Minutes of Planning Committee Meeting No. 479 held at 5.00pm Monday 4 September 2017 in the Council Chambers, Surf Coast Shire Offices Torquay.

1. OPENING OF MEETING
   5.07 pm

2. PRESENT
   Wayne Reid (Chairman), Geoffrey Fulton, Wesley McClendon, Robert Troup, Mich Watt
   Surf Coast Shire Chief Executive Officer - Keith Baillie and General Manager Environment and Development - Ransce Salan (attended the meeting as observers)

3. APOLOGIES
   Nil

4. CONFIRMATION OF MINUTES
   Minutes of the Planning Committee Meeting held on Monday 7 August 2017
   Moved: Wesley McClendon Seconded: Geoffrey Fulton

5. DISCLOSURE OF CONFLICTS OF INTEREST
   Nil
   DISCLOSURE OF INTERESTS (AT DISCRETION OF COMMITTEE)
   Nil

6. PUBLIC PRESENTATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Applicant</th>
<th>Objectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1</td>
<td>-</td>
<td>J Watt, G Bond</td>
</tr>
<tr>
<td>8.2</td>
<td>S Wright</td>
<td>C Gomm</td>
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</tbody>
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7. CONSIDERATION OF THE AGENDA
   As Presented

8. CONSIDERATION OF APPLICATIONS FOR A PERMIT

Item 8.1 12 The Esplanade, Torquay (17/0005)……………………………….Page 3
   Development of Five Dwellings

Item 8.2 3 Narani Way, Fairhaven (16/0392)……………………………….Page 47
   Vary Registered Restrictive Covenant(s) (Building Envelope) and Construct Alterations & Additions to Existing Dwelling
9. RECENT VCAT DECISIONS
   Nil

10. POLICY ISSUES
    Nil

11. OTHER MATTERS
    Nil

12. CLOSE OF MEETING
    6.25 pm

    NEXT MEETING – 16 October 2017
ITEM NO: 8.1
PLANNING REF: 17/0005
PROPOSAL: Development of Five Dwellings
APPLICANT: Auhaus Architecture
DATE RECEIVED: 05-Jan-2017
SUBJECT LAND: 12 THE ESPLANADE, TORQUAY. (LOT: 1 TP: 700794)
ZONE: General Residential 1
OVERLAYS: Design and Development - Schedule 13, Significant Landscape - Schedule 6, Development Contributions Plan
PERMIT REQUIRED UNDER CLAUSES: 32.08-4 and 43.02-2
EXISTING USE: Vacant lot
REPORTING OFFICER: Maya Dougherty

REASON FOR REFERRAL TO PLANNING COMMITTEE:
☑ Planning Officer recommending refusal
☒ Objections received x seven

MOVED: Robert Troup SECONDED: Wesley McClendon FOR: 4 AGAINST: 0
OFFICERS RECOMMENDATION ☑ ALTERNATIVE RECOMMENDATION ☐

POINTS OF DISCUSSION:
Amended Recommendation.
Complies with DDO objectives.
Although a large building, it is a quality building which gets the balance right.

ALTERATIONS TO PLANNING OFFICER RECOMMENDATION:
Add new Conditions 1.(h) and 1.(i)

PLANNING COMMITTEE RESOLUTION
That Council having caused notice of Planning Application No. 17/0005 to be given under Section 52 of the Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the Planning and Environment Act 1987 decides to Grant a Notice of Decision to Grant a Permit under the provisions of 32.08-4 and 43.02-2 of the Surf Coast Planning Scheme in respect of the land known and described as 12 THE ESPLANADE, TORQUAY., for the Development of Five Dwellings in accordance with the endorsed plans, subject to the following conditions:

Amended Plans

1. Before the development starts, 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 show:

   (a) Provide details of how safe access to the basement car park can be achieved

   (b) Access to the basement car park in accordance with Clause 52.06-8 of the planning scheme which will include a section through the access from the centreline of The Esplanade
Endorsed Plans

2. The development as shown on the endorsed plans must not be altered unless with the prior written consent of the responsible authority.

Landscaping

3. Before the development starts, three copies of a landscape plan 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 this permit. The plan must be drawn to scale with dimensions and three copies must be provided. The landscaping plan must be generally in accordance with the landscape concept plan dated 28 July 2017 prepared by Auhaus Architecture, except that the plan must show:

a) a survey (including botanical names) of all existing vegetation to be retained and/or removed;

b) buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary;

c) details of surface finishes of pathways and driveways;

d) a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;

e) landscaping and planting within all open areas of the site;

f) At least the following number of canopy trees in the following areas:
   
i) Two within the front setback
   
   ii) Three within the south side setback;
g) predominantly the use of plant species indigenous to the locality.

All species selected must be to the satisfaction of the responsible authority. 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.

Unless with the prior written consent of the responsible authority, before the occupation of the development, the landscaping works shown on the endorsed plans must be carried out, completed and maintained to the satisfaction of the responsible authority.

**Development Infrastructure Levy (Community Infrastructure)**

4. Before the commencement of the approved development, a Community Infrastructure Levy (additional dwellings) must be paid to the Collecting Agency (Surf Coast Shire Council) based on the net change in demand units in accordance with the provisions of the incorporated Torquay – Jan Juc Development Contributions Plan applying to the land.

**Works in Road Reserve**

5. Prior to the occupation of the development, the developer must:

   a) Engage Council to undertake the changes to line marking for the on street parking in front of the site, and pay any applicable fee for the service; and

   b) Lower the footpath along the frontage of the site in accordance with the endorsed plans. These works are to be undertaken at the full cost of the developer and relevant permits and insurances must be in place to undertake the works.

**Surveyor’s Certificate – Frame Stage**

6. A written statement from a licensed surveyor shall be submitted for approval to the responsible authority confirming:

   a) that the buildings have been set out in accordance with the endorsed plan; and

   b) that the roof levels will not exceed the roof levels specified on the endorsed plan.

   The statement shall be submitted to the responsible authority at completion of the frame of the building.

**Maximum Building Height - metres**

7. The maximum building height must not exceed 8.2 metres above natural ground level in accordance with the endorsed plans and to the satisfaction of the responsible authority.

**Rooftop appurtenances**

8. No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.

**Vehicle Access and Parking**

9. Before the occupation of the development, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
a) constructed  
b) properly formed to such levels that they can be used in accordance with the plans  
c) surfaced with an all-weather-seal coat  
d) drained  
e) line marked to indicate each car space and all access lanes  
f) clearly marked to show the direction of traffic along access lanes and driveways  

to the satisfaction of the responsible authority. Car spaces, access lanes and driveways must be kept available for these purposes at all times.  

Expiry  

10. The approval granted by this permit for the construction of buildings and/or works will expire if one of the following circumstances applies:  
a) The development (buildings and/or works) is not started within two years of the date of this permit  
b) The development (buildings and/or works) is not completed within four years of the date of this permit  

The Responsible Authority may extend the periods referred to if a request is made in writing in accordance with Section 69 of the Planning and Environment Act 1987.  

Notes  

1. The following requirements apply to vehicle crossings and driveways:  
   - Vehicle crossings shall be constructed in reinforced concrete or other approved material;  
   - New vehicle crossings to suit the proposed driveways shall be constructed;  
   - Redundant vehicle crossings shall be removed and kerb and channel or other approved road edgings reinstated to suit existing works;  
   - Pathways shall be replaced with a section capable of sustaining traffic loadings where vehicle crossings are constructed or relocated;  
   - Entrance culverts with endwalls and suitable pavement material must be constructed to suit the proposed driveways to the satisfaction of the responsible authority.  
   - A "Non-Utility - Minor Works" permit shall be obtained from the Coordinating Road Authority defined in the Roads Management Act 2004 prior to any works being undertaken in road reserves.  

CARRIED  

SUMMARY  

The application is for the development of five three bedroom dwellings. Units 1 and 2 are to be located on the ground floor, fronting The Esplanade, Units 3 and 4 are to be located on the first floor, also fronting The Esplanade, and Unit 5 is to be located to the rear of the lot within a separate two storey building.
A roof top terrace is proposed, with the remainder of the roof to be non-trafficable and vegetated. The roof
top terrace is proposed to be a shared space, accessible to all units within the development.

In addition, a shared basement car park is proposed, providing 11 spaces.

A permit is required under the General Residential Zone and the Design and Development Overlay –
Schedule 13 for the development of two or more dwellings on a lot.

Seven objections have been received. Objections present concerns regarding the impact on the
neighbourhood character, the front setback, the design, overlooking, impact on views, the height, bulk,
amenity, objecting to the roof top terrace and Unit 5, impacts on public open space opposite and impacts on
property values.

It is considered the proposal responds appropriately to the preferred neighbourhood character, as specified
by Clause 22.09 Torquay-Jan Juc Residential Development and Neighbourhood Character Policy and the
Design and Development Overlay – Schedule 13. These provisions flag this area for urban consolidation and
substantial change, while providing specific design objectives for The Esplanade.

Many of the objections are concerned with retaining the existing neighbourhood character; however the
Planning Scheme identifies this area to undergo “substantial change” to accommodate growth. It is
considered the proposal presents a modern design and increases density as supported by Clause 22.09.

The proposal includes elements of non-compliance with the DDO13. Specifically it exceeds the preferred 7.5
metre height (with a maximum height of 8.2 metres at the roof top balustrade) and provides less than the
preferred 50% area available for landscaping at ground level (at 42%). It is considered the proposal
responds to the design objectives as it will present as 7.3 metres in height at the front façade and the
addition of 230 square metres of landscaped roof area will positively contribute to the landscaped site area.

Furthermore, the proposal adequately responds to the objectives of Clause 55 Two or More Dwellings on a
Lot.

It is recommended the proposal be supported as it is generally consistent with the Surf Coast Planning
Scheme.

**RECOMMENDATION**

That Council having caused notice of Planning Application No. 17/0005 to be given under Section 52 of the
Planning and Environment Act 1987 and having considered all the matters required under Section 60 of the
Planning and Environment Act 1987 decides to Grant a Notice of Decision to Grant a Permit under the
provisions of 32.08-4 and 43.02-2 of the Surf Coast Planning Scheme in respect of the land known and
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**Amended Plans**

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(a) Provide details of how safe access to the basement car park can be achieved

(b) Access to the basement car park in accordance with Clause 52.06-8 of the planning scheme
which will include a section through the access from the centreline of The Esplanade

(c) The lowering of the footpath along the frontage of the site

(d) Relocation of the access to provide a minimum of 1.0m clearance to Electricity Supply Pole
(e) Changes required to the line-marking, to retain the maximum number of car parks within The Esplanade along the frontage of the site

(f) Amend the visitor space to provide additional width for adequate access to vehicles parked in this space in accordance with Design Standard 2 of Clause 52.06-8 of the planning scheme and show the turning templates for vehicles entering the car spaces of Unit 3 & 4 with the widened space.

(g) A notation on plans that the privacy screening to prevent overlooking complies with the requirements of Standard B22.

Endorsed Plans

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d) a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant;

e) landscaping and planting within all open areas of the site;

f) At least the following number of canopy trees in the following areas:

i) Two within the front setback

ii) Three within the south side setback;

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All species selected must be to the satisfaction of the responsible authority. 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.

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Development Infrastructure Levy (Community Infrastructure)

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Vehicle Access and Parking

9. Before the occupation of the development, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
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   b) properly formed to such levels that they can be used in accordance with the plans
   c) surfaced with an all-weather-seal coat
   d) drained
   e) line marked to indicate each car space and all access lanes
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Expiry

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Notes

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- Pathways shall be replaced with a section capable of sustaining traffic loadings where vehicle crossings are constructed or relocated;
- Entrance culverts with endwalls and suitable pavement material must be constructed to suit the proposed driveways to the satisfaction of the responsible authority.
- A "Non-Utility - Minor Works" permit shall be obtained from the Coordinating Road Authority defined in the Roads Management Act 2004 prior to any works being undertaken in road reserves.
OFFICER REPORT

PROPOSAL

The application seeks approval for the Development of Five Dwellings.

More specifically:
Units 1 and 2 on the ground floor
- 3 bedrooms
- 2.5 bathrooms
- Open plan kitchen/living/dining area
- Deck and front yard facing The Esplanade
- Rear yard
- Lift access from the basement to the ground floor lobby.

Units 3 and 4 on the first floor
- 3 bedrooms
- 2 bathrooms for Unit 3 and 2.5 bathrooms for Unit 4
- Open kitchen/living/dining
- Deck on east side (front setback)
- Lift access from the basement and first floor lobby

Rooftop terrace
- Internal stairwell leading to the roof top terrace – access available from first floor lobby (both stair and lift access)
- The rooftop terrace is to be largely landscaped which is to be a non-trafficable area
- An area surfaced with decking and surrounding by balustrades will be set back 11 m from the front of the building
- A skylight over the stair well, the same height as the balustrade

Unit 5
- Access from the basement car park via separate stairs leading into Unit 5
- Ground floor
  - 3 bedrooms
  - 2.5 bathrooms
  - Living area
  - Front and rear yard
- First floor
  - Deck on the north side
  - Smaller deck on the west side
  - Open living/ kitchen/ dining
  - Stairwell on the west side

Shared basement car park providing:
- 11 car parking spaces (two per unit plus one for visitors)
- 5 bicycle parking spaces
- Storage cages for each unit
- Bins storage area
- Lift lobby

Two 3000L subterranean rainwater tanks

Front fence
- Retaining wall to 0.7m above ground level
- Battened Fence above the retaining wall to 1.5 m above ground level

External materials:
- External walls are to be predominantly precast concrete
- Unit 5 will have vertical timber cladding on the west elevation
- Textured bronze metal cladding will frame the front balconies of Units 1, 2, 3 and 4
- The front (east) elevation of Units 1, 2, 3 and 4 will have floor to ceiling glazing opening out onto the front balconies

Figure 1: Site plan, including the landscaped roof

Figure 2: Basement car park plan
Figure 3: Ground floor plan

Figure 4: First floor plan

Figure 5: Showing the street (east) elevation

Figure 6: Showing the south elevation
SITE AND SURROUNDING AREA

Figure 7: Showing the north elevation

Figure 8: Showing the west elevation

Figure 6: Aerial photograph (2017), showing the subject site in context of the immediate neighbourhood
The 1011 square metre site is located on The Esplanade, Torquay, between Price Street to the north and Bell Street to the south. Currently the site is vacant.

The site has a 20.12 metre street frontage and a depth of 50.30 metre and slopes slightly from the rear to the street. There is no vegetation growing on the site.

The site is within an established residential beachside area and has direct views to the foreshore reserve and the ocean beyond. Properties along The Esplanade in the vicinity of the site are varied in style and scale and include some older bungalows, larger two storey houses with viewing windows and decks and medium density units.

