Late Agenda

for the

Planning & Amenity Committee Meeting

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

on

Thursday, 2 November, 2017 at 7.00pm

Chairperson: Cr Laurence Evans

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

4. Matters of Decision

4.12 29 St.Ninians Road, Brighton Support the Grant of a Planning Permit Application No: 2016/627/1 Ward: Northern.................... 3
4. Matters of Decision

4.12 29 ST. NINIANS ROAD, BRIGHTON
SUPPORT THE GRANT OF A PLANNING PERMIT
APPLICATION NO: 2016/627/1 WARD: NORTHERN

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/217394

1. Purpose and background

To report an in-principle agreement reached by all parties for alterations and additions to an existing permitted single dwelling with a basement on a lot more than 500sqm (Attachment 1). This application only seeks consent for the construction of an additional storey within an attic-style roof in the Design and Development Overlay 1 (DDO1) at 29 St. Ninians Road, Brighton (refer Attachment 2). The existing home was built more than 30 years ago and has existing use and development rights.

<table>
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<tr>
<th>Applicant</th>
<th>Mr and Mrs Cushen</th>
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<tr>
<td>Date received</td>
<td>27 January 2017 (Amended)</td>
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History

On 18 May 2017 Council’s Planning and Amenity Committee considered this application and resolved to issue a Notice of Decision to Grant a Planning Permit for alterations and additions to an existing permitted single dwelling with a basement on a lot more than 500sqm. The conditions of the notice are included as Attachment 3.

On 3 June 2017, an application for review was lodged by an objector pursuant to Section 82 of the Planning and Environment Act 1987. The objector listed grounds relating to:

- Non-compliance with Clause 54 (Rescode);
- Building the wall on the boundary; and
- Overlooking.

The permit applicant, Mr and Mrs Cushen have lodged statement of grounds opposing the application for review and sought dismissal of the application on the basis that the objection is unfounded. VCAT ordered on 25 September, after hearing from all parties on 22 September 2017 not to dismiss the proceeding because the DDO1 specifically refers to amenity impacts, including overlooking.

The applicant did advise VCAT that it would be proceeding with a modified design which was a result of discussions with the objector. The modified proposal makes the following changes to the plans:

- The wing containing two bedrooms which abutted the pool house to No 31 has been deleted and replaced with a single level entry and bathroom setback 3.9 metres off the boundary to your home at No 31 St Ninians Road;
- The windows to the internal stair at the eastern elevation has been removed, as a consequence of the internal stair having been relocated, and in its place is a window to a bedroom at the first floor level. That window is 7.8 metres off the boundary to No 31 and its sill is 1.7 metres off finished floor level.
- The stair and entrance to the south elevation has been removed as part of an agreement made between my clients and the owners of No 27 St Ninians Road;
- The attic which contains the master bedroom has been redesigned and windows reconfigured. Blinds will be installed to the windows. The attic occupies 45.08% of
the floor area of the level below and so complies with the parameters prescribed at Schedule 1 to the Design and Development Overlay of the Bayside Planning Scheme.

These modified plans has resulted in a consent position between the parties, except Council, because it is considered that notification of the modified design was required prior to Council forming its position on the modified design in accordance with VCAT Practice Note PNPE9.

The permit applicant has subsequently written to VCAT seeking that VCAT exercise its discretion and direct Council that public notification of the proposed amendment to the parties is not given. VCAT subsequently ordered that notice must be given.

Notice was given by the permit applicant and no further statement of grounds were lodged.

These plans form the in-principle agreement reached by all parties in addition to the conditions noted in the recommendation.

If Council agrees to support the recommendation below then a planning permit will be issued by VCAT which contains, unchanged, all of the conditions in the recommendation section of this report. Alternatively, should Council determine to not support the issue of an amended permit, then the application will proceed to a VCAT merits hearing scheduled on 28 November 2017 for three hours.

2. Policy implications

Planning permit requirements

Clause 43.02-2 (Design and Development Overlay Schedule 1) – Buildings and works not otherwise exempt.

3. Stakeholder Consultation

External referrals

There were no external referrals required to be made in accordance with Clause 66 of the Bayside Planning Scheme.

