above ground level is less than 1.5 metres in height and therefore does not comprise a storey. As such, the proposal complies with this Standard and the Design and Development Overlay, Schedule 1.</td>
</tr>
<tr>
<td><strong>B8 Site Coverage</strong></td>
<td>No</td>
<td>Maximum: 50% Proposed: 53%</td>
</tr>
<tr>
<td><strong>B9 Permeability</strong></td>
<td>Complies</td>
<td>Minimum: &gt;20% Proposed: 20%</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Complies</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>----------</td>
</tr>
<tr>
<td>B10</td>
<td>Energy Efficiency</td>
<td>Complies</td>
</tr>
<tr>
<td>B11</td>
<td>Open Space</td>
<td>Complies</td>
</tr>
<tr>
<td>B12</td>
<td>Safety</td>
<td>Complies</td>
</tr>
<tr>
<td>B13</td>
<td>Landscaping</td>
<td>No</td>
</tr>
<tr>
<td>B14</td>
<td>Access</td>
<td>Complies</td>
</tr>
<tr>
<td>B15</td>
<td>Parking Location</td>
<td>Complies</td>
</tr>
</tbody>
</table>

**CLAUSE 55.04 AMENITY IMPACTS**

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
</table>

19
### B17 Side and Rear Setbacks

Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings.

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
<th>Roof Deck</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>Proposed</td>
<td>Required</td>
</tr>
<tr>
<td>South (side)</td>
<td>0m or 2m</td>
<td>0m – 2m</td>
</tr>
<tr>
<td>North (side)</td>
<td>0m or 2m</td>
<td>0m – 1m</td>
</tr>
<tr>
<td>East (rear)</td>
<td>0m or 3m</td>
<td>7.6m</td>
</tr>
</tbody>
</table>

Areas of non-compliance are underlined. Refer to Section 5.3 of the Report for further discussion.

### B18 Walls on Boundaries

Ensure the location, length and height of a wall on a boundary respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings.

<table>
<thead>
<tr>
<th>Ground floor</th>
<th>First Floor</th>
<th>Roof Deck</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>Proposed</td>
<td>Required</td>
</tr>
<tr>
<td>South (side)</td>
<td>0m or 2m</td>
<td>0m – 2m</td>
</tr>
<tr>
<td>North (side)</td>
<td>0m or 2m</td>
<td>0m – 1m</td>
</tr>
<tr>
<td>East (rear)</td>
<td>0m or 3m</td>
<td>7.6m</td>
</tr>
</tbody>
</table>

No

**Maximum Height:** 3.6m  
**Proposed:** 3.5m  
**Maximum Average Height:** 3.2m  
**Proposed:** 3.35m  
**Maximum Length:** 22.75m  
**Proposed:** 22m

### B19 Daylight to Existing Windows

Allow adequate daylight into existing habitable room windows.

Complies

The development has been sufficiently setback from all habitable room windows to abutting properties in accordance with the standard.

### B20 North Facing Windows

Allow adequate solar access to existing north-facing habitable room windows.

N/A

No north facing windows on adjoining properties are affected.

### B21 Overshadowing Open Space

Ensure buildings do not significantly overshadow existing secluded private open space.

Complies

Additional overshadowing will occur over the adjoining secluded private open space at No’s 1 and 3 Keith Court to the south of the site.

The overshadowing extends marginally beyond the shadow cast by the existing fence line. At least 75% of the secluded private open space at these neighbouring properties will receive 5 hours of sunlight between the hours of 9am and 3pm on 22nd September.
<table>
<thead>
<tr>
<th>Item</th>
<th>Complies</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>B22 Overlooking</td>
<td>No</td>
<td>All habitable room windows have been screened to a minimum height of 1.7 metres above finished floor level or have been sited appropriately in accordance with this Standard. The proposed roof deck has been appropriately screened to limit views into neighbouring properties in accordance with this Standard. The proposed first floor balconies are located within 9 metres of the neighbouring property to the north, No. 142 Esplanade.</td>
</tr>
<tr>
<td>B23 Internal Views</td>
<td>Complies</td>
<td>All habitable room windows have been screened to a minimum height 1.7 metres above finished floor level or have been sited appropriately in accordance with this Standard. At ground floor level internal fencing limits views between adjoining areas of secluded private open space within the development.</td>
</tr>
<tr>
<td>B24 Noise Impacts</td>
<td>Complies</td>
<td>It is anticipated that the level of noise which will be emitted from the dwellings will not exceed levels otherwise expected from residential uses.</td>
</tr>
</tbody>
</table>