The site has three direct abuttals:

- South at 11 The Esplanade – a large contemporary, double storey dwelling with front and side decking/terrace, a rear pool and a semi-basement garage with a double width side driveway - at the south side of the land;

- North at 13 The Esplanade – a large contemporary, double storey building of three dwellings with a shared semi-basement garage and side driveway to the north side of the land;

- West (rear) at 8 Pride Street Anderson St – a double storey rendered dwelling sited some 14 meters from the common (rear) property boundary

Relevant History and Background

**Past permits:**

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<th>Application No.</th>
<th>Proposal</th>
<th>Decision</th>
<th>Date</th>
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<tr>
<td>16/0108</td>
<td>Two lot subdivision</td>
<td>Withdrawn</td>
<td>08/09/16</td>
</tr>
<tr>
<td>15/0101</td>
<td>Dwelling, swimming pool and front fence</td>
<td>Approved</td>
<td>25/05/15</td>
</tr>
<tr>
<td>13/0467</td>
<td>Construction 2 dwellings on a lot, an outdoor swimming pool and a front fence and 2 lot subdivision</td>
<td>Approved</td>
<td>26/06/14</td>
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Registered Restrictions

Under Section 61(4) of the *Planning & Environment Act 1987* the Responsible Authority must not issue a planning permit that would result in a breach of a registered restriction. The subject land is not affected by registered restrictions.

**CULTURAL HERITAGE MANAGEMENT PLAN (CHMP)**

The Aboriginal Heritage Regulations 2007 specify the circumstances in which a Cultural Heritage Management Plan is required for an activity or class of activity. Part 2 - Division 2 of the Aboriginal Heritage Regulations 2007 specifies exempt activities which do not require a Cultural Heritage Management Plan.

The site is located within an area of Aboriginal cultural significance.

The application is classified as a high impact activity.

There has not been significant ground disturbance on the land.

In light of the above, a CHMP is required. A CHMP has been approved for the land – Cultural Heritage Management Plan Number 14861.

**REFERRALS**

The following external referrals were undertaken: N/A

The following internal referrals were undertaken:
<table>
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<th>Department</th>
<th>Advice/ Comments/ Conditions</th>
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<tbody>
<tr>
<td>Infrastructure</td>
<td>Consent with conditions</td>
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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 submitted with the application but modified to show:

   a) Provide details of how safe access to the basement car park can be achieved
   b) Access to the basement car park in accordance with Clause 52.06-8 of the planning scheme which will include a section through the access from the centreline of The Esplanade
   c) The lowering of the footpath along the frontage of the site
   d) Relocation of the access to provide a minimum of 1.0m clearance to Electricity Supply Pole
   e) Changes required to the line-marking, to retain the maximum number of car parks within The Esplanade along the frontage of the site
   f) Amend the visitor space to provide additional width for adequate access to vehicles parked in this space in accordance with Design Standard 2 of Clause 52.06-8 of the planning scheme and show the turning templates for vehicles entering the car spaces of Unit 3 & 4 with the widened space.

2. Before the use starts, the area(s) set-aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:

   a) constructed
   b) properly formed to such levels that they can be used in accordance with the plans
   c) surfaced with an all-weather-seal coat
   d) drained
   e) line marked to indicate each car space and all access lanes
   f) clearly marked to show the direction of traffic along access lanes and driveways

   Car spaces, access lanes and driveways must be kept available for these purposes at all times.
3. The following requirements shall apply to vehicle crossings and driveways that shall be constructed to the satisfaction of the responsible authority:
   a) Vehicle crossings shall be constructed in reinforced concrete or other approved material;
   b) New vehicle crossings to suit the proposed driveways shall be constructed;
   c) Redundant vehicle crossings shall be removed and kerb and channel or other approved road edgings reinstated to suit existing works;
   d) Line-marking of the car parks in The Esplanade to plans endorsed under the permit.
   e) Pathways shall be replaced with a section capable of sustaining traffic loadings where vehicle crossings are constructed or relocated;
   f) A "Non-Utility - Minor Works" permit shall be obtained from the Coordinating Road Authority defined in the Roads Management Act 2004 prior to any works being undertaken in road reserves.

PUBLIC NOTICE
Public notification of the application was required, as it was considered that the application may result in material detriment. Public notification procedures included a sign on site and notices to adjoining property owners and occupiers.

AMENDMENT TO APPLICATION AFTER NOTICE
A Section 57a request was made to Council to amend the application after notice was undertaken. The following changes were made to the plans:

Front building:
- Reduced building footprint and increased area available for landscaping
- Increased front setback (to 6.35m)
- Increased south side setback
- Reduced height of skylight on the roof so that it is the same height as the balustrade
- Altered window treatment (window hoods) to improve articulation on the north and south elevations.

Unit 5:
- Materials changed to timber
- Changes to materials and window hoods to provide improved articulation
- Increased north side setback (no longer abutting the side boundary)

These are the plans on which the report is based.
Public notification of the amendments to plans was required. The following forms of notice were undertaken:

- Letters sent to all objectors including adjoining property owners

**OBJECTIONS**

A total of seven objections have been lodged with Council. In addition, a further two submissions were received from existing objectors in response to the amended plans, supporting their original objections.

The concerns of objectors are summarised below:

**Non-compliance with the Planning Scheme**

The proposal is inconsistent with the Surf Coast Planning Scheme

The proposal is not consistent with the highly specific requirements of the DDO13, showing disregard for the purposes of planning for a unique geographical area.

**Character**

Concerns that the proposed use of concrete slab walls is industrial and is not appropriate for a residential area.

The rooftop terrace is a negative contribution to character from the street and public park.

The bulk and façade does not complement the coastal landscape setting, preventing visual permeability from the foreshore parkland, walking trail and footpath along The Esplanade.

Does not blend into the environment in either shape or colour.

The hard corners and uninterrupted concrete walls impose on both the natural surrounds and the three adjacent properties.

**Front setback**

Concerns that the front setback is not large enough, particularly in contrast with the 14 m setback of 13 The Esplanade (adjacent to the north). Suggestions have been provided that 9 m would be acceptable and deleting Unit 5 would allow the main building to be moved back.

**Design**

The land should be developed as an architectural showcase with sensitive and considered design to enhance the area.

A design more sensitive to the location would include a deeper front setback and open rear courtyard.

The combination and the industrial style fully closed façade with a solid roof line at 7.5 metres in height with a street setback of only 6 metres is overbearing on The Esplanade.

The adjacent buildings do not have a solid façade and have rooflines with only small peaks reaching their maximum heights.

Allowing more stone and glass edifices to be built will deter locals from enjoying their own open spaces.

The solid wall of the front balconies should be removed entirely due to total obstruction of natural light and view of the street.
**Rooftop terrace**

Concerns have been raised regarding the appropriateness of the rooftop terrace in terms of noise impacts on surrounding residents, overlooking onto surrounding properties and the foreshore park, and setting a precedent for a third floor.

Visual impact has also been raised as a concern, particularly in the case that outdoor furniture would be used.

That people using the rooftop terrace would be in full view of their neighbours and from public spaces is a strong negative to the character and public enjoyment of the Cosy Corner precinct.

**Site coverage/area available for vegetation**

Concerns regarding the variation sought from the DDO13 requirement for 50% of land to be available for the planting of vegetation and request for reduction of building footprint and increased landscaping area.

Concerns that the proposal is an overdevelopment of the site.

**Overlooking**

The south-facing windows have direct views into the main living areas including kitchen, living, pool and backyard of number 11 – request privacy screening on all south facing windows.

**Impact on views**

Reduced views from Units at 13 The Esplanade to the foreshore park and Point Danger.

**Height**

The proposal does not give a maximum height to structures on the rooftop terrace.

The proposal clearly exceeds the 7.5 metre height limit, with the sky light over the stair well exceeding it by 1.5 metres.

The rooftop terrace effectively provides a third floor habitable level at least 3 metres higher than the highest floor level of adjacent and surrounding properties between Bell and Price Street.

The addition of outdoor furniture including shade umbrellas will be clearly visible and when blown about by the wind, leaves an ugly spectacle.

**Bulk**

The bulk and volume of the proposal is excessive for the site, particularly as the whole frontage is at 7.5 metres in height, and needs to be set back much further between the existing building, providing a more integrated streetscape.

The large volume and façade does not complement the coastal landscape setting.

Prevents visual permeability when viewed from the foreshore parkland, walking trail and the footpath along The Esplanade.

**Unit 5**

Suggestions have been made to remove Unit 5 to allow for an increased front setback and to better address the DDO13.
Concerns regarding overlooking from the first floor balcony of Unit 5 to the north and the 1.7m timber screen will not block noise, with a suggestion the balcony be set back 3 m from the northern boundary. The objectors have stated that this is still a concern with the amended plans.

Concerns the boundary wall is too high and too close to the north boundary, creating visual crowding and impact the amenity of the secluded private open space in the rear yards of surrounding properties and changing the open feel of the rear yards.

The first floor balcony is too close and would overlook 13 The Esplanade and the screen would not block out noise.

**Overlooking**

Concerns about overlooking to secluded private open space to the rear, with only a two metre rear setback from Unit 5.

The rooftop terrace provides for overlooking of neighbours’ properties and public spaces.

**Amenity**

The proposal has a detrimental impact on use and enjoyment of neighbouring properties.

**Impact on public space**

Concerns regarding overlooking onto the public open space and the visual encroachment into this area.

**Noise**

Concerns regarding noise impacts from the roof top terrace.

Concerns regarding noise impact of air conditioning units and other equipment

**Devalue properties**

Properties would be devalued by $400,000 to $500,000

**PLANNING SCHEME PROVISIONS**

The use is defined as dwelling which is nested under accommodation.

**Zone table**

**General Residential Zone – (GRZ1)**

| Surf Coast General Residential Areas last updated VC116 |

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Proposal</th>
<th>Permit required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 32.08-1 <strong>Use of land</strong></td>
<td>No permit required to use the land for a dwelling.</td>
<td>Dwelling</td>
<td>No</td>
</tr>
<tr>
<td>Clause 32.08-4 <strong>Minimum garden area requirement</strong></td>
<td>Whether or not a planning permit is required for the construction or extension of a dwelling or residential building on a lot, a lot must provide the minimum garden area at ground level as set out in the following table:</td>
<td>As the proposal was received before March 2017 and is therefore exempt from the Garden Area requirements by the transitional provision at Clause 32.08-14.</td>
<td>N/A</td>
</tr>
<tr>
<td>Lot size</td>
<td>Minimum % set aside as garden area</td>
<td></td>
<td></td>
</tr>
<tr>
<td>400-500 square metres</td>
<td>25%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>501-650 square metres</td>
<td>30%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Above 650 square metres</td>
<td>35%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: Transitional provisions apply
**Clause 32.08-9 Maximum building height**

Building height must not exceed 11 metres; and
The building must not contain more than three storeys at any point

Note: A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees. Note: A basement is not a storey for the purposes of calculating the number of storeys contained in a building.

Note: If the land is in a Special Building Overlay, Land Subject to Inundation Overlay or is land liable to inundation the maximum building height specified in the zone or schedule to the zone is the vertical distance from the minimum floor level determined by the relevant drainage authority or floodplain management authority to the roof or parapet at any point.

- Height: 8.2 m (to the balustrade and skylight)
- Storeys: 2
- Complies

**Clause 32.08-4 Construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings**

A permit is required to:
- Construct a dwelling if there is at least one dwelling on the existing lot;
- Construct two or more dwellings on a lot;
- Extend a dwelling if there are two or more dwellings on a lot;
- Construct or extend a dwelling if it is on common property;
- Construct or extend a residential building.

A development must meet the requirements of Clause 55.

- Medium density application
- Yes

**Clause 32.08-4 Front fences**

A permit is required to construct or extend a front fence within 3 metres of a street if the fence is associated with 2 or more dwellings on a lot or a residential building and the fence exceeds maximum height in Clause 55.06-2.

A development must meet the requirements of Clause 55.

- Front fence with a height of 1.5 metres, therefore does not exceed the maximum height specified in Clause 55.06-2
- No

**Overlay tables**

**Significant Landscape Overlay – Schedule 6 (SLO6)**

Central Torquay and Jan Juc Residential Areas last updated VC124

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Proposal</th>
<th>Permit required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 42.03-2 combined with Schedule 6 Permit triggers – buildings and works</td>
<td>A permit is not required to construct a building or carry out works.</td>
<td>5 Dwellings</td>
<td>No</td>
</tr>
<tr>
<td>Clause 42.03-2 combined with Schedule 6: 3.0 Permit triggers - Vegetation</td>
<td>A permit is required to remove, destroy or lop any Bellarine Yellow Gum (Eucalyptus leucoxylon subsp. bellarinenis) or Moonah (Melaleuca lanceolata subsp. lanceolata), any exotic tree greater than 5 metres in height or native vegetation greater than 3 metres in height. This does not apply:</td>
<td>No vegetation removal proposed</td>
<td>No</td>
</tr>
</tbody>
</table>
• If the vegetation is dead.
• If the vegetation is within 2 metres of the outer edge of the roof of a building or overhangs this area.
• If the vegetation is listed as an environmental weed in the incorporated document “Environmental Weeds – Invaders of our Surf Coast, 2nd Edition (2002)”.
• To the reasonable trimming of vegetation for the purpose of maintaining its on-going health and proportion within the garden landscape.
• If the table to Clause 42.03-3 specifically states that a permit is not required

### Design and Development Overlay – Schedule 13 (DDO13)
Coastal Boulevards Torquay – Jan Juc last updated C66

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Proposal</th>
<th>Permit required</th>
</tr>
</thead>
</table>
| Clause 43.02-2 combined with Schedule 13 Permit triggers - Buildings and works | A permit is required to construct a building or to construct or carry out works. This does not apply to:  
• an outdoor swimming pool associated with a dwelling, unless the proportion of the site covered by buildings, hard surfaces and pools exceeds 50 per cent of the site area  
• Construct or carry out works normal to a dwelling.  
• Construct or extend an outbuilding (other than a garage or carport) with a gross floor area that does not exceed 10 square metres and a maximum building height of no more than 3 metres above ground level. | 5 Dwellings | Yes |
| Clause 43.02-2 combined with Schedule 13 Permit triggers - fences | A permit is required to construct a fence that is more than 1.0 metre in height and located on or within:  
• 6 metres of the front street boundary.  
• 1 metre of a boundary abutting a public open space or foreshore reserve. | Fence to 1.5 metres in height on the front boundary | Yes |
### Development Contributions Plan Overlay – Schedule 2 (DCP02)
#### Torquay Jan Juc Development Contributions Plan last updated C57

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Proposal</th>
<th>Levies payable</th>
</tr>
</thead>
</table>
| Clause 45.06-1 combined with Schedule 2: 3.0 DCP | A permit granted must:  
- Be consistent with the provisions of the relevant development contributions plan.  
- Include any conditions required to give effect to any contributions or levies imposed, conditions or requirements set out in the relevant schedule to this overlay. | Charging area: 20 Development Infrastructure levy: N/A Community Infrastructure levy: $900 per additional dwelling $3,600 |  |

### Particular Provisions
The following particular provisions are considered in respect to this application:

<table>
<thead>
<tr>
<th>Provision</th>
<th>Permit triggers/Requirements</th>
<th>Permit Required/ Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.06 Car parking</td>
<td>These provisions do not apply to the extension or construction and use of one dwelling on a lot in the GRZ</td>
<td>Yes</td>
</tr>
<tr>
<td>55 Two or more dwellings on a lot and residential buildings</td>
<td>Refer to the Clause 55 assessment attached to this report.</td>
<td>Yes</td>
</tr>
</tbody>
</table>

### State Planning Policy Framework
The following State policies have been considered with respect to this application:
- Clause 11.02 Urban growth
- Clause 11.07 Regional Victoria
- Clause 11.09 Geelong (G21)
- Clause 12.02 Coastal areas
- Clause 12.04 Significant environments and landscapes
- Clause 15.01 Urban environment
- Clause 15.02 Sustainable development
- Clause 16.01 Residential development

### Local Planning Policy Framework
The following provisions of the LPPF have been considered with respect to this application:

#### Municipal Strategic Statement
The MSS is a statement of the key strategic planning, land use and development objectives for the municipality and the strategies and actions for achieving those objectives. The key provisions of the MSS as it relates to this application include:
- Clause 21.01 Profile and Vision
Clause 21.02 Settlement, Built Environment, Heritage and Housing

Clause 21.08 Torquay-Jan Juc Strategy

Clause 22.02 Streetscape and Landscaping Policy

These clauses outline that the Surf Coast Shire contains rich and diverse environmental, cultural and scenic landscapes including rugged coastlines, native forests, rolling to flat rural plains and many rivers, lakes and wetlands. The southern part of the Shire contains nodes of coastal townships dotted along the Great Ocean Road comprising Torquay-Jan Juc, Anglesea, Aireys Inlet, Fairhaven, Moggs Creek and Lorne. Each of these towns has its own distinct character and identity and a potential for development.