Internal referrals

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

<table>
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<tr>
<th>Internal Referral</th>
<th>Response</th>
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<tr>
<td>Drainage</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Arborist</td>
<td>No objection, subject to conditions.</td>
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Public notification

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

- Overlooking,
- Visual bulk,
- Protection of boundary wall on neighbouring property,
- Request for proposal site to be surveyed,
- Protection of existing street trees,
- Proposed setback at attic and roof level to be maintained,
- Proposed third level is not an attic, and
Does not comply with ResCode height and setback standards.

Resident Consultation meeting

A consultation meeting was held on 1 February 2017 between the permit applicant and the three (3) objectors. One of the objectors was unable to attend personally, but was represented at the meeting by a family member.

As a result of this meeting no objections were withdrawn and 3 remain.

VCAT Compulsory Conference

A compulsory conference has not been scheduled for this application for review.

The permit applicant and the objector have met outside of the VCAT process and have agreed to an amended design. They have signed a consent order on the basis of this amended design.

4. Recommendation

That Council:

Determines to Support the application under the provisions of the Bayside Planning Scheme in respect of Planning Application 2016/627/1 for the land known and described as 29 St Ninians Road, Brighton, for the alterations and additions to an existing dwelling, including the construction of an attic level in the Design and Development Overlay 1 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 (Prepare by Orbit Architecture, Drawing No.TP0000 Revision A, TP1101-TP1103 Revision A, TP2101 Rev B, TR2102 Rev C, TP2103 Rev E, TP2104-2105 Rev A, TP3101 Rev D, TP3102 Rev B, TP3103 Rev E, TP3104 Rev D, TP4101-TP4102 Rev B, TP4103 Rev A, TP6101 Rev A, and TP3101 Rev D dated 14/9/2017) but modified to show:
   a) Screening or other complaint treatment to prevent overlooking of the private open space of No.27 St Ninians Road within 9 metres measured from a 45 degree plane from the western facing glazing at attic level, to the satisfaction of the Responsible Authority.
   b) A Landscape plan in accordance with Condition 7 of this permit.

2. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

3. The flat roof adjacent to the windows at attic level must not be used as a roof terrace or balcony without the prior written consent of the Responsible Authority.

4. 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.

5. 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.

6. All pipes, 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
7. 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 drawn to scale with dimensions and three copies must be provided. The plan must show:
   a) A planting schedule of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant. The planting must include indigenous and coastal species.
   b) Landscaping and/or planting within all areas of the site not covered by buildings or hard surfaces.
   c) Details of surface finishes of pathways and driveways.

8. 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.

9. 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.

10. 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.

11. Council records indicate that there is a 2.0m wide drainage and sewerage easement along the northern property boundary as indicated on the drawings provided. The plans indicate no proposals to encroach into the easement with any buildings or structures of note. Proposals to be built over the easement will require Build Over Easement consent from the Responsible Authority/Authorities.

12. 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.

Permit Notes:
- This permit application was not assessed against the provisions of Clause 54 – One Dwelling on a Lot (ResCode) of the Bayside Planning Scheme. It is the responsibility of the applicant/owner to appoint a Registered Building Surveyor to determine compliance of the endorsed plans associated with the issue of this Planning Permit against Part 4 of the Building Regulations 2006. Non-compliance with any regulation will require dispensation from Council’s Building Department.
- 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.
- Subsurface water must be treated in accordance with Council’s Policy for “Discharge of Pumped Subterranean Water Associated with Basements or Below Ground Structures.”
5. **Council Policy**

**Council Plan 2017-2021**

Relevant strategies 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.

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.

**Bayside Planning Scheme**

- Clause 11 Settlement
- Clause 12 Environmental and Landscape Values
- Clause 15 Built Environment and Heritage
- Clause 16 Housing
- 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 22.06 Neighbourhood Character Policy (C2)
- Clause 32.09 Neighbourhood Residential Zone
- Clause 43.02 Design and Development Overlay (Schedule 1)
- Clause 65 Decision Guidelines

6. **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.

Council resolved to issue a Notice of Decision to Grant a Planning Permit subject to conditions. The assessment below identifies how the proposal will impact that decision, particularly if any conditions need to be amended. The modified design impacts on:

- Neighbourhood Character / Visual Bulk,
- Side and rear setbacks,
- Overlooking, and
- Car parking.

These matters will be discussed in greater detail below and assist in determining if support for the modified design is warranted.