**CLAUSE 55.05 ON-SITE AMENITY AND FACILITIES**

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>B25 Accessibility</td>
<td>Complies</td>
<td>Entries are accessible for people with limited mobility with a lift provided from the basement car park to first floor level. The development could be further retrofitted to accommodate people with limited mobility in the future if required.</td>
</tr>
<tr>
<td>B26 Dwelling Entry</td>
<td>No</td>
<td>The development fronts the Esplanade and includes the existing vehicle entry to the northern side of the site which is clearly identifiable. The entries to each dwelling provide shelter, a sense of personal address and a transitional space around the building entry. However, these entries are enclosed within the centre of the site and are not easily identifiable from the street.</td>
</tr>
<tr>
<td>B27 Daylight to New Windows</td>
<td>Complies</td>
<td>All habitable windows will open out onto a space clear to the sky.</td>
</tr>
</tbody>
</table>
### Bayside City Council

**Planning & Amenity Committee Meeting - 30 October 2018**

**Attachment 1**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Decision</th>
<th>Minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>B28 Private Open Space</td>
<td>Provide reasonable recreation and service needs of residents by adequate private open space.</td>
<td>Complies</td>
<td>Minimum: 25m² secluded, 40m² overall with a minimum dimension of 3 m; Proposed: Dwelling 1 - 75m² (approx.) Dwelling 2 - 74.9m² (approx.)</td>
</tr>
<tr>
<td>B29 Solar Access to Open Space</td>
<td>Allow solar access into the secluded private open space of new dwellings/buildings.</td>
<td>Complies</td>
<td>Appropriate solar access to the private open space areas is provided.</td>
</tr>
<tr>
<td>B30 Storage</td>
<td>Provide adequate storage facilities for each dwelling.</td>
<td>Complies</td>
<td>Designated storage areas are provided within the basement.</td>
</tr>
</tbody>
</table>

### CLAUSE 55.06 DESIGN DETAIL

<table>
<thead>
<tr>
<th>Title and Objective</th>
<th>Complies with Standard?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B31 Design Detail</strong></td>
<td>No</td>
<td>Refer to Attachment 2 and Section 5.3 of the report for further discussion.</td>
</tr>
<tr>
<td>Encourage design detail that respects the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B32 Front Fences</strong></td>
<td>Complies</td>
<td>As the site fronts a Road Zone Category 1, a 2m high front fence is as-of-right. The applicant proposed a 1.8m high fence.</td>
</tr>
<tr>
<td>Encourage front fence design that respects the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B33 Common Property</strong></td>
<td>No</td>
<td>Areas of common property are not functional or capable of efficient management. See Section 5.3 of the report for further discussion.</td>
</tr>
<tr>
<td>Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained. Avoid future management difficulties in common ownership areas.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B34 Site Services</strong></td>
<td>No</td>
<td>Site services have not been provided on site. Insufficient space is available around the dwellings for the provision of site services. See Section 5.3 of the report for further discussion.</td>
</tr>
<tr>
<td>Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive. Avoid future management difficulties in common ownership areas.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
BAYSIDE CITY COUNCIL – DELEGATE OFFICER REPORT – STANDARD PLANNING REPORT