A recurring theme of the Surf Coast Shire’s MSS is balancing development against the environmental qualities of the Shire which provide the foundation of its attractiveness as a place to live, to work and to visit. To achieve this Shire has adopted detailed policies for the coastal townships and their hinterland which direct new development into existing town areas and limit development in areas of high scenic, environmental and agricultural value.

The MSS identifies that Torquay-Jan Juc and Winchelsea will be the urban growth areas within the Shire. A lesser intensity of development is planned for the smaller coastal townships due to character, environmental and servicing considerations.

The Torquay-Jan Juc Strategy (Clause 21.08) describes Torquay-Jan Juc as follows:

Torquay-Jan Juc is the main urban growth centre of the Surf Coast Shire. It is a popular destination for surfers, tourists, holiday makers and retirees, and the sea-change movement has resulted in the town becoming increasingly popular for permanent settlement by those valuing a coastal lifestyle.

Key Issues and Influences identified include:
- State and regional policies identifying Torquay-Jan Juc as a growth node in the Great Ocean Road and G21 regions.
- Balancing growth and development densities against a community desire to maintain the coastal character of Torquay-Jan Juc whilst also achieving overarching sustainability objectives. The five values identified in Sustainable Futures Plan Torquay Jan Juc 2040 (2012) to help manage this are:
  - Value 1: Places for People – The importance of a close knit community
  - Value 2: The Natural Environment – Protecting and enhancing the natural environment
  - Value 3: The Built Environment – Fostering the unique coastal look and feel
  - Value 4: Services and Infrastructure – Planning for services and infrastructure with development
  - Value 5: A Local Economy – Providing employment opportunities locally.
- Increasing housing diversity and affordability in response to socio-demographic change.
21.08-2 Settlement, Built Environment and Housing has the objective:

To accommodate and manage the projected population growth and demographic change of Torquay-Jan Juc in an environmentally sustainable manner that respects and celebrates the distinct surfing identity and coastal character of the town and responds to Value 1 “Places for People” and Value 3 “The Built Environment” from the Sustainable Futures Plan Torquay Jan Juc 2040 (2012)

The relevant strategies to achieve this include:

- Promote a range of lot sizes and housing types, including medium density development in appropriate locations, in the new growth areas and ensure good access to surrounding areas, public transport, public open space and other facilities.

- Provide a range of housing types, sizes and configurations at suitable densities to cater for the changing housing needs of current and future populations, taking account of the differential capacity of the various areas to accommodate housing growth and change (in accordance with Map 2 to Clause 21.08 – Torquay-Jan Juc Residential Development Framework).

- Encourage a variety of well-designed medium and higher density housing types and sizes in the form of units, townhouses, terrace housing and low-rise apartments (including smaller sized dwellings with only one or two bedrooms) in Old Torquay and within walking distance of neighbourhood activity centres, ensuring such developments value add to the evolving urban character.

- Ensure new residential development is of a high standard and builds on the coastal character by incorporating contemporary designs, with an articulated built form and a range of visually interesting building materials, colours and façade treatments that respond to the local context and preferred character of the neighbourhood.

Local Policies:

22.09: Torquay – Jan Juc Residential Development and Neighbourhood Character Policy

General Provisions

| Exemptions | Are there any exemptions relevant to the proposal? | No |
| Existing uses | Do existing use rights apply? | No |
| Decision guidelines | Does the proposal meet the following relevant decision guidelines? | Yes |

Relevant Incorporated and/or Reference Documents

The following relevant documents have been considered during the assessment of this application:

- Torquay and Jan Juc Structure Plan (2007)
- Torquay-Jan Juc Neighbourhood Character Study Review (2012)
- Torquay-Jan Juc Neighbourhood Character Study and Vegetation Assessment (2006)

Relevant Planning Scheme Amendments and/or Strategies

There are no amendments relevant to this application.

OFFICER DIRECT OR INDIRECT INTEREST

No Council officers have any direct or indirect interest in the matter to which this report relates, in accordance with Section 80 (C) of the Local Government Act.

DISCUSSION OF KEY ISSUES

The application seeks approval for Development of Five Dwellings, which requires a permit under the GRZ1 and DDO13.
Policy

The proposal is generally supported by state and local policy. Particularly relevant is Clause 22.09 Torquay-Jan Juc Residential Development and Neighbourhood Character Policy.

The proposal is located within “Housing Area 1 – Urban Consolidation” under Clause 22.09. This area is identified as undergoing “substantial change” and encourages “residential growth and increased housing diversity, including delivery of a higher proportion of well-designed medium and higher density development in the form of units, townhouses, terrace housing and low-rise apartments to provide greater housing choice in response to a growing and changing population and to make efficient use of available infrastructure and services.”

The policy also states that: “New development will be distinguishable from the original building stock by providing a more intense built form, but will be respectful of the key elements of these styles and sited in accordance with the predominant pattern of front setbacks in the street to allow for space for the retention of planting of canopy trees and shrubs that soften the built form and contribute to the spaciousness and leafiness of the streetscapes.”

It is considered the proposal is particularly supported by the above policy, as the contemporary design does provide a more intense built form but incorporates vegetation in innovative ways such as on the roof top, built-in first storey planters in addition to ground level plantings.

DDO13 – Coastal Boulevards, Torquay-Jan Juc - Design Objectives

The DDO13 supports the implementation of the above local policy, however provides more specific objectives for The Esplanade.

The design objectives are:

- To encourage building design that complements the coastal landscape setting and the scenic and landscape values of the foreshore environs.
- To ensure that development provides for spacing around buildings and visual permeability when viewed from foreshore areas and the street.
- To minimise the visual impact of development when viewed from public areas, having regard to building size, height, bulk, siting, site coverage, car parking and external materials and colours.
- To encourage retention and establishment of native and indigenous vegetation that enhances the softening of development, with emphasis on the establishment of vegetation that improves the interface with the foreshore areas.
- To provide for the reasonable sharing of views of the foreshore, ocean and significant landscape features from properties affected by this Schedule.
- To reinforce and/or establish a low fenced or unfenced open character along the coastal boulevards and reserves.

The proposal seeks variations to the DDO13 as follows:

- Building height – the DDO13 states “buildings should not exceed a height of 7.5 metres”, however the proposal is for a maximum height at the front setback of 7.3 metres, a maximum roofline height of 7.8 m, a maximum balustrade height of 8.2 metres.

Officer response

The frontage of the building is 7.3 metres in height and the height at 7.8 m is setback a further 2.5 metres, in addition, the balustrade is setback nearly 12 metres from the building frontage and will therefore not be visible from the street. It is considered maximum building height will not have a negative impact on the streetscape.

- Site coverage/landscaping – the DDO13 states that “at least 50 per cent of the site should be available for the planting of vegetation”, however the proposal provides for 42 per cent available for landscaping.
Officer response

It is considered the proposal provides sufficient vegetation to meet the above objectives, in particular the “softening of the development” due to proposed plantings in the front and side setbacks as well as first floor planters and roof top vegetation.

Neighbourhood Character

The detailed assessment against the Clause 55 is included as an Attachment to this report. Areas of non-compliance are discussed below.

55.03-1 Street setback

The proposed front setback is 6.35 metres. While this clause requires a setback of 9 metres, the DDO13 specifies a minimum front setback of 6 metres.

Therefore, as the DDO13 is specific to The Esplanade and Clause 55 presents generic standards for all of Victoria, the proposed setback is considered to be appropriate in this location.

55.03-5 Energy Efficiency

Standard B10 requires that living areas and private open space should be located on the north side of the development if practicable.

With the exception of Unit 5, all living areas have only eastern solar access. While this does not meet the standard, this is considered an acceptable variation specific to The Esplanade as dwellings are designed to maximise ocean views.

55.04-1 Side and Rear Setbacks

The proposal seeks a variation of 0.1 metres to the rear setback as a 2.1 metre setback is required by this standard and a 2 metres setback is proposed.

This is considered to be an acceptable minor variation, particularly as there are no dwellings near the rear boundary.

Objections

Non-compliance with the Planning Scheme

The proposal is inconsistent with the Surf Coast Planning Scheme

The proposal is not consistent with the highly specific requirements of the DDO13, showing disregard for the purposes of planning for a unique geographical area.

Officer response

See assessment against the relevant provisions of the Surf Coast Planning Scheme above.

Character

Concerns that the proposed use of concrete slab walls is industrial and is not appropriate for a residential area.

The rooftop terrace is a negative contribution to character from the street and public park.

The bulk and façade does not complement the coastal landscape setting, preventing visual permeability from the foreshore parkland, walking trail and footpath along The Esplanade.

Does not blend into the environment in either shape or colour.

The hard corners and uninterrupted concrete walls impose on both the natural surrounds and the three adjacent properties.
Officer response

This area of Torquay has been identified for change in Clause 22.09 and by the DDO13. These policies encourage growth and specify the preferred neighbourhood character. Therefore, there is a mismatch between those who would like to preserve the existing neighbourhood character and the preferred neighbourhood character identified in the Surf Coast Planning Scheme.

Particularly relevant to this proposal is the preference in 22.09 for “modern” design elements within the Urban Consolidation area.

It is also considered that the proposal does allow for visual permeability from the street and the foreshore by meeting the side setbacks required by the DDO13. Furthermore, the proposal does not use reflective materials that would stand out and the inclusion of planters and a roof top garden will result in a softening effect.

Front setback

Concerns that the front setback is not large enough, particularly in contrast with the 14 metre setback of 13 The Esplanade (adjacent to the north). Suggestions have been provided that 9 metre setback would be acceptable and deleting Unit 5 would allow the main building to be moved back.

Officer response

It is noted the application complies with the DDO13 which requires a front setback of six metres, allowing sufficient area for the planting of vegetation within the front setback. The adjacent properties fronting The Esplanade both have exceptionally large front setbacks. The DDO13 has been applied since these buildings were constructed and, as such, it would be unreasonable to require the proposal have a setback of nine metres, particularly as it is supported by the current Planning Scheme.

Design

The land should be developed as an architectural showcase with sensitive and considered design to enhance the area.

A design more sensitive to the location would include a deeper front setback and open rear courtyard.

The combination and the industrial style fully closed façade with a solid roof line at 7.5 metres in height with a street setback of only 6 metres is overbearing on The Esplanade.

The adjacent buildings do not have a solid façade and have rooflines with only small peaks reaching their maximum heights.

Allowing more stone and glass edifices to be built will deter locals from enjoying their own open spaces.

The solid wall of the front balconies should be removed entirely due to total obstruction of natural light and view of the street.

Officer response

While it is acknowledged the proposal is of a different design than nearby buildings on The Esplanade, Clause 22.09 encourages modern design for this area. This is further addressed above in the “Character” sub-section.

Rooftop terrace

Concerns have been raised regarding the appropriateness of the rooftop terrace in terms of noise impacts on surrounding residents, overlooking onto surrounding properties and the foreshore park, and setting a precedent for a third floor
Visual impact has also been raised as a concern, particularly in the case that outdoor furniture would be used.

That people using the rooftop terrace would be in full view of their neighbours and from public spaces is a strong negative to the character and public enjoyment of the Cosy Corner precinct.

**Officer response**

It is acknowledged that rooftop terraces are a relatively new design element for Torquay, however nowhere does the Surf Coast Planning Scheme discourage them. The proposed usable portion of the rooftop terrace is only 28% of the total roof top area for the front building. The remainder of the roof top is to be a non-trafficable area planted with vegetation. As the usable portion is to be setback from the front of the building 11.9 metres it is considered it won’t be visible from the street and, as the foreshore reserve slopes down away from the subject site, it is unlikely to be visible from the reserve as well.

Any use of the rooftop terrace will be associated with the residential use of the land and therefore any noise impacts are residential in nature, which is appropriate in a residential neighbourhood.

**Site coverage/area available for vegetation**

Concerns regarding the variation sought from the DDO13 requirement for 50% of land to be available for the planting of vegetation and request for reduction of building footprint and increased landscaping area.

Concerns that the proposal is an overdevelopment of the site.

**Officer response**

The proposal is for 42% of the land to be available for the planting of vegetation at the ground level. As outlined earlier, the 8% variation is considered acceptable and results in a development which complements the coastal landscape setting and the character of the area.

**Overlooking**

The south-facing windows have direct views into the main living areas including kitchen, living, pool and backyard of number 11 – request privacy screening on all south facing windows

**Officer response**

The first floor windows are 1.7 metres above floor level on the south side, meeting the Clause 55 requirement to prevent overlooking and the plans show a 2 metre high paling fence on the boundary, preventing overlooking at the ground level.

**Impact on views**

Reduced views from Units at 13 The Esplanade to the foreshore park and Point Danger.

**Officer response**

An objective of the DDO13 is to provide for the reasonable sharing of views of the foreshore, ocean and significant landscape features.

It is considered that while oblique views from adjoining properties facing The Esplanade will be reduced, these properties will maintain views directly to the east. This is considered a reasonable view sharing outcome.

**Height**

The proposal does not give a maximum height to structures on the rooftop terrace.
The proposal clearly exceeds the 7.5 metre height limit, with the sky light over the stair well exceeding it by 1.5 metres.

The rooftop terrace effectively provides a third floor habitable level at least 3 metres higher than the highest floor level of adjacent and surrounding properties between Bell and Price Street.

The addition of outdoor furniture including shade umbrellas will be clearly visible and when blown about by the wind, leaves an ugly spectacle.

**Officer response**

While the proposal does indeed exceed the 7.5 metre maximum height preferred by the DDO13, the design response is considered appropriate due to the reasons outlined below.

The roof line at the front setback is 7.3 metres, complying with the DDO13. As the maximum height of the roofline (7.8 metres) is to be setback from the front of the building 2.7 metres and 9.2 metres from the front of the lot, the impact of the height on the streetscape will be minimised.

As argued in the “Rooftop terrace” subsection above, due to the setback of the terrace and the fall of the land, although the balustrade is a maximum height of 8.2 metres, the trafficable area will not be prominent from the street or the foreshore reserve.

In addition, the amended plans show a reduced height of the skylight so that it will no longer exceed the height of the balustrade.

**Bulk**

The bulk and volume of the proposal is excessive for the site, particularly as the whole frontage is at 7.5 metres in height, and needs to be set back much further between the existing building, providing a more integrated streetscape.