6.1. **Neighbourhood character**

The site is located within Neighbourhood Character Precinct C2 and the modified design is considered to demonstrate a greater level of compliance with the preferred future character statement and precinct guidelines than the previous proposal.
The existing separation from the side boundaries would be maintained and the footprint and siting of the building will provide sufficient space to establish a meaningful level of vegetation and planting.

The proposal makes use of a contemporary design that opens up to the coastal foreshore and is consistent with the scale and high level of visual interest of properties adjoining the coastal foreshore. The large amount of glazing facing the foreshore, punctuated by the first floor parapet and gable end of the attic would provide a lightness of structure.

The modified design increases the setbacks from the adjoining properties significantly reducing the visual bulk impact. The proposal will ensure that the ground floor addition to the east does not exceed the overall height of the adjoining properties pool house. The first floor will be setback 3.9 metres, while the attic level will be a further 3.8 metres from the eastern property boundary. This changes ensure the proposal reduced visual bulk and provides visual separation between buildings. This is a positive change to the proposal and for the adjoining neighbours.

The range of materials and muted colour tones is considered to sit comfortably in the surrounds of adjacent contemporary properties and the coastal setting. The proposal would add additional interest to the already varied roof forms in the area. In the context of the surrounding scale of roof forms, in particular at No.23 St Ninians St, the scale of the proposed roof would not appear discordant in the existing highly built up context.

6.2. **Side and rear setbacks – DDO1**

The site is located within the Neighbourhood Residential Zone and is in excess of 500 square metres in site area. No planning permit is required for buildings and works for a single dwelling on a lot above 500 square metres and as such an assessment against the Clause 54 (ResCode) standards is not applicable.

Therefore, the Design and Development Overlay – Schedule 1 (DDO1) will be used as the assessment tool to identify the suitability of the proposed modified design.

The proposed addition to the rear of the existing dwelling was originally setback:

- 0 metres from the east boundary at ground and first floor,
- 2.1 metres from the north boundary, and
- 4.5 metres from the south boundary.

The proposal has been amended in the modified design to be setback:

- 3.9m setback from the east boundary at ground and first floor,
- Remains at 2.1 metres form the north boundary, and
- 5.2 metres from the south boundary.

The modified design has now significantly increased these setbacks to meet with concerns raised by the owners at 31 St Ninians Road, Brighton.

The contemporary design of the first floor extension would sit comfortably in the context of the surrounding built form. The proposed dwelling, in terms of both height and design would appear comparatively diminutive in the context of larger and bulkier neighbouring properties. The separation of buildings as viewed from the coastal foreshore would also be maintained.

The proposal would add visual interest to the existing level of varied built form and the proposed roof form would not appear discordant in the highly built up surrounds. The proposed materials, particularly the standing seam metal cladding and the rough sawn shiplap timber, draw from the palate of materials evident at surrounding properties. Overall the proposal is considered to be comfortably in keeping with the character of the area. It is in this context that the development cannot be considered to have a significant or detrimental impact on the coastal environment.
The first floor extension will be less visible from the western aspect of the neighbouring dwelling and its primary private open space. The first floor extension is not considered to have an unreasonable visual bulk impact on this neighbouring property and through the negotiations is considered to be an improved outcome for the adjoining properties.

6.3. **Overlooking (Standard A15)**

The windows in the proposed additions that are being modified includes windows with sill heights of 1.7 metres and appropriate screening techniques to minimise overlooking. This outcome complies with the ResCode Standard B22 guidance.

A condition of approval remains in the recommendation as previously approved by the Planning and Amenity Committee on 18 May 2017 to address overlooking from the attic.

6.4. **Car parking and traffic**

Pursuant to Clause 52.06-1, a proposal to extend an existing dwelling or construct a single dwelling in the Neighbourhood Residential Zone on a lot larger than 500 square metres is exempt from car parking requirements under Clause 52.06.

However, the ground floor plan has been modified to delete the proposed garage to the east of the existing building. All car parking facilities will now be accommodated within the existing ground floor of the building.

This is considered to be an acceptable outcome and will reduce the impact on the adjoining properties.

6.5 **Conclusion**

The modified plans have been amended to substantially reduce the size of the proposal. The modifications clearly improve the outcome for the adjoining residents particularly from a built form perspective. The modified plans should be supported by the Committee to allow resolution of this application.

**Support Attachments**

1. Modified plans ↓
2. Original decision plans ↓