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Not support the grant of a Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal</td>
<td>Construction of two new dwellings, alteration of access to a road within a Road Zone, Category 1, construction of a roof deck in a Design and Development Overlay, Schedule 1 and removal of easements</td>
</tr>
<tr>
<td>Application No.</td>
<td>5/2016/829/1</td>
</tr>
<tr>
<td>Address</td>
<td>1/140 Esplanade BRIGHTON, 2/140 Esplanade BRIGHTON</td>
</tr>
<tr>
<td>Applicant</td>
<td>Trumen Corp (Vic) Pty Ltd C/O HWL Ebsworth Lawyers</td>
</tr>
<tr>
<td>Title/Covenant/S173 Agreement</td>
<td>Lots 1 and 2 on Cluster Plan 001050 The title is not subject to any restrictive covenants.</td>
</tr>
<tr>
<td>Date application plans formally amended at VCAT</td>
<td>08/06/2018</td>
</tr>
<tr>
<td>Current statutory days</td>
<td>N/A</td>
</tr>
<tr>
<td>Zoning</td>
<td>Neighbourhood Residential Zone (Schedule 3)</td>
</tr>
<tr>
<td>Overlays</td>
<td>Design and Development Overlay (Schedule 1) Development Contributions Plan (Schedule 1)</td>
</tr>
<tr>
<td>Site area</td>
<td>848sqm</td>
</tr>
<tr>
<td>Number of outstanding objections</td>
<td>4 (3 statement of grounds)</td>
</tr>
<tr>
<td>Is the site located within an area of cultural heritage sensitivity?</td>
<td>Yes</td>
</tr>
<tr>
<td>Is a development contribution fee applicable?</td>
<td>No</td>
</tr>
<tr>
<td>Responsible officer</td>
<td>P. Stewart for R. Nolan</td>
</tr>
<tr>
<td>Signature</td>
<td>P. Stewart for R. Nolan</td>
</tr>
<tr>
<td>Planning delegate</td>
<td>W. Winter</td>
</tr>
<tr>
<td>Signature and date</td>
<td>16/7/18</td>
</tr>
</tbody>
</table>
1. Application details

Proposal
To report plans formally amended in respect of VCAT Proceeding No. P93/2018. Changes incorporated to the amended plans are summarised as follows:

Basement:
- Revised ramp gradients to the basement access ramp.
- Basement car park northern wall recessed above a height of 2.1 metres (wall length of 6.8 metres).
- Splay to the theatre wall associated with Dwelling 1 deleted.
- Reduced setback from the southern basement access ramp (flat section).

Ground floor:
- Revised ramp gradients to the basement access ramp.
- Retention of toilet on common property.
- Relocation of light switch to bin enclosure (location of which is unmarked on the plans).
- Vehicular access sightlines shown.
- Landscape buffer along the eastern property boundary widened to 0.9 metres.
- Additional planting area to the north of the Dwelling 1's ensuite, bedroom 1 and bedroom 2.
- Dwelling 2 street access of the Esplanade located on the western property boundary.
- Deletion of internal fencing adjacent to the southern boundary pedestrian access path.

First floor:
- Deletion of the northern balconies associated with Dwelling 1 off the living / dining room and kitchen. Associated windows and door entries deleted.
- Balcony associated with the informal living room to Dwelling 1 treated with a planter box and screening replaced with a 1.2 metre high glass balustrade.
- Setback to first floor butler pantry and power room associated with Dwelling 2 increased from 3.95 metres to 4.3 metres.

Roof deck:
- Stair added to the lap pool with pool plant equipment concealed below.
- 1.7 metres high obscure glazing associated with the north, east and southern boundaries replaced with 1.2 metre high clear glazed balustrade.

Elevations:
- Overall building height reduced by 0.1 metres, being reduced from 9 metres to 8.9 metres.
- Associated changes to screening and window profiles to reflect the changes to the floor plans.

History
Council determined to Not Support the application for the development of the construction of Construction of two new dwellings, alteration of access to a road within a Road Zone, Category 1, construction of a roof deck in a Design and Development Overlay, Schedule 1 and removal of easements on the following grounds:

1. The proposed development of the land does not comply with the purposes of the Neighbourhood Residential Zone and fails to respond to the objectives of Clause 22.06 (Neighbourhood Character Policy, Precinct C1) of the Bayside Planning Scheme, due
to a failure to maintain the spacious garden settings and bayside vegetation character of the area, and failure to ensure that new buildings are appropriate in the context of the street, on the following grounds:
   a) It does not maintain and enhance the garden setting of the site.
   b) The development does not enhance the bayside vegetation character of the area.
   c) It does not retain a sense of spaciousness in the area and provide adequate space for front gardens.
   d) It does not ensure that the buildings do not dominate the streetscape.
   e) The development does not use building materials that complement the coastal setting.
   f) The new buildings do not provide an interesting and attractive interface with the foreshore reserve.

2. The proposed development fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:
   a) B1 – Neighbourhood Character
   b) B5 – Integration to the Street
   c) B6 – Front Setback
   d) B8 – Site Coverage
   e) B17 – Side and Rear Setbacks
   f) B18 – Walls on Boundaries
   g) B22 – Overlooking
   h) B26 – Dwelling Entry
   i) B31 – Design Detail
   j) B33 – Common Property
   k) B34 – Site Services

3. The application fails to ensure that vehicle safety, egress and manoeuvre within the site is in accordance with Clause 52.06 (Car Parking) of the Bayside Planning Scheme.