The large volume and façade does not complement the coastal landscape setting.

Prevents visual permeability when viewed from the foreshore parkland, walking trail and the footpath along The Esplanade.

**Officer response**

It is considered the design breaks up the bulk from the street by providing glazing, verandahs, and offsetting the first floor side walls.

In terms of visual permeability when viewed from the foreshore, it is noted that the proposal meets the side setbacks of the DDO13.

Front setback and height has been previously addressed.

**Unit 5**

Suggestions have been made to remove Unit 5 to allow for an increased front setback and to better address the DDO13.

Concerns regarding overlooking from the first floor balcony of Unit 5 to the north and the 1.7m timber screen will not block noise, with a suggestion the balcony be set back 3 m from the northern boundary. The objectors have stated that this is still a concern with the amended plans.

Concerns the boundary wall is too high and too close to the north boundary, creating visual crowding and impact the amenity of the secluded private open space in the rear yards of surrounding properties and changing the open feel of the rear yards.
The first floor balcony is too close and would overlook 13 The Esplanade and the screen would not block out noise.

**Officer response**

As the proposed front setback is considered to comply with the DDO13, it would be unreasonable to require Unit 5 be removed from the proposal.

The amended plans increase the north side setback so that it no longer abuts the boundary.

The proposed balcony on the north side meets overlooking requirements as it provides screening to 1.7 metres. It is not expected that overlooking screening would reduce noise and noise impacts are considered to be limited to that normal to a dwelling.

**Overlooking**

Concerns about overlooking to secluded private open space to the rear, with only a two metre rear setback from Unit 5.

The rooftop terrace provides for overlooking of neighbours’ properties and public spaces.

**Officer response**

The window spanning both the ground floor and the first floor that appears to present overlooking issues from the rear elevation of Unit 5 is a window into the stair void, which is not a habitable room.

As stated above, much of the rooftop terrace will be non-trafficable and as such, will not present overlooking issues.

**Amenity**

The proposal has a detrimental impact on use and enjoyment of neighbouring properties.

**Officer response**

It is considered the proposal will be used normal to multi-dwelling developments already existing on The Esplanade, such as 13 The Esplanade adjacent. Therefore, the use for residential is not considered to detract from the amenity of neighbouring properties.

**Impact on public space**

Concerns regarding overlooking onto the public open space and the visual encroachment into this area.

**Officer response**

Increased passive surveillance of public open space is generally encouraged by planning policy for reasons of improved public safety.

**Noise**

Concerns regarding noise impacts from the roof top terrace.

Concerns regarding noise impact of air conditioning units and other equipment

**Officer response**

Noise impacts are considered to be normal to use for dwellings, appropriate in a residentially zoned area.
Devalue properties

Properties would be devalued by $400,000 to $500,000

Officer response

Estimates of property devaluation are speculative and cannot be substantiated. VCAT has regularly determined that property devaluation is not a relevant planning consideration. Compliance with the standards and objectives of ResCode ensures appropriate amenity for adjoining property owners.

Referrals
The advice from Council's Infrastructure Department has been included in the recommendation.

CONCLUSION
On balance the application is considered appropriate for the reasons set out in the discussion. It is recommended that a notice of decision be granted for the Development of Five Dwellings subject to conditions.
All new dwellings (including medium density housing), buildings and works that require a permit should meet the following requirements. *Clause 43.02-2 combined with Schedule 13 Requirements - Buildings and works*

<table>
<thead>
<tr>
<th><strong>Street setback</strong></th>
<th><strong>Complies</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Walls of buildings should be set back from streets at least:</td>
<td></td>
</tr>
<tr>
<td>▪ 6 metres from the front street.</td>
<td>The front setback is 6.35 m at the ground floor and 6.5 m at the first floor</td>
</tr>
<tr>
<td>▪ 3 metres from a side street on a corner lot.</td>
<td>Yes</td>
</tr>
</tbody>
</table>

_Porches, pergolas, balconies and verandahs may not encroach into these setbacks._

<table>
<thead>
<tr>
<th><strong>Building height</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Buildings should not exceed a height of 7.5 metres above natural ground level.</td>
<td><strong>Main Building:</strong></td>
</tr>
<tr>
<td></td>
<td>Roof line at front setback: 7.3 m</td>
</tr>
<tr>
<td></td>
<td>Maximum height: 7.8 m – setback 2.7 m from the front of the dwelling and 9.2 m from the front of the lot.</td>
</tr>
<tr>
<td></td>
<td>The roof line is over 7.5 m for a length of 9.2 m, due to the slope of the land (slightly lower towards the front of the lot), the remaining 16.6m of roof line is under 7.5 m.</td>
</tr>
<tr>
<td></td>
<td>Balustrade: Maximum height: 8.2 m – setback 11.9 m from the front of the dwelling and 18.5 m from the front of the lot. Therefore it is unlikely that the balustrade will be visible from the street.</td>
</tr>
<tr>
<td></td>
<td><strong>Does not comply</strong></td>
</tr>
<tr>
<td></td>
<td>Unit 5 Maximum height: 7.3 m</td>
</tr>
<tr>
<td></td>
<td>Complies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Site coverage / landscaping</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>At least 50 per cent of the site should be available for the planting of vegetation. The area available for the planting of vegetation cannot include driveways, paths, decks, terraces, patios, swimming pools and tennis courts (whether or not these areas are pervious).</td>
<td>Total: 428 sq m (excluding paths) Percentage: 42%</td>
</tr>
<tr>
<td></td>
<td><strong>Does not comply</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Parking and access</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Garages and carports should be set back at least 1 metre behind the main building façade and should be visually compatible with the development.</td>
<td>The proposal includes a shared basement car parking area, the entrance of which is setback from the front wall of the dwelling 9 m. This will not be visible from the street.</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Clause</td>
<td>Description</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Only one single width vehicle crossover should be provided to each lot.</td>
<td>One single width crossover is proposed.</td>
</tr>
<tr>
<td>A driveway should be predominantly setback at least 1 metre from the side boundary it is closest to, to allow for a 1 metre landscaped buffer.</td>
<td>The driveway is proposed to be set back 0.8 m from the southern side boundary.</td>
</tr>
<tr>
<td>Garages should not exceed one third of the total building width as seen from the street.</td>
<td>Complies</td>
</tr>
<tr>
<td><strong>Side and rear setbacks</strong></td>
<td></td>
</tr>
<tr>
<td>A new building should be set back at least:</td>
<td></td>
</tr>
<tr>
<td>• 3 metres from one side boundary at ground floor level.</td>
<td>Front building</td>
</tr>
<tr>
<td>• 3 metres from both side boundaries at first floor level.</td>
<td>South side setback</td>
</tr>
<tr>
<td>• 6 metres from a rear boundary abutting a public open space or foreshore reserve.</td>
<td>Ground Floor: 3.9 m - Complies First Floor: 3 m - Complies</td>
</tr>
<tr>
<td></td>
<td>North side setback</td>
</tr>
<tr>
<td></td>
<td>Ground Floor: 1.8 m - Complies First Floor: 3 m  – Complies</td>
</tr>
<tr>
<td></td>
<td>Unit 5</td>
</tr>
<tr>
<td></td>
<td>North side</td>
</tr>
<tr>
<td></td>
<td>Ground Floor: 1.2 m - Complies First Floor:</td>
</tr>
<tr>
<td></td>
<td>1 m to balcony</td>
</tr>
<tr>
<td></td>
<td>3 m to northern wall</td>
</tr>
<tr>
<td></td>
<td>South side</td>
</tr>
<tr>
<td></td>
<td>Ground Floor: 3 m - Complies First Floor: Complies</td>
</tr>
<tr>
<td></td>
<td>Rear (west) setback:</td>
</tr>
<tr>
<td></td>
<td>Ground Floor: 2 m – N/A</td>
</tr>
<tr>
<td></td>
<td>First Floor: 2 m – N/A</td>
</tr>
</tbody>
</table>
### ATTACHMENT – ASSESSMENT AGAINST CLAUSE 55

<table>
<thead>
<tr>
<th>55.02 NEIGHBOURHOOD CHARACTER AND INFRASTRUCTURE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>55.02-1 Neighbourhood Character</strong></td>
</tr>
<tr>
<td>To ensure that the design respects the existing neighbourhood character or contributes to neighbourhood character.</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

| **55.02-2 Residential Policy** | Met? | Standard B3 | Met? | Comments |
| To ensure that residential development is provided in accordance with any policy for housing in the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies. | Yes | An application must be accompanied by a written statement to the satisfaction of the responsible authority that describes how the development is consistent with any relevant policy for housing in the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies. | Yes | The proposal responds to the specific policy that identifies this area as undergoing substantial change. Complies |

| **55.02-3 Dwelling Diversity** | Met? | Standard B3 | Met? | Comments |
| To encourage a range of dwelling sizes and types in developments of ten or more dwellings | N/A | Developments of ten or more dwellings should provide a range of dwelling sizes and types, including: • Dwellings with a different number of bedrooms. • At least one dwelling that contains a kitchen, bath or shower, and a toilet and wash basin at ground floor level. | N/A | |

| **55.02-4 Infrastructure** | Met? | Standard B4 | Met? | Comments |
| To ensure development is provided with appropriate utility services and infrastructure. | Yes | Development should be connected to reticulated services, including reticulated sewerage, drainage, electricity and gas, if available. | Yes | The proposal is within an existing urban area. Complies |
| To ensure development does not unreasonably exceed the capacity of utility services and infrastructure, including reticulated services and roads. | Yes | In areas where utility services or | Yes | As above |
not unreasonably overload the capacity of utility services and infrastructure. Developments should provide adequate vehicle and pedestrian links that maintain or enhance local accessibility.

55.02-4 Integration With The Street

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B5</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Development should be oriented to front existing and proposed streets.</td>
<td>Yes</td>
<td>The proposal includes only a single width crossover, maintaining the existing footpath length. Complies</td>
</tr>
<tr>
<td>Yes</td>
<td>High fencing in front of dwellings should be avoided if practicable.</td>
<td>Yes</td>
<td>The proposal includes four separate balconies overlooking the street. Complies</td>
</tr>
<tr>
<td>N/A</td>
<td>Development next to existing public open space should be laid out to complement the open space.</td>
<td>N/A</td>
<td>The site is not adjoining public open space; however it does provide active surveillance to the public open space (Torquay Foreshore Reserve) across the street.</td>
</tr>
</tbody>
</table>

55.03 SITE LAYOUT AND BUILDING MASSING

55.03-1 Street Setback

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B6</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Walls of buildings should be set back from streets the distance specified below: There is an existing building on both the abutting allotments facing the same street, and the site is not on a corner. The average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser. Porches, pergolas and verandahs that are &lt; 3.6m high and eaves may encroach ≤ 2.5m into the setbacks of this standard.</td>
<td>No</td>
<td>Required Setback: 9 m Proposed Setback: 6.35 m Does not comply, however the DDO13 requires only a 6 m setback. Therefore the proposal is considered to reflect the preferred neighbourhood character and, thus, complies with the objective.</td>
</tr>
</tbody>
</table>

55.03-2 Building Height

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B7</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>The maximum building height should not exceed 9 metres, unless the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, in which case the maximum building height should not exceed 10 metres. Changes of building height between existing buildings and new buildings should be graduated.</td>
<td>Yes</td>
<td>Main Building: Maximum height: 7.8 m Balustrade: Maximum height: 8.2 m Complies</td>
</tr>
<tr>
<td>N/A</td>
<td>Both buildings on either side are also two storeys.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

55.03-3 Site Coverage

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B8</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>The site area covered by buildings should not exceed 60 per cent.</td>
<td>Yes</td>
<td>The site coverage is proposed to be 50% (including the basement access ramp) Complies</td>
</tr>
</tbody>
</table>
### 55.03-4 Permeability

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B9</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>The site area covered by the pervious surfaces should be at least 20% of the site</td>
<td>Yes</td>
<td>50% pervious surfaces Complies</td>
</tr>
<tr>
<td>Yes</td>
<td>To facilitate on-site stormwater infiltration</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 55.03-5 Energy Efficiency

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B10</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
</table>
| Yes  | Buildings should be:  
- Orientated to make appropriate use of solar energy  
- Sited and designed to ensure that the energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced | Yes | All dwellings have solar access from the north or east, with all habitable rooms having direct light access.  
Shadow diagrams submitted with the application show the proposal will not impact energy efficiency of existing dwellings on adjoining lots. Complies |
| No   | Living areas and private open space should be located on the north side of the development if practicable | | The first floor living area for Unit 5 has north-facing orientation. All other living areas have only eastern solar access. Does not comply. |
|      | Developments should be designed so that solar access to north-facing windows is maximised | Yes | All north-facing windows have clear solar access. Complies |

### 55.03-6 Open Space

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B11</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
</table>
| Yes  | If any public or communal open space is provided on site, it should:  
- Be substantially fronted by dwellings, where appropriate  
- Provide outlook for as many dwellings as practicable  
- Be designed to protect any natural features on the site  
- Be accessible and useable | Yes | The rooftop terrace is proposed as communal open space, accessible by a combination of elevator and stairs.  
As it is on the roof, it cannot meet all the requirements of this standard, e.g. substantially fronted by dwellings.  
However, it is considered to be appropriately accessible to all users of the dwellings and to assist the proposal to integrate with the landscape. Complies |
|      | To integrate the layout of the development with any public and communal open space provided in or adjacent to the development | | |

### 55.03-7 Safety

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B12</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Entrances to dwellings should not be obscured or isolated from the street and internal accessways</td>
<td>Yes</td>
<td>While the entrance to Unit 5 will not be visible from the street, the side entry gate will be. Complies</td>
</tr>
<tr>
<td></td>
<td>Planting which creates unsafe spaces along streets and accessways should be avoided</td>
<td>Yes</td>
<td>The design does not indicate the potential creation of unsafe spaces along streets and access ways. Complies</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Section</th>
<th>Met?</th>
<th>Standard</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>55.03-8 Landscaping</td>
<td>Yes</td>
<td>B13</td>
<td></td>
<td>An indicative landscaping plan has been provided with the application. A more detailed plan will be required as a condition.</td>
</tr>
<tr>
<td>To encourage development that respects the landscape character of the neighbourhood</td>
<td>Yes</td>
<td></td>
<td></td>
<td>The plan shows some canopy trees in the south side setback and the ground floor secluded private open spaces, as well as lawn over much of the permeable area and plantings along paths and the driveway.</td>
</tr>
<tr>
<td>To encourage development that maintains and enhances habitat for plants and animals in locations of habitat importance</td>
<td>Yes</td>
<td></td>
<td></td>
<td>In addition, planter boxes are shown adjacent the balconies and the majority of the roof top is to be vegetated.</td>
</tr>
<tr>
<td>To provide appropriate landscaping</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Complies with conditions.</td>
</tr>
<tr>
<td>To encourage the retention of mature vegetation on the site</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development should provide for the retention or planting of trees, where these are part of the character of the neighbourhood</td>
<td>N/A</td>
<td></td>
<td></td>
<td>There are no existing trees on the site.</td>
</tr>
<tr>
<td>Development should provide for the replacement of any significant trees that have been removed in the 12 months prior to the application being made</td>
<td>N/A</td>
<td></td>
<td></td>
<td>Significant trees have not been removed in the last 12 months.</td>
</tr>
<tr>
<td>The landscape design should specify landscape themes, vegetation (location and species), paving and lighting</td>
<td>Yes</td>
<td></td>
<td></td>
<td>This will be a condition of the permit.</td>
</tr>
<tr>
<td>55.03-9 Access</td>
<td>Yes</td>
<td>B14</td>
<td></td>
<td>Complies with conditions.</td>
</tr>
<tr>
<td>To ensure the number and design of vehicle crossovers respects the neighbourhood character</td>
<td>Yes</td>
<td></td>
<td></td>
<td>A shared single-width crossover is provided to the site.</td>
</tr>
<tr>
<td>The width of accessways or car spaces should not exceed:</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Complies</td>
</tr>
<tr>
<td>• 33% of the street frontage, or</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• if the width of the street frontage is less than 20m, 40% of the street frontage</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No more than one single-width crossover should be provided for each dwelling fronting a street</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Complies</td>
</tr>
<tr>
<td>The location of crossovers should maximize the retention of on-street car parking spaces</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Complies</td>
</tr>
<tr>
<td>The number of access point to a road in a Road Zone should be minimised</td>
<td>N/A</td>
<td></td>
<td></td>
<td>Complies</td>
</tr>
<tr>
<td>Developments must provide access for service, emergency and delivery vehicles</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Complies</td>
</tr>
<tr>
<td>55.03-10 Parking Location</td>
<td>Yes</td>
<td>B15</td>
<td></td>
<td>The basement car park is accessible for all dwellings.</td>
</tr>
<tr>
<td>To provide convenient parking</td>
<td>Yes</td>
<td></td>
<td></td>
<td>Car parking facilities should:</td>
</tr>
<tr>
<td>• Be reasonably close and convenient</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
for resident and visitor vehicles
To protect residents from vehicular noise within developments