4. The application fails to ensure an appropriate post construction landscaping outcome.

2. Planning controls

Planning Permit requirements

A planning permit is required pursuant to:

- Clause 32.09-6 (Neighbourhood Residential Zone) – Construction of two or more dwellings on a lot.
- Clause 43.02-2 (Design and Development Overlay Schedule 1) – Construction of a roof deck.
- Clause 52.02 (Easements, Restrictions and Reserves) – Removal of easements.
- Clause 52.29 (Land adjacent to a Road Zone Category 1) – Create or alter an access to a Road Zone Category 1.

Planning Scheme Amendments

Planning Scheme Amendment VC110 implements the government’s response to the recommendations of the Managing Residential Development Advisory Committee by amending Clause 72 to introduce a new general term, “garden area” and amending the Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone, Mixed Use Zone and Township Zone. This application benefits from transitional provisions in relation to this planning scheme amendment.
3. Stakeholder consultation

External referrals

The application was referred to the following authorities:

<table>
<thead>
<tr>
<th>Referral Authority</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>South East Water</td>
<td>Council relies upon earlier comments, no objection subject to conditions</td>
</tr>
<tr>
<td></td>
<td>The amended plans were not referred to South East Water.</td>
</tr>
<tr>
<td>VicRoads</td>
<td>Council relies upon earlier comments, no objection subject to conditions</td>
</tr>
<tr>
<td></td>
<td>The amended plans were not referred to VicRoads</td>
</tr>
</tbody>
</table>

Internal referrals

The application was referred to the following Council departments for comment:

<table>
<thead>
<tr>
<th>Internal Referral</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arborist</td>
<td>Objection.</td>
</tr>
<tr>
<td></td>
<td>Fails to include appropriate landscaping.</td>
</tr>
<tr>
<td>Drainage</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Drainage Assets Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
</tbody>
</table>

Public notification

The original application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and Environment Act 1987 and three objections were received at the time of determination. One additional objection has been received by council. Council has received three Statement of Grounds from objecting parties.

The following concerns were raised:

- Neighbourhood character;
- Built form;
- Height;
- Overlooking;
- Overshadowing;
- Noise;
- Removal of easements;
- Removal of vegetation;
- Construction damage;
- Impact on common property/owners corporation issues;
- Parking / Traffic.

The number of objections received for this application is consistent across Council’s record management systems.

Consultation meeting
A consultation meeting was held on 23rd October 2017 attended by the permit applicant and three objectors. As a result of this meeting no objections were withdrawn.

A Compulsory Conference was not directed by the Tribunal.

Permit Preamble

The application was advertised as follows: 'Construction of two new dwellings, alteration of access to a road within a Road Zone, Category 1 and removal of easements'.

It is noted that a permit is required pursuant to Clause 42.02 of the Bayside Planning Scheme for the construction of roof decks within the Design and Development Overlay 1.

For the purposes of the officer’s report, the permit preamble has been amended accordingly as follows: ‘Construction of two new dwellings with roof decks in Design and Development Overlay 1, alteration of access to a road within a Road Zone, Category 1, and removal of easements.’

4. Council Policy

Council Plan 2017-2021

Relevant objectives of the Council plan include:

- Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.
- Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.
- Where a range of housing types is provided to accommodate the changing needs of the community, enabling people to age in place and providing opportunities for young adults and families to live and remain in the municipality.

Relevant strategies of the Council plan include:

- Make discretionary planning controls stronger, by advocating for Council’s planning and urban design objectives to state government.
- Ensure new development responds to preferred neighbourhood character in activity centres.