<table>
<thead>
<tr>
<th>For dwellings and residential buildings</th>
<th>Complies</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Be secure</td>
<td></td>
</tr>
<tr>
<td>• Be well ventilated if enclosed</td>
<td></td>
</tr>
</tbody>
</table>

Shared accessways or car parks of other dwellings and residential buildings should be located at least 1.5m from the windows of habitable rooms. This setback may be reduced to 1m where there is a fence at least 1.5m high or where window sills are at least 1.4m above the accessway

Yes
The driveway, before it disappears underground, is not adjacent any habitable room windows.
Complies

### 55.04 AMENITY IMPACTS

<table>
<thead>
<tr>
<th><strong>55.04-1 Side And Rear Setback</strong></th>
<th><strong>Met?</strong></th>
<th><strong>Standard B17</strong></th>
<th><strong>Met?</strong></th>
<th><strong>Comments</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure that 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</td>
<td>Yes</td>
<td>A new building not on or within 200mm of a boundary should be set back from side or rear boundaries 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

#### North
- **Main building**
  - Wall Height: 3.4-3.2 m ground floor and 6.4 to 7.3 m first floor
  - Required Setback: 1 m ground floor and 1.84 to 2.4 first floor
  - Proposed Setback: 1.8 ground floor, 3m first floor
  - Complies

  **Unit 5**
  - Wall height: 3.5 m ground floor and 6.8 m first floor
  - Required Setback: 1 m ground floor and 1.96 m first floor
  - Proposed setback: 1.2m ground floor and 3 m first floor
  - Complies

#### East
- N/A - Street side

#### South
- **Main building**
  - Wall Height: From 6.65m to 7.4m
  - Required Setback: 1.87 m to 2.5 m
  - Proposed Setback: 3.9 m ground floor and 3 m first floor
  - Complies

  **Unit 5**
  - Wall height: 7.2 m to 7.4 m
  - Required Setback: 2.3 m to 2.5 m
  - Proposed setback: 3 m
  - Complies

#### West (rear)
- **Unit 5**
  - Wall Height: 7 m
  - Required Setback: 2.1 m
  - **Proposed Setback**: 2m
  - **Does not comply**
  - As this minor variation is only 0.1 m, the proposal is considered to comply with the Objective.

A new building not on or within 200mm of a boundary should be set back from side or rear boundaries 1m, plus 0.3m for every metre of height over 3.6m up

N/A
As above
<table>
<thead>
<tr>
<th>55.04-2 Wall On Boundaries</th>
<th>Met?</th>
<th>Standard B18</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure that the location, length and height of a wall on a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings</td>
<td>N/A</td>
<td>A new wall constructed on or within 200mm of a side or rear boundary of a lot or a carport constructed on or within 1 metre of a side or rear boundary of a lot should not abut the boundary for a length of more than: 10 metres plus 25 per cent of the remaining length of the boundary of an adjoining lot, or Where there are existing or simultaneously constructed walls or carports abutting the boundary on an abutting lot, the length of the existing or simultaneously constructed walls or carports, whichever is the greater.</td>
<td>N/A</td>
<td>No walls on boundary</td>
</tr>
<tr>
<td>A new wall constructed on or within 200mm of a side or rear boundary of a lot or a carport constructed on or within 1m of a side or rear boundary of a lot should not abut the boundary for a length of more than: 10m plus 25% of the remaining length of the boundary of an adjoining lot; or Where there are existing or simultaneously constructed walls or carports abutting the boundary on an abutting lot, the length of the existing or simultaneously constructed walls or carports, whichever is the greater.</td>
<td>N/A</td>
<td>A new wall or carport may fully abut a side or rear boundary where slope and retaining walls or fences would result in the effective height of the wall or carport being less than 2 metres on the abutting property boundary.</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>The height of a new wall constructed on or within 200mm of a side or rear boundary or a carport constructed on or within 1 metre of a side or rear boundary should not exceed an average of 3.2 metres with no part higher than 3.6 metres unless abutting a higher existing or simultaneously constructed wall.</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>55.04-3 Daylight To Existing Windows</th>
<th>Met?</th>
<th>Standard B19</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>To allow adequate daylight into existing habitable room windows</td>
<td>Yes</td>
<td>Buildings opposite an existing habitable room window should provide for a light court to the existing window that has a minimum area of 3sqm and minimum</td>
<td>Yes</td>
<td>Complies</td>
</tr>
<tr>
<td>Standard</td>
<td>Met?</td>
<td>Comments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td>------</td>
<td>----------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>55.04-4 North Facing Windows</td>
<td>Yes</td>
<td>All side setback are more than 50% of the height of the new walls</td>
<td></td>
<td></td>
</tr>
<tr>
<td>To allow adequate solar access to existing north-facing habitable room windows</td>
<td>Yes</td>
<td>Complies</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Standard</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>55.04-5 Overshadow Open Space</td>
<td>Yes</td>
<td>Shadow diagrams submitted with the proposal show the secluded private open space of 11 The Esplanade will be overshadowed only slightly as a result of the proposal. However, well over 40 sq m remains unaffected.</td>
</tr>
<tr>
<td>To ensure buildings do not significantly overshadow existing secluded private open space</td>
<td>Yes</td>
<td>Complies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Standard</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>55.04-6 Overlooking</td>
<td>Yes</td>
<td>Main building</td>
</tr>
<tr>
<td>To limit views into existing secluded private open space and habitable room windows</td>
<td>Yes</td>
<td>The boundary fences will provide screening to 1.7 m on the ground floor and all first floor habitable room windows are at 1.7 m above finished floor level. All balconies are facing the street and have screening to both sides. The accessible portion of the rooftop terrace has side setbacks of 3.4 m (south) and 3.5 (north) side setbacks and 12 m front setback from the front of the building.</td>
</tr>
</tbody>
</table>

dimensions of 1m clear to the sky. The calculation of the area may include land on the abutting lot.

Walls or carports more than 3m in height opposite an existing habitable room window should be set back from the window at least 50% of the height of the new wall if the wall is within a 55° arc from the centre of the existing window. The arc may be swung to within 35° of the plane of the wall containing the existing window. Where the existing window is above ground floor level, the wall height is measured from the floor level of the room containing the window. Refer to Diagram B2.

55.04-4 North Facing Windows

To allow adequate solar access to existing north-facing habitable room windows

N/A

If a north-facing habitable window of an existing dwelling is within 3m of a boundary on an abutting lot, a building should be setback from the boundary 1m, plus 0.6m for every metre of height over 3.6m up to 6.9m, plus 1m for every metre of height over 6.9m, for a distance of 3m from the edge of each side of the window. A north-facing window is a window with an axis perpendicular to its surface oriented north 20 degrees west to north 30 degrees east. Refer to Diagram B3.

55.04-5 Overshadow Open Space

To ensure buildings do not significantly overshadow existing secluded private open space

Yes

Where sunlight to secluded private open space of an existing dwelling is reduced, at least 75%, or 40sqm with minimum dimension of 3m, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9am and 3pm on 22 September.

If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced

N/A

55.04-6 Overlooking

To limit views into existing secluded private open space and habitable room windows

Yes

A habitable room window, balcony, terrace, deck or patio should be located and designed to avoid direct views into the secluded private open space of an existing dwelling within a horizontal distance of 9m (measured at ground level) of the window, balcony, terrace, deck or patio. Views should be measured within a 45° angle from the plane of the window or perimeter of the balcony, terrace, deck or patio, and from a height of 1.7m above the floor level.

Yes

Main building

The boundary fences will provide screening to 1.7 m on the ground floor and all first floor habitable room windows are at 1.7 m above finished floor level.

All balconies are facing the street and have screening to both sides.

The accessible portion of the rooftop terrace has side setbacks of 3.4 m (south) and 3.5 (north) side setbacks and 12 m front setback from the front of the building.
Complies

Unit 5
The boundary fences will provide screening to 1.7 m on the ground floor.
The first floor balcony shows a 1.7 m privacy screen around the balcony, preventing overlooking to adjoining private open space.
A window adjoining the first floor stairwell appears to provide potential for overlooking into the secluded private open space of 8 Pride Street, however this window is adjacent the stair void and, as such, overlooking will not be possible.
Complies.

A habitable room window, balcony, terrace, deck or patio with a direct view into a habitable room window of an existing dwelling within a horizontal distance of 9m (measured at ground level) of the window, balcony, terrace, deck or patio should be either:
• offset a minimum of 1.5m from the edge of one window to the edge of the other
• have sill heights of at least 1.7m above floor level
• have fixed, obscure glazing in any part of the window below 1.7m above floor level
• have permanently fixed external screens to at least 1.7m above floor level and be no more than 25% transparent

Obscure glazing in any part of the window below 1.7m above floor level may be openable provided that there are no direct views as specified in this standard

Screens used to obscure a view should be:
• perforated panels or trellis with a maximum of 25% openings or solid translucent panels
• permanent, fixed and durable
• designed and coloured to blend with the development

To limit views into the secluded private open space and

<table>
<thead>
<tr>
<th>55.04-7 Internal Views</th>
<th>Met?</th>
<th>Standard B23</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Windows and balconies should be designed to prevent overlooking of more than 50% of the secluded private open space</td>
<td>Yes</td>
<td>Yes</td>
<td>Screening on first floor balcony of Unit 5 and the lack of windows on the first floor of the rear elevation of the main building</td>
<td></td>
</tr>
<tr>
<td>habitable room windows of dwellings and residential buildings within a development</td>
<td>open space of a lower-level dwelling or residential building directly below and within the same development</td>
<td>prevent internal overlooking to secluded private open space. Complies</td>
<td></td>
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</tbody>
</table>

55.04-8 Noise Impacts Objective

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B24</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Noise sources, such as mechanical plant, should not be located near boundaries of immediately adjacent existing dwellings</td>
<td>Yes</td>
<td>A condition will be included on the permit to require any mechanical plant to be shown on the plans. Complies with conditions.</td>
</tr>
<tr>
<td>To contain noise sources in developments that may affect existing dwellings</td>
<td>Yes</td>
<td>Noise sensitive rooms and secluded private open spaces of new dwellings and residential buildings should take account of noise sources on immediately adjacent properties</td>
<td>Yes</td>
</tr>
<tr>
<td>No habitable room windows of dwellings and residential buildings within a development</td>
<td>N/A</td>
<td>Dwellings and residential buildings close to busy roads, railway lines or industry should be designed to limit noise levels in habitable rooms</td>
<td></td>
</tr>
</tbody>
</table>

55.05 ON-SITE AMENITY AND FACILITIES

<table>
<thead>
<tr>
<th>55.05-1 Accessibility</th>
<th>Met?</th>
<th>Standard B25</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure the consideration of the needs of people with limited mobility in the design of developments</td>
<td>Yes</td>
<td>The dwelling entries of the ground floor of dwellings and residential buildings should be accessible or able to be easily made accessible to people with limited mobility.</td>
<td>Yes</td>
<td>Units 1, 2 and 5 have ground floor access. Units 1, 3 and 4 have lift access. Complies</td>
</tr>
</tbody>
</table>

55.05-2 Dwelling Entry

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B26</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Entries to dwellings and residential buildings should:</td>
<td>Yes</td>
<td>While the entry of Unit 5 is not visible from the street, the secure side entry gate is. Complies</td>
</tr>
<tr>
<td></td>
<td>• be visible and easily identifiable from streets and other public areas</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>• provide shelter, a sense of personal address and a transitional space around the entry</td>
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<td></td>
</tr>
</tbody>
</table>

55.05-3 Daylight To New Windows

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B27</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>A window in a habitable room should be located to face:</td>
<td>Yes</td>
<td>Complies</td>
</tr>
<tr>
<td></td>
<td>• an outdoor space or a light court with a minimum area of 3sqm and minimum dimension of 1m clear to the sky, not including land on an abutting lot, or</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>• a verandah provided it is open for at least one third its perimeter, or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• a carport provided it has two or more open sides and is open for at least one third of its perimeter</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

55.05-4 Private Open Space

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard B28</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>A dwelling or residential building should have private open space:</td>
<td>Yes</td>
<td>Unit 1 SPOS (rear and side yard): 100 sq m</td>
</tr>
<tr>
<td></td>
<td>• an area of 40sqm, with one part secluded at the side or rear with a</td>
<td></td>
<td>However, this does not have access from a living room</td>
</tr>
</tbody>
</table>
service needs of residents

- min area of 25sqm, a min dimension of 3m and convenient access from a living room, or
  - a balcony of 8sqm with a min width of 1.6m and convenient access from a living room, or
  - a roof-top area of 10sqm with a min width of 2m and convenient access from a living room

Balcony: 11 sq m, minimum width: 2.1 m and has convenient access from a living room.
Complies

Unit 2
SPOS (rear yard): 25 sq m - does not have access from a living room
Balcony: 14.5 sq m, minimum width: 2.1 m and has convenient access from a living room.
Complies

Unit 3
Balcony: 12 sq m, minimum dimension 1.6 m, convenient access from a living room
Complies

Unit 4
Balcony: 9.5 sq m, minimum dimension 1.6 m, convenient access from a living room
Complies

Unit 5
Balcony: 10.5 sq m
Balcony: 6.5 sq m
Both have direct access from a living room.
Ground floor yard: 120 sq m, direct access from a living room (the north side and west side setbacks have not been included in this calculation).
Complies

<table>
<thead>
<tr>
<th>55.05-5 Solar Access To Open Space</th>
<th>Met?</th>
<th>Standard B29</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>To allow solar access into the secluded private open space of new dwellings and residential buildings</td>
<td>Yes</td>
<td>The private open space should be located on the north side of the dwelling or residential buildings</td>
<td>Yes</td>
<td>All units have part of their open space with north-facing access (i.e. Rear yards for Units 1 and 2, Roof terrace for all units and Unit 5 balcony)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The southern boundary of secluded private open space should be set back from any wall on the north of the space at least ((2 + 0.9h)) metres, where (h) is the height of the wall Refer to Diagram B29</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>55.05-6 Storage</th>
<th>Met?</th>
<th>Standard B30</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>To provide adequate storage facilities for each dwelling</td>
<td>Yes</td>
<td>Each dwelling should have convenient access to at least 6m³ of externally accessible, secure storage space</td>
<td>Yes</td>
<td>Secure storage is provided for each unit in the basement car park.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Complies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>55.06 DETAILED DESIGN</th>
<th>Met?</th>
<th>Standard B31</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>To encourage design detail that respects the existing or preferred neighbourhood character</td>
<td>Yes</td>
<td>The design of buildings, including: Facade articulation and detailing, Window and door proportions, Roof form, and Verandahs, eaves and parapets, should respect the existing or preferred neighbourhood character.</td>
<td>Yes</td>
<td>Articulation is provided to the façade through the offsetting of the side setbacks between the ground and first floors, variation of materials, including glazing and balustrades, and the visual interest the front verandahs provide. In addition, the form and vegetated roof is considered to reflect the modern design identified as the preferred</td>
</tr>
<tr>
<td><strong>55.06-2 Front Fences</strong></td>
<td><strong>Met?</strong></td>
<td><strong>Standard B32</strong></td>
<td><strong>Met?</strong></td>
<td><strong>Comments</strong></td>
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</tr>
<tr>
<td>To encourage front fence design that respects the existing or preferred neighbourhood character</td>
<td>Yes</td>
<td>Garages and carports should be visually compatible with the development and the existing or preferred neighbourhood character</td>
<td>N/A</td>
<td>The basement carpark will not be visible from the street</td>
</tr>
<tr>
<td>Neighbourhood character. Complies.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>55.06-3 Common Property</strong></th>
<th><strong>Met?</strong></th>
<th><strong>Standard B33</strong></th>
<th><strong>Met?</strong></th>
<th><strong>Comments</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure that communal open space, car parking, access lanes and site facilities are practical, attractive and easily maintained</td>
<td>Yes</td>
<td>The design of front fences should complement the design of the dwelling and any front fences on adjoining properties</td>
<td>Yes</td>
<td>Timber battened fence will provide visual permeability, in line with the neighbouring front fences. Complies</td>
</tr>
<tr>
<td>A front fence within 3m of a street should not exceed: Streets in a Road Zone – 2m Other Streets – 1.5m</td>
<td>Yes</td>
<td></td>
<td>Yes</td>
<td>The fence is to be 1.5 m Complies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>55.06-4 Site Service</strong></th>
<th><strong>Met?</strong></th>
<th><strong>Standard B34</strong></th>
<th><strong>Met?</strong></th>
<th><strong>Comments</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure that site services can be installed and easily maintained To ensure that site facilities are accessible, adequate and attractive</td>
<td>Yes</td>
<td>The design and layout of dwellings and residential buildings should provide sufficient space (including easements where required) and facilities for services to be installed and maintained efficiently and economically</td>
<td>Yes</td>
<td>Bin and recycling enclosure is provided in the basement car park. Complies</td>
</tr>
<tr>
<td>Bin and recycling enclosures, mailboxes and other site facilities should be adequate in size, durable, waterproof and blend in with the development</td>
<td>Yes</td>
<td></td>
<td>Yes</td>
<td>As above Complies</td>
</tr>
<tr>
<td>Bin and recycling enclosures should be located for convenient access</td>
<td>Yes</td>
<td>Mail boxes will be provided. Complies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mailboxes should be provided and located for convenient access</td>
<td>Yes</td>
<td></td>
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</tbody>
</table>
ITEM NO: 8.2
PLANNING REF: 16/0392
PROPOSAL: Vary Registered Restrictive Covenant(s) (Building Envelope) and Construct Alterations & Additions to Existing Dwelling
APPLICANT: Spiire
DATE RECEIVED: 31-Aug-2016
SUBJECT LAND: 3 NARANI WAY, FAIRHAVEN. (Lot 38, PS 415308H)
ZONE: Residential 1
OVERLAYS: Neighbourhood Character - Schedule 1, Environmental Significance - Schedule 5, Design and Development - Schedule 10, Bushfire Management
PERMIT REQUIRED UNDER CLAUSES: 43.05-2, 52.02
EXISTING USE: Dwelling
REPORTING OFFICER: Maggie Juniper

REASON FOR REFERRAL TO PLANNING COMMITTEE:
☑ Planning Officer recommending refusal
☐ Objections received x Four (4)

MOVED: Robert Troup SECONDED: Wesley McClendon FOR: 4 AGAINST: 0

OFFICERS RECOMMENDATION ☑ ALTERNATIVE RECOMMENDATION ☐

POINTS OF DISCUSSION:
Legal ramifications and concerns of beneficiaries who have reasonable expectations of character based on restrictions which apply to the land.

Planning Committee Resolution
That Council having considered all the matters the Planning and Environment Act 1987 requires it to consider and having given notice of the application decides to pursue refusal of the application at the upcoming VCAT hearing on the following grounds:

1. The variation to the building envelope is contrary to Section 60(2) of the Planning and Environment Act as it is likely to result in loss of amenity and loss arising from change to the character of the neighbourhood for owners of the land benefitted by the restriction.

2. The variation to the building envelope impacts on the interests of affected people as defined within Clause 52.02 – Restrictions, Easements and Reserves, with the envelopes intending to deliver a particular neighbourhood character outcome which the community and Council believed necessary to protect this sensitive area of Fairhaven.

3. The increased size of the building envelope results in an incremental loss of opportunity for landscaping and vegetation on the site. The landscape values of the area are an important part of the unique open bushland character of this neighbourhood.

4. The application is a piecemeal application and approval has not been sought to vary the habitation building envelope which applies to the land via Section 173 Agreement AF849666S and Covenant AF949804A.

CARRIED
Summary

The application seeks approval to Vary a Restrictive Covenant (Building Envelope) and to Construct Alterations and Additions to Existing Dwelling.

The application was not determined by the responsible authority within the 60 day statutory time period and an Application for Review to VCAT was made by the applicant for failure to grant a permit within the prescribed time under Section 79 Planning & Environment Act 1987. The responsible authority is now unable to determine the application but will argue a position at the forthcoming VCAT Hearing.

The proposed alterations and additions include -

- Roofing an existing rear (north) courtyard
- Construction of an extension over two levels to the existing study (west)
- Construction of a new 1st floor deck (east) with a timber batten side screen
- Construction of a roof top deck (south west) accessed via spiral stairs within the extended study

All of the above building and works will be contained within the building envelope that applies to the land with the exception of the proposed 1st floor deck. A concurrent application has been made to vary the building envelope restriction that applies to the land to allow this construction.

Planning Permit No. 03/0246, issued 19 January 2004, allowed the subdivision of the wider land into 47 lots, and resulted in the creation of the Narani Way Estate at Fairhaven. A condition of the permit required a Section 173 Agreement to be entered into and included specification of habitation building envelopes, ongoing land management and a single dwelling restriction for all lots. A Vegetation and Management Plan (VMP) was also approved as part of the subdivision and continues to have application to future development within the estate.

Planning Scheme Amendment Am103, gazetted 18 August 2016, removed the Development Plan Overlay 1 from the Narani Way Subdivision and this now allows Planning Permit applications to be placed on Public Notice as determined by the RA.

The site is large and the proposed alterations and additions are mostly contained within the existing building footprint and will be compliant with the built form standards of the Neighbourhood Character Overlay Schedule 1 - the exception being the street and rear boundary setbacks these determined by the location of the building envelope. Furthermore, as the new building footprint is limited and no native vegetation removal is proposed the proposal will generally satisfy the objectives of the Environmental Significance Overlay – Schedule 5 (ESO5).

For this application, the key issue is whether the registered restriction(s) that applies to the land should be varied to allow development outside of the current building envelope.

Amendments to the Planning and Environment Act 1987 (the Act) in 1991 enabled a planning scheme to make provision for the removal or variation of restrictions under s.23 Subdivision Act 1988 which included restrictive covenants, subject to the qualifications set out in the Act (see ss. 6(2)(g) and 6A of the Act). One of the qualifications is contained in s.60 of the Act, which introduces threshold requirements which must be satisfied before a restrictive covenant can be removed or varied by a planning permit. This elevates matters to be considered beyond the planning policies central to the vast majority of applications.

The application was advertised and received 4 objections – including 2 from beneficiary lot owners.

Key grounds include loss of amenity (from extension of the building envelope) and loss arising from change to the character of the neighbourhood - in this case the unique open bushland character of the Narani Way estate that derives from the building envelope restriction(s).

It is agreed lot owners benefit from a certainty as to how the estate will be developed and where buildings will be sited. The subdivision is near 50% developed and has been developed consistent with the building envelope restrictions and for this reason it is considered inappropriate to 'change the rules' midway potentially disadvantaging owners who have gone through the due process.

Recommendation

That Council having considered all the matters the Planning and Environment Act 1987 requires it to consider and having given notice of the application decides to pursue refusal of the application at the upcoming VCAT hearing on the following grounds:
1. The variation to the building envelope is contrary to Section 60(2) of the Planning and Environment Act as it is likely to result in loss of amenity and loss arising from change to the character of the neighbourhood for owners of the land benefitted by the restriction.

2. The variation to the building envelope impacts on the interests of affected people as defined within Clause 52.02 – Restrictions, Easements and Reserves, with the envelopes intending to deliver a particular neighbourhood character outcome which the community and Council believed necessary to protect this sensitive area of Fairhaven.

3. The increased size of the building envelope results in an incremental loss of opportunity for landscaping and vegetation on the site. The landscape values of the area are an important part of the unique open bushland character of this neighbourhood.

4. The application is a piecemeal application and approval has not been sought to vary the habitation building envelope which applies to the land via Section 173 Agreement AF849666S and Covenant AF949804A.
OFFICER REPORT

PROPOSAL

The application seeks approval to Vary a Restrictive Covenant (Building Envelope) and to Construct Alterations and Additions to Existing Dwelling.

The application was not determined by the responsible authority within the 60 day statutory time period and an Application for Review to VCAT was made by the applicant for failure to grant a permit within the prescribed time under Section 79 Planning & Environment Act 1987. The responsible authority is now unable to determine the application but will argue a position at the forthcoming VCAT Hearing.

The plans considered were submitted on 31 August 2016 (development) and 20 October 2016 (overlooking and overshadowing diagrams). The proposed development plans were approved Wybellaena Developments Design Panel 21.06.16.

It is proposed to:

Ground Floor:
- Construct a roof over the existing rear (north) courtyard and reclad the existing retaining wall with alucobond panels
- Construct new external access stairs to the 1st floor level (south)

First Floor:
- Construct an extension over two levels to the existing study (west) and reposition existing (external) spiral stairs
- Construct a new front deck (east) with a timber batten side screen on north side

Roof Level:
- Construct a roof top deck with glazed balustrade at the western side of the dwelling roof to be accessed via the spiral stairs within the extended study

The plans also show ‘indicative roof mounted solar panels and an AC unit’ but no elevation details of the roof top plant has been provided.

The alterations will have a maximum building height of 7.310 metres ngl (RL62.670) at the study roof.

The alterations and additions are designed and constructed of materials to match the contemporary coastal style of the existing dwelling. No native vegetation removal is proposed.

All of the above building and works will be contained within the building envelope that applies to the subject land with the exception of the proposed 1st floor deck and a concurrent application has been made to vary the building envelope restriction that applies to the land to allow this construction.

SITE AND SURROUNDING AREA

The 1129.32sqm application site (Lot 32 PS415308H) lies at the northern side of Narani Way, on the western side of the internal loop roadway, within the Narani Way Subdivision at Fairhaven. The site is located at the south-western side of the subdivision proximal to the established residential area of Fairhaven that lies to the north of the Great Ocean Road and to the west of the Painkalac Creek Valley.

The site is zoned General Residential 1 with a Neighbourhood Overlay 1, a Design and Development Overlay 10, an Environmental Significance Overlay 5 and a Bushfire Management Overlay (BMO). The site is subject to a Section 173 Agreement that obligates compliance with the building envelopes and the ongoing maintenance and management requirements of the endorsed Vegetation and Management Plan. The site is also subject to two registered restrictions - covenants that apply similar requirements.

The site is developed by a modern two storey dwelling approved under Planning Permit 07/0520 in August 2007. The dwelling is located at the western side of the land within the building envelope and gains access
to an integrated lower level garage from Narani Way in the south. The remainder of the land contains a scattering of native canopy tree vegetation typical of the area.

The site (and dwelling) is elevated above the roadway and falls at a moderate grade (11% approx.) from the rear northwest corner to the front southeast corner.

The adjoining properties can be described as follows:

- North at 50 Narani Way Fairhaven – a two storey coastal style dwelling at a similar deep street setback (26m approx.) and sited around 6 metres off the common side property boundary

- Northwest at 9 Bimbadeen Drive Fairhaven * – a two storey brick dwelling with upper level balcony (south) that is located on a double lot and sited around 12 metres off the common rear property boundary; * the property is outside of the Narani Way subdivision

Opposite the site in the south, and within the subdivision, are similar sized bush blocks developed by one and two storey scale coastal style dwellings which face away from the street to the coastal views in the south/southeast. In the north and west are a number of vacant treed allotments.
HISTORY
Past permits:

Planning Permit No. 03/0246, issued 19 January 2004, allowed the subdivision of the land into 47 lots, and resulted in the creation of the Narani Way Estate at Fairhaven. A condition of the permit required a Section 173 Agreement to be entered into and included specification of habitation building envelopes, ongoing land management and a single dwelling restriction for all lots. A Vegetation and Management Plan (VMP) was also approved as part of the subdivision and continues to have application to future development within the estate.

Planning Scheme Amendment Am103, gazetted 18 August 2016, removed the Development Plan Overlay 1 from the Narani Way Subdivision and this now allows Planning Permit applications to be placed on Public Notice as determined by the RA.

REGISTERED RESTRICTIONS

Under Section 61(4) of the Planning & Environment Act 1987 the Responsible Authority must not issue a planning permit that would result in a breach of a registered restriction.

The subject land is affected by two (2) registered restrictions (covenants) and by a Section 173 Agreement.

- **Covenant PS415308H dated 14/05/2008**, is a restriction sheet on Plan of Subdivision, and identifies a building envelope for all lots on the plan to benefit all lots on the plan. The restriction states “the registered proprietor or/s for the time being of all lots on this plan shall not construct any dwelling and garage/carport associated with the dwelling on the land other than within the area shown hatched in the schedule”

The application proposes to construct an extension to an existing dwelling outside of the building envelope and therefore a concurrent application (as is the case here) is required to vary this restriction.