Bayside Planning Scheme

- Clause 9 Plan Melbourne
- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- Clause 18 Transport
- Clause 19 Infrastructure
- Clause 21.02 Bayside Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Environmental and Landscape Values
- Clause 21.06 Built Environment and Heritage
- Clause 21.09 Transport and Access
- Clause 21.10 Infrastructure
- Clause 22.06 Neighbourhood Character Policy (Precinct C1)
• Clause 22.08 Water Sensitive Urban Design
• Clause 32.09 Neighbourhood Residential Zone (Schedule 3)
• Clause 43.02 Design and Development Overlay (Schedule 1)
• Clause 45.06 Development Contributions Plan Overlay (Schedule 1)
• Clause 52.02 Easements, Restrictions and Reserves
• Clause 52.06 Car Parking
• Clause 52.29 Land adjacent to a Road Zone Category 1
• Clause 55 Two or more dwellings on a lot
• Clause 65 Decision Guidelines

5. Considerations

In considering this application, regard has been given to the State and Local Planning Policy Frameworks, the provisions of the Bayside Planning Scheme, objections and statement of grounds received and the individual merits of the application.

It is noted a number of discrepancies between the written list of proposed changes appended to PNPE9 Form A and the changes detailed on the architectural drawings. Council relies upon the architectural drawings for the assessment following.

This report will detail how the amended plans at Attachment 2 respond to the previous Grounds for Refusal and relevant planning policies.

Ground for Refusal 1

The proposed development of the land does not comply with the purposes of the Neighbourhood Residential Zone and fails to respond to the objectives of Clause 22.08 (Neighbourhood Character Policy, Precinct C1) of the Bayside Planning Scheme, due to a failure to maintain the spacious garden settings and bayside vegetation character of the area, and failure to ensure that new buildings are appropriate in the context of the street, on the following grounds:

a) It does not maintain and enhance the garden setting of the site.

b) The development does not enhance the bayside vegetation character of the area.

c) It does not retain a sense of spaciousness in the area and provide adequate space for front gardens.

d) It does not ensure that the buildings do not dominate the streetscape.

e) The development does not use building materials that complement the coastal setting.

f) The new buildings do not provide an interesting and attractive interface with the foreshore reserve.

An additional setback (above the 2.1 metre high basement clearance height creating an additional 0.6 metres of soil depth) combined with an additional planting areas along the northern and eastern property boundaries, are considered an improvement but limited as it will not provide additional opportunities for significant tree planting that would soften the presentation of the proposed built form.

Whilst not listed as a change in the documentation accompanying the application it is noted that the basement extends further to the southern site boundary, offsetting any 'gains' in overall landscaping opportunities noted above.

There are no other notable changes which address any of the sub-categories noted above. Council retains its objection to the proposed development on the above grounds.
Ground for Refusal 2

The proposed development fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:

a) B1 – Neighbourhood Character
   Council continues to reply upon its submissions in the original report in relation to this Standard.

b) B5 – Integration to the Street
   Council continues to reply upon its submissions in the original report in relation to this Standard.

c) B6 – Front Setback
   Council continues to reply upon its submissions in the original report in relation to this Standard.

d) B8 – Site Coverage
   Council continues to reply upon its submissions in the original report in relation to this Standard.

e) B17 – Side and Rear Setbacks
   Council continues to reply upon its submissions in the original report in relation to this Standard.

f) B18 – Walls on Boundaries
   Council continues to reply upon its submissions in the original report in relation to this Standard acknowledging that the length of wall to be constructed on the boundary will be reduced due to the step to the Walk-in-robe and ensuite associated with Dwelling 1 at ground floor.

g) B22 – Overlooking
   Council continues to reply upon this ground for refusal.

   The proposed screening measured associated with the first floor rear (east) façade have been replaced with a high level window to Dwelling 1 and a full height window to Dwelling 2. The proposed removal of screening to Dwelling 2 results in the opportunity for overlooking into the rear area of secluded private open space associated with 3/140 Esplanade (Refer to Section C-C).

   It is noted the detailing associated with Section B-B is incorrect as it annotated a 1.8 metre high window sill height when the east façade shows a 1.7 metre high wall and wall. Irrespective of the inconsistency, the proposed screening treatment to this Dwelling remains compliant.

   The proposed amendments to delete the balcony screening to 1.7 metres in favour of a 1.2 metre high balustrade continues to comply with this Standard.

   It is noted that a development at 142 and 142A Esplanade is the subject of a VCAT application for review pursuant to Section 82 of the Planning and Environment Act 1987. If this development were to be approved, it is unlikely this would result in any overlooking opportunities to this development.

h) B26 – Dwelling Entry
   It is acknowledged that the pedestrian access off the Esplanade has incorporated an access gate to Dwelling 2 (now flush with the proposed front fence) and the deletion of the internal front fence would facilitate the functional use of this access. The proposed plans however do not detail an associated pathway to a defined front door. It is noted that direct pedestrian access from the Esplanade to Dwelling 1 has not been provided.