- **Covenant AF949804A dated 04/07/2008** specifies that the [owners] shall not:
a) Build, erect or construct or cause to be built erected or constructed more than one dwelling house together with the usual outbuildings;

b) Build, erect or construct or cause to be built erected or constructed any dwelling together with the usual outbuildings outside the building envelope described in the Agreement under Section 173 of the Planning & Environment Act which affects the land.

c) Construct permit or allow any fence, fencing, hedge or hedging along or near the title boundary nearest to the roadway or in front of any dwelling constructed on the Lot.

d) Build, erect or construct or cause to be built, erected or constructed any dwelling outbuildings or other structures (including swimming or ornamental pools) unless the plans and specifications for such dwelling outbuilding or structure has been approved in writing by JBA Super Pty Ltd and Begley Superannuation Pty Ltd trading as Wybellena Developments provided that this obligation share expire on the 1st January 2020.

The application proposes to construct an extension to an existing dwelling outside of the building envelope and therefore a concurrent application (as is the case here) is required to vary this restriction.

No fencing, hedging near the roadway title boundaries are proposed.

The plans were approved by Wybellena Developments on 21 June 2016.

- Section 4 Specific Obligations of the Owner, of the Section 173 Agreement, AF849666S dated 16/05/2008, states:

  The Owner covenants and agrees that:

  4.1 A habitation building envelope shall be created for each of the lots and that no building shall be constructed outside the said habitation building envelope. Further an area of land as noted on the plan of subdivision as public open space is to vest upon registration of the plan of subdivision of the land in the Council.

  4.2 Ongoing maintenance and management of the requirements and recommendations of the endorsed Vegetation and Management Plan.

  4.3 No more than one dwelling house together with usual outbuildings shall be constructed on each lot.

The application proposes to construct an extension to an existing dwelling outside of the building envelope and therefore a concurrent application (as is the case here) is required to vary the habitation building envelope. Subject to issue or not of a permit an amendment to the Section 173 Agreement may be required.

ABORIGINAL CULTURAL HERITAGE

Pursuant to Section 52(1) of the Aboriginal Heritage Act 2006 if a Cultural Heritage Management Plan (CHMP) is required a planning permit cannot be granted until a copy of the approved CHMP is provided and cannot grant a permit for an activity that is inconsistent with the approved CHMP [s. 52(3)].

The subject site is within an area of cultural heritage sensitivity but the proposal is not a high impact activity as specified in the Aboriginal Heritage Regulations 2007 therefore a CHMP isn't required.

SURF COAST PLANNING SCHEME PROVISIONS

**General Residential Zone – (GRZ1)**

**Surf Coast General Residential Areas last updated VC116**

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Proposal</th>
<th>Permit required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 32.08-1 Use of land</td>
<td>No permit required to use the land for a dwelling.</td>
<td>Dwelling</td>
<td>Yes ☐ No ☒</td>
</tr>
<tr>
<td>Clause 32.08-4 Minimum</td>
<td>Whether or not a planning permit is required for the construction or extension of a dwelling or residential</td>
<td>The percentage of lot area set aside</td>
<td>Complies</td>
</tr>
</tbody>
</table>
### Building on a lot, a lot must provide the minimum garden area at ground level as set out in the following table:

<table>
<thead>
<tr>
<th>Lot size</th>
<th>Minimum % set aside as garden area</th>
</tr>
</thead>
<tbody>
<tr>
<td>400-500 square metres</td>
<td>25%</td>
</tr>
<tr>
<td>501-650 square metres</td>
<td>30%</td>
</tr>
<tr>
<td>Above 650 square metres</td>
<td>35%</td>
</tr>
</tbody>
</table>

Note: Transitional provisions apply

### Clause 32.08-9 Maximum building height

Building height must not exceed 11 metres; and The building must not contain more than three storeys at any point

Note: A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees. Note: A basement is not a storey for the purposes of calculating the number of storeys contained in a building.

Note: If the land is in a Special Building Overlay, Land Subject to Inundation Overlay or is land liable to inundation the maximum building height specified in the zone or schedule to the zone is the vertical distance from the minimum floor level determined by the relevant drainage authority or floodplain management authority to the roof or parapet at any point.

Height: 7.310m (extended study roof)
Storeys: 2
Complies

### Clause 32.08-3 Construction and extension of one dwelling on a lot

A permit is required to construct or extend one dwelling on a lot of less than 300 square metres.

Extend dwelling on lot >300sqm
Yes ☐ No ☒

### Environmental Significance Overlay – Schedule 5 (ESO5)

Parts of the Settlements and Hinterlands of Aireys Inlet to Eastern View last updated VC124

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Proposal</th>
<th>Permit required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 42.01-2 combined with Schedule 5: 3.0 Buildings and works</td>
<td>A permit is required to:</td>
<td>Construct building &amp; works – extend dwelling</td>
<td>Yes ☐ No ☒</td>
</tr>
<tr>
<td></td>
<td>• Construct a building or construct or carry out works.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Construct bicycle pathways and trails.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clause 42.01-2 combined with Schedule 5: 3.0 Fence</td>
<td>A permit is required to construct a fence.</td>
<td>NA</td>
<td>Yes ☐ No ☒</td>
</tr>
<tr>
<td></td>
<td>This does not apply to a fence not more than 1.5m in height</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>that is of post and wire construction with gaps in the wire large enough</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>to enable the movement of indigenous fauna.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clause 42.01-2 combined with Schedule 5: 3.0 Vegetation</td>
<td>A permit is not required to remove, destroy</td>
<td>NA</td>
<td>Yes ☐ No ☒</td>
</tr>
<tr>
<td></td>
<td>or lop any vegetation that is:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• within 2 metres of the outer edge of the roof of a building or</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>overhangs this buffer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• not indigenous to the Aireys Inlet to Eastern</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
View area.
- dead, unless it is a tree containing a hollow.
- Included in the table of exemptions at Clause 42.01-3

| Clause 42.01-2 combined with Schedule 5: 3.0 Subdivision | A permit is required to Subdivide land | NA | Yes ☒ No ☐ |

**Design and Development Overlay – Schedule 10 (DDO10)**

The Settlements of Aireys Inlet, Fairhaven and Moggs Creek last updated C102

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Proposal</th>
<th>Permit required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 43.02-2 combined with Schedule 10: 2.0 Buildings and works</td>
<td>A permit is not required to construct a building or construct or carry out works</td>
<td>Construct building &amp; works – extend dwelling</td>
<td>Yes ☐ No ☒</td>
</tr>
</tbody>
</table>
| Clause 43.02-2 combined with Schedule 10: 2.0 Fence | A permit is required to construct a fence, other than a post and wire fence that is not more than 1.5 m in height. **Requirements**

For properties fronting the Great Ocean Road, a fence forward of the front wall of a dwelling (Section A on Diagram 1) should not exceed 1.5 metres in height and should not be less than 50% permeable over the whole length of the fence. For any other property, a fence forward of the front wall of a dwelling (Section A on Diagram 1), other than post and wire, is strongly discouraged. Fencing adjacent or to the rear of a dwelling (Section B on Diagram 1) should not exceed 1.8 metres in height and should be limited in length, and used only for the purpose of providing privacy to habitable room windows or designated areas of private open space. | NA | Yes ☒ No ☐ |

**Neighbourhood Character Overlay – Schedule 1 (NCO1)**

The Settlements of Aireys Inlet, Fairhaven and Moggs Creek last updated VC116

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Proposal</th>
<th>Permit required</th>
</tr>
</thead>
</table>
| Clause 43.05-2 combined with Schedule 1: 3.0 Buildings & works | A permit is required to construct a building including:
- The construction of an outdoor swimming pool associated with a dwelling.
- The construction or extension of an outbuilding normal to a dwelling. | Buildings and works – extend dwelling
Refer to assessment table in the attachments | Yes ☐ No ☒ |
| Clause 43.05-2 combined with Schedule 1: 3.0 Trees | A permit is NOT required to Remove, destroy or lop trees | NA | No permit required |

**Bushfire Overlay (WMO or BMO)** last updated VC109

<table>
<thead>
<tr>
<th>Clause</th>
<th>Requirement</th>
<th>Proposal</th>
<th>Permit Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 44.06-1 Buildings &amp; works</td>
<td>A permit is required to construct a building or to construct or carry out works associated with the following uses:</td>
<td>Buildings &amp; works associated with</td>
<td>Yes ☒ No ☐</td>
</tr>
</tbody>
</table>
• Accommodation
• Child care centre
• Education centre
• Hospital
• Industry
• Place of assembly
• Retail premises
• Timber production

This does not apply to any of the following:
• If a schedule to this overlay specifically states that a permit is not required.
• A building or works consistent with an agreement under Section 173 of the Act prepared in accordance with a condition of permit issued under the requirements of Clause 44.06-3.
• An alteration or extension to an existing building used for a dwelling or a dependent person’s unit that is less than 50 percent of the gross floor area of the existing building.
• An alteration or extension to an existing building (excluding a dwelling and a dependent person’s unit) that is less than 10 percent of the gross floor area of the existing building.
• A building or works ancillary to a dwelling if the following requirements are met:
  - The combined floor area of all buildings ancillary to the dwelling does not exceed 150 square metres.
  - The building or works are located more than 10 metres from any existing building used for Accommodation.
• A building or works associated with Timber production provided the buildings or works are not within 150 metres of Accommodation or land zoned for residential or rural residential purposes.

Clause 44.06-1 Subdivision
A permit is required to subdivide land. NA Yes ☒ No ☐

Particular Provisions
The following particular provisions are considered in respect to this application:

<table>
<thead>
<tr>
<th>Provision</th>
<th>Permit triggers/Requirements</th>
<th>Permit Required/ Applicable</th>
</tr>
</thead>
</table>
| 52.02 Easements, Restrictions and Reserves | A permit is required before a person proceeds:
  • Under Section 23 of the Subdivision Act 1988 to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.
  • Under Section 24A of the Subdivision Act 1988. | Yes ☒ No ☐ |
| 52.48 Bushfire Protection: Exemptions | Refer to bushfire assessment attached to this report. | Yes ☒ No ☐ |
| 54 One dwelling on a lot | Refer to the Clause 54 assessment attached to this report. | Yes ☒ No ☐ |
State Planning Policy Framework
The following State policies have been considered with respect to this application:

- Clause 11.02 Urban growth
- Clause 11.03 Open space
- Clause 11.05 Regional development
- Clause 11.07 Geelong (G21) regional growth
- Clause 12.02 Coastal areas
- Clause 12.04 Significant environments and landscapes
- Clause 13.05 Bushfire
- Clause 15.01 Urban environment
- Clause 15.02 Sustainable development
- Clause 16.01 Residential development

Local Planning Policy Framework
The following provisions from the LPPF have been considered with respect to this application:

21.01 – Profile and Vision
The Municipal Framework Plan at Clause 21.01-4 establishes that “The underlying principle that directs all local policy and strategies of the Surf Coast Planning Scheme is that the natural environment is the single most important attribute and asset of the Surf Coast Shire.”

The key strategy, relevant to this proposal, is:
- To support and strengthen the individual character and role of the coastal and rural towns within the Shire that contributes to the diversity of experiences, and residential, commercial, recreational and employment opportunities.

21.02 – Settlement, Built Environment, Heritage and Housing
The key issues and influences identified under this clause include:
- Growth of the coastal towns from Anglesea through to Lorne is limited by physical constraints, including the Great Otway National Park and the desire to retain the natural scenic coastal landscape settings between these urban settlements.
- Development pressure and insensitive suburban style development are threatening the character of the coastal towns valued by residents and visitors alike.
- Insensitive and inappropriate development often result from a poor understanding of local character, stemming from an inadequate analysis of the context in which a property is located.

With the heading of Neighbourhood Character, Clause 21.02-4 states the objective:
“To protect the individual coastal township character values of low urban density, recessive built form, vegetated coastal landscapes and ecological values of the natural environment from inappropriate urban development.”

Applicable strategies include:
- Encourage a coastal style of urban form within all coastal towns and coastal localities in all developments.
- Recognise the key role vegetation plays in defining township character and in softening urban development.

21.03 – Environmental management
Under the heading of Environmental Assets (Clause 21.03-2) this clause identifies the objective of “To protect and enhance the Shire’s diverse natural resources in an ecologically sustainable manner for present and future generations.” Relevant strategies to achieve this objective include:
- Encourage the protection, maintenance and re-establishment of indigenous vegetation and the removal of environmental weeds.
- Avoids controls the inhibit the effective management of pest plants and animals.
Clause 21.12 – Aireys Inlet to Eastern View Strategy
This clause identifies Aireys Inlet as a small coastal township ‘where the key focus will be on the protection and enhancement of the unique coastal character with its cover of indigenous vegetation’. The strategy states that the ‘Aireys Inlet to Eastern View Neighbourhood Character Study and Vegetation Assessment 2005’ establishes that the town has a ‘distinctive low density, generally vegetated coastal character’ and that the preferred neighbourhood character is to retain and enhance these identified characteristics, including ‘the generous space between buildings, the low building scale, the availability of views, the informal fencing of property boundaries and the informal road network’. Strategies for residential development in Aireys Inlet are described as to:

- Recognise that the townships have limited growth opportunities due to environmental and physical limitations and the desire to protect and enhance the preferred neighbourhood character.
- Maintain and enhance the vegetated landscape and encourage its dominance over the built environment.
- Encourage new development that displays a coastal style of architecture, maintains a low rise building height and blends with the surrounding landscape.
- Limit the size and footprint of dwellings and hard surfaces so buildings can be screened by vegetation setback from buildings to provide fire safety and so that a sense of space around buildings is maintained.
- Encourage a reasonable sharing of views of significant landscape features form private land.

The section on Environment sets the objective “To protect and enhance areas of high environmental and landscape significance within the townships and surrounding land and the vistas of natural landscape features viewed from public places.” Of the listed strategies, of relevance is “Avoid development on the ridgelines and hillsides that is visually prominent when viewed from the Great Ocean Road at Fairhaven, Moggs Creek and Eastern View.”

Clause 22.02 – Streetscape and Landscape Policy
To protect and enhance the landscape character of towns, the policy requires that applications for development be accompanied by a landscape plan.

General Provisions

<table>
<thead>
<tr>
<th>62 Exemptions</th>
<th>Are there any exemptions relevant to the proposal? If yes, discuss</th>
<th>Yes ☐ No ☒</th>
</tr>
</thead>
<tbody>
<tr>
<td>63 Existing uses</td>
<td>Do existing use rights apply? If yes, discuss</td>
<td>Yes ☐ No ☐ N/A ☒</td>
</tr>
<tr>
<td>65 Decision guidelines</td>
<td>Does the proposal meet the following relevant decision guidelines? If no, discuss</td>
<td>Yes ☑ No ☐</td>
</tr>
</tbody>
</table>

Relevant Incorporated and/or Reference Documents
There are no documents relevant to this application.

Relevant Planning Scheme Amendments and/or Strategies
There are no Amendments and/or seriously entertained Strategies relevant to this application.

OBJECTIONS Identify objections here and discuss in Key Issues section of report
The application received three (3) objections and one (1) comment. Council’s electronic storage system (TRIM) was checked on 24 August 2017.

Copies of the objections are attached to the file, and are summarised as follows:

1. AIDA
   - Development of wider property was contentious and was only progressed after a S173 Agreement was agreed
   - The S173 Agreement set building envelopes/building setbacks which are significantly substandard compared to the neighbourhood character overlay established shortly afterwards
   - Proposed variation to building envelope will degrade sensitive character of area and undermine confidence of community in the value of application of S173 Agreement
Application should be rejected.