   The principal dwelling entries therefore remains the western access with concealed entries. The proposed amendments continues to result in poor site legibility for visitors,
postal works and emergency service vehicles etc.
Council continues to rely upon this ground for refusal and its justification outlined in original officer’s report.

j) **B31 – Design Detail**
The amended plans detail an overall reduction in building height from 9 metres to 8.9 metres. The plans are unclear about where the overall reduction in height is amended within the development. All finished floor levels remain unchanged but to the top of the parapet which is annotated at 18.10 in lieu of 18.20. All dimensions between floors and the structure between floors are unaltered.

k) **B33 – Common Property**
Council continues to reply upon its submissions in the original report in relation to this Standard.

l) **B34 – Site Services**
In relation to easements Council’s Assets Engineer notes,

1. Easement crossing the property from north to south - No council drain in that easement according to the council GIS system, but there is an internal drain according to the drawings they provided (private drain). Council has no responsibility on private drains inside properties.

2. Easement along south boundary - No council drain in the easement according to the council GIS system. Applicant to check any private drains in that easement.

It is the responsibility of the property owner to maintain private drains, not the council.
Council has no objection to remove any of the easements if applicant can prove:

i. Storm water from Lot 1/140 and 2/140 can be discharged to council nominated legal point of discharge.

ii. Storm water from Lot 3/140 and 4/140 can be discharged to council nominated legal point of discharge.

iii. Storm water from the main access can be discharged to council nominated legal point of discharge.

Council continues to reply upon its submissions in the original report in relation to this Standard.

**Ground for Refusal 3**
The application fails to ensure that vehicle safety, egress and manoeuvre within the site is in accordance with Clause 52.06 (Car Parking) of the Bayside Planning Scheme.
Council continues to rely upon this ground for refusal in the absence of detailing on the application plans relating to swept path diagrams for accessing car parking spaces and basemen access / egress. It is acknowledged these matters can be dealt with via planning permit conditions.

**Ground for Refusal 4**
The application fails to ensure an appropriate post construction landscaping outcome.
Council continues to reply upon its submissions in the original report in relation to this Standard.

6. **Recommendation**
That Council resolve to:
Not Support the Grant of a Permit under the provisions of the Bayside Planning Scheme in respect of Planning application 5/2016/629/1 for the land known and described as 1/140
Esplanade BRIGHTON, 2/140 Esplanade BRIGHTON, for the construction of two new dwellings on a lot, and roof decks in a Design and Development Overlay, Schedule 1, alteration of access to a road within a Road Zone, Category 1, and removal of easements for the following reasons:

1. The proposed development of the land does not comply with the purposes of the Neighbourhood Residential Zone and fails to respond to the objectives of Clause 22.06 (Neighbourhood Character Policy, Precinct C1) of the Bayside Planning Scheme, due to a failure to maintain the spacious garden settings and bayside vegetation character of the area, and failure to ensure that new buildings are appropriate in the context of the street, on the following grounds:
   a) It does not maintain and enhance the garden setting of the site.
   b) The development does not enhance the bayside vegetation character of the area.
   c) It does not retain a sense of spaciousness in the area and provide adequate space for front gardens.
   d) It does not ensure that the buildings do not dominate the streetscape.
   e) The development does not use building materials that complement the coastal setting.
   f) The new buildings do not provide an interesting and attractive interface with the foreshore reserve.

2. The proposed development fails to comply with the Objectives and Standards of Clause 55 of the Bayside Planning Scheme, in particular:
   a) B1 – Neighbourhood Character
   b) B5 – Integration to the Street
   c) B6 – Front Setback
   d) B8 – Site Coverage
   e) B17 – Side and Rear Setbacks
   f) B18 – Walls on Boundaries
   g) B22 – Overlooking
   h) B26 – Dwelling Entry
   i) B31 – Design Detail
   j) B33 – Common Property
   k) B34 – Site Services

3. The application fails to ensure that vehicle safety, egress and manoeuvre within the site is in accordance with Clause 52.06 (Car Parking) of the Bayside Planning Scheme.

4. The application fails to ensure an appropriate post construction landscaping outcome.
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