2. **Owner of Lot 40 Bimbadeen Drive Fairhaven**
   - Narani Way subdivision includes building envelopes designed to provide views through spaces between houses
   - Blocks have been purchased on that basis
   - Proposal exceed building height and likely to impact on views from my property
   - Plans appear to create a three storey building against impeding views and outlook

3. **Owner of 32 Narani Way Fairhaven**
   - Building envelope should not be extended as it contravenes special conditions and registered restrictive covenants for the Narani way development
   - Will set a precedent – may encourage other owners to seek to vary their restrictive covenants and build outside of envelopes – such changes will destroy the vision and reality of original development
   - To date home builders have complied with the restrictions
   - Existing deck encroachment by original owners – not sufficient grounds to overturn Registered restrictive Covenant
   - Does not meet aims of several Overlays relevant to Fairhaven and Narani Way in particular – the Design and Development Overlay Schedule 10, the Neighbourhood Character Overlay Schedule 2 and the environmental Significance Overlay Schedule 5
   - Chose to live in Narani Way because of restrictions on development in the estate

4. **Owner of 9 Bimbadeen Drive Fairhaven**
   - The building envelope on the lot has a small 4 metre setback from the rear boundary shared with 9my0 property
   - Proposed study addition /turret that incorporates stair to roof top terrace is built to the limit of the building envelope
   - The addition being closer and height will further shade property in morning
   - Principal living area of property has windows that directly face propose study/turret extension
   - Development will also affect another property at 7 Bimbadeen Drive
   - Has sought to negotiate a modified design (sloping roof form rather than parapet) with land owner but this has not been accepted
   - should not be extended as it contravenes special conditions and registered restrictive covenants for the Narani way development
   - Will set a precedent – may encourage other owners to seek to vary their restrictive covenants and build outside of envelopes – such changes will destroy the vision and reality of original development
   - To date home builders have complied with the restrictions
   - Existing deck encroachment by original owners – not sufficient grounds to overturn Registered restrictive Covenant
   - Does not meet aims of several Overlays relevant to Fairhaven and Narani Way in particular – the Design and Development Overlay Schedule 10, the Neighbourhood Character Overlay Schedule 2 and the environmental Significance Overlay Schedule 5
   - Chose to live in Narani Way because of restrictions on development in the estate

*Note: In *Slaveski v Darebin (VCAT/2006/400)* the Tribunal provided an analysis to detriment whether or not an objection is made in good faith it held:

- **Unless the Tribunal is satisfied that each objection was either vexatious or not made in good faith, the objections from beneficiaries of the covenant were fatal to the grant of a permit;**
- **The permit applicant carried the onus of leaving the Tribunal satisfied that each objection was not made in good faith;**
- **Lack of good faith needed to be shown in the objections to the permit application rather than in the statement of grounds;**
- **It did not necessarily follow that similar objections, even if they were copied objections, lack genuineness or lacked bona fides. It was not surprising that objectors shared some of each other’s concerns which gave rise to objections dealing with similar issues;**
Where a beneficiary to a covenant objected in circumstances where the person was remote from the subject land that did not necessarily mean a lack of genuineness although there may be circumstances where the remoteness of the objector did raise questions as to the genuineness of the objection.

CONSULTATION
Consultation was not undertaken for the application.

DISCUSSION OF KEY ISSUES
The application seeks approval to Vary a Registered Restriction (Building Envelope) and to Construct Alterations and Additions to the Existing Dwelling, which requires a permit under Clause 52.02 Restrictions, Easements and Reserves, the Neighbourhood Character Overlay, Schedule 1 (NCO1) and the Environmental Significance Overlay – Schedule 5 (ESO5).

In common with all lots within the Narani Way subdivision at Fairhaven, the subject lot is burdened by a building envelope restriction that limits the development footprint to around 25% of the site area (1129sqm) excluding an access driveway. As the site is large and the proposed alterations and additions are mostly contained within the existing building footprint the proposed development will be compliant with the built form standards of the Neighbourhood Character Overlay Schedule 1 - the exception being the street and rear boundary setbacks. These however are determined by the location of the building envelope proximal to the street boundary and the north side boundary (refer Clause 54 Attachment). Furthermore, as the new building footprint is limited and no native vegetation removal is proposed the proposal will satisfy the objectives of the Environmental Significance Overlay – Schedule 5 (ESO5).

In this respect it is considered the proposal would also generally meet the objectives and strategies of the relevant State and Local planning policies for residential development in an area of identified landscape character.

However, for this application, the key issue is whether the registered restriction(s) that applies to the land should be varied to allow development outside of the current building envelope.

Planning Permit No. 03/0246, issued 19 January 2004, allowed the subdivision of the wider land generally known as “The Fairhaven” into 47 lots and associated roadways, resulting in the creation of the Narani Way Estate at Fairhaven. A condition of the permit required a Section 173 Agreement be entered into with this to specify the creation of habitation building envelopes, ongoing land management and a single dwelling restriction for all lots. A Vegetation and Management Plan (VMP) was also approved as part of the subdivision and continues to have ongoing application to existing and future development within the estate.

All lots within the estate are subject to registered restrictions or covenants. Whilst there is some variation in the number of covenants on the lots according to different stages of the subdivision, the registered restrictions require dwelling development and outbuildings to be located within the building envelope that applies to the lot, a single dwelling development of each lot, no front fencing or hedging and the same alongside other street boundaries, and that all dwelling development including pools and outbuildings must be approved in writing by Wybellena Developments with this obligation to expire on the 1st January 2020.

Development within the estate was also required to be generally in accordance with the Development Plan Overlay 1 (DPO1) but to some extent this was made redundant by subsequent application of new planning controls of the NCO1, DDO10 and ESO5. Planning Scheme Amendment Am103, gazetted 18 August 2016, removed the DPO1 which now allows Planning Permit applications to be placed on Public Notice as determined by the RA.

Clause 52.02 Restrictions, Easements and Reserves
Amendments to the Planning and Environment Act 1987 (the Act) in 1991 enabled a planning scheme to make provision for the removal or variation of restrictions under s.23 Subdivision Act 1988 which included restrictive covenants, subject to the qualifications set out in the Act (see ss. 6(2)(g) and 6A of the Act).

One of the qualifications is contained in s.60 of the Act, which introduced threshold requirements which must be satisfied before a restrictive covenant can be removed or varied by a planning permit. This section of the Act thus elevates matters to be considered beyond the planning policies central to the vast majority of applications when it comes to applications relating to restrictive covenants.
If the threshold requirements are satisfied the responsible authority can proceed to consider an application for removal or variation of a restrictive covenant under clause 52.02 Surf Coast Planning Scheme. This clause relevantly provides that a permit is required before a person proceeds under s. 23 Subdivision Act 1988 to vary or remove a covenant.

There are two important provisions in clause 52.02. First, the purpose of the clause is stated:

To enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people are considered.

Secondly, the decision guidelines provide:

Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

“AFFECTED people” has been held by the Tribunal to include persons who are not owners of land which is benefitted by the covenant but who consider their interests to be affected in a planning sense by the proposed removal or variation (Hill v Campaspe Shire Council [2011] VCAT 949 per Deputy President Gibson). This interpretation reflects the ordinary and natural meaning of the words of the clause.

Two submitters - not beneficiating land owners have objected to the proposal on process, character and amenity grounds.

AIDA (Aireys Inlet and District Association Inc) has advised the estate was initially contentious and only progressed after a S173 Agreement was agreed between the Shire and the owner. Despite this the building envelopes have boundary setbacks that are significantly substandard compared to the objectives of the Neighbourhood Character Overlay. It is considered by allowing a variation to the building envelope will further degrade the character of this sensitive area and undermine the confidence of the community in the values of the conditions seen to apply to the S173 Agreement.

The second submitter, owner of 9 Bimbadeen Drive to the west has objected to the increased shadowing and building bulk of the study addition but as these elements are within the current building envelope the objection can only be considered on general planning grounds not being relevant to the proposed variation of the restriction.

Section 60(2) Planning and Environment Act 1987
For Removal or Variation of a Restriction Created After 25 June 1991 (as is the case here), Section 60(2) of the Planning and Environment Act 1987 sets out that “the responsible authority must not grant a permit which allows the removal or variation of a restriction unless it is satisfied that the owner of any land benefited by the restriction will be unlikely to suffer-

(a) Financial loss; or
(b) Loss of amenity; or
(c) Loss arising from change to the character of the neighbourhood; or
(d) Any other material detriment;

as a consequence of the removal or variation of the restriction.

<table>
<thead>
<tr>
<th>Issue for consideration</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>a Financial loss; or</td>
<td>No specific financial loss has been identified by any beneficiating land owner but one such owner has raised that the precedent (to vary the building envelope) will diminish the value of all adjoining properties in Narani Way and over time its character will become more suburban.</td>
</tr>
<tr>
<td>b Loss of amenity; or</td>
<td>A beneficiating land owner has identified the building envelopes are designed to provide views from various allotments through the spaces between houses and by allowing development beyond the building envelope this may impact on views and by inference result in a loss of</td>
</tr>
<tr>
<td></td>
<td>Loss arising from change to the character of the neighbourhood; or</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>c</td>
<td>This issue of change to the character has been raised by a benefitting land owner. In particular it has been highlighted that:</td>
</tr>
<tr>
<td></td>
<td>- proposal will create a precedent that will encourage others to seek to vary their restrictive covenant allowing building outside of envelopes which will change the vision and reality of the original development</td>
</tr>
<tr>
<td></td>
<td>- properties were purchased on the basis of the suite of controls that applied to development in the estate</td>
</tr>
<tr>
<td></td>
<td>- people have built homes that were required to abide by the ‘rules’ which has led to a harmonious development of the estate as envisaged</td>
</tr>
<tr>
<td></td>
<td>- the proposed deck (and extension of building envelope) is counter to aims of Environmental Significance Overlay and the Neighbourhood Character Overlay.</td>
</tr>
<tr>
<td></td>
<td>- purchased land to build in Narani Way and have committed to the concept as embodied in the special Conditions and Restrictive Covenants within the Contract of Sale.</td>
</tr>
<tr>
<td></td>
<td>- the restrictions set a defined character for the estate and ongoing development and provide a transition from the more suburban part of Fairhaven and large lots in the north.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>d</th>
<th>Any other material detriment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>None specified</td>
</tr>
</tbody>
</table>

It is agreed the S173 Agreement and related building envelopes and other restrictions on lots within the estate direct a unique low density coastal bushland character that is different to the wider area of Fairhaven. The restrictions establish an agreed position with respect to the intensity and siting of future development.

Lot owners also benefit from certainty as to how the estate will be developed and where buildings will be sited. The subdivision is near 50% developed and has been developed consistent with the building envelope restrictions and for this reason it is considered inappropriate to ‘change the rules’ midway potentially disadvantaging owners who have gone through due process.

**Clause 54 standards not varied by NCO2**

An assessment of the proposed development against the provisions of this clause not varied by the NCO2 is attached. The following specific comments are made with respect to Overshadowing (A14) and Overlooking (Std A15) which were raised as issues by the land owner of 9 Bimbadeen Drive.

- **Overshadowing (A14)**
  Shadow Diagrams show maximum off site shading occurs at 9.00am affecting the POS of no 9 Bimbadeen Drive but that by 12 noon the shadow falls within the subject site. No 9 Bimbadeen Drive is a large site and the std will be met. There is no shading impact on existing dwelling to north at 40 Narani Way.

- **Overlooking (A15)**
  The study addition (west side slot window) and roof top deck will increase the extent of overlooking across the private open space of residential properties to the north (50 Narani Way) and to the west (9 Bimbadeen Drive). Primary recreation decks and habitable room windows are not affected. The common boundaries are not solidly fenced and the areas affected are generally treed and not considered to be secluded private open space. In the circumstances application of the standard is not warranted.
CONCLUSION

Considering all of the above factors and weighting the matters holistically, it is considered that the application does not respond positively to the matters Council is required to consider. As such, it is recommended that the application is not supported.
## ATTACHMENT – ASSESSMENT AGAINST CLAUSE 54 WITH NCO1 VARIATIONS

**MODIFIED STANDARDS IDENTIFIED BY SHADING** Last updated as at VC116

### 54.02 NEIGHBOURHOOD CHARACTER

#### 54.02-1 Neighbourhood Character Objectives

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>The design response must be appropriate to the neighbourhood and the site. The proposed design must respect the existing or preferred neighbourhood character and respond to the features of the site.</td>
<td>No</td>
<td>Development is not responsive to preferred neighbourhood character in that it seeks to vary the approved building envelope that established the character of this subdivision. <strong>FAILS</strong> – see discussion</td>
</tr>
</tbody>
</table>

#### 54.02-2 Integration With The Street Objective

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard A2</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Development should be oriented to front existing and proposed streets</td>
<td>Yes</td>
<td>Proposed 1st floor deck will face both street frontages.</td>
</tr>
<tr>
<td></td>
<td>High fencing in front of dwellings should be avoided if practicable</td>
<td>Yes</td>
<td>None proposed</td>
</tr>
<tr>
<td></td>
<td>Dwellings should be designed to promote the observation of abutting streets and any abutting public open spaces</td>
<td>Yes</td>
<td>Observation of the street will be enhanced by proposed 1st floor deck.</td>
</tr>
</tbody>
</table>

### 54.03 SITE LAYOUT AND BUILDING MASSING

#### 54.03-1 Street Setback Objective

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard A3</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
</table>
| Yes  | **NCO Modified requirements**  
Walls of buildings should be set back from streets the distance specified below:  
There is an existing building on both the abutting lots facing the same street, and the site is not on a corner:  
- Minimum front street setback 9m  
There is an existing building on one abutting allotment facing the same street and no existing building on the other abutting allotment facing the same street, and the site is not on a corner:  
- Minimum front street setback 9m  
There is no existing building on either of the abutting allotments facing the same street, and the site is on a corner:  
- Minimum front street setback 9m  
The site is on a corner  
- 9 metres from the front street  
- 6 metres from the side street. | Yes | No change to street setbacks of dwelling’s walling which are compliant.  
**1st Floor Deck >3.60m**  
Front street setback: Required: 9.00m  
Proposed: 10.30m  
Complies  
Side street setback:  
Required: 6.00m  
Proposed: 25m  
Complies  
**Rooftop Terrace Balustrade**  
Front street setback:  
Required: 9.00m  
Proposed: 5.20m  
Fails but within approved building envelope on land – see discussion  
Side street setback:  
Required: 6.00m  
Proposed: 25m  
Complies |
| NA   | NA | NA | NA |
To ensure that the height of buildings respects the existing or preferred neighbourhood character | Yes | Changes of building height between existing buildings and new buildings should be graduated | Yes | Two storey scale typical of area | Complies |

To ensure that the site coverage respects the existing or preferred neighbourhood character and responds to the features of the site | Yes | NCO Modified standard  
- The maximum building height should not exceed 7.5 metres.  
- Buildings should be stepped down the slope on steep sites.  
The following requirements apply to land within the precincts shown on Map 1 of this Schedule.  
- Precinct 1  
The second storey is to be set behind the lower storey on lots located within Precinct 1.  
- Precinct 2  
Buildings should be stepped down the site following the contour, on lots located within Precinct 2.  
- Precinct 3  
Buildings should be recessive adjacent to the lighthouse, on lots located within Precinct 3.  
- Precincts 2 and 3  
New development located in Precincts 2 and 3 is not to dominate or compete with views of the lighthouse. | Yes | Max height: 7.310m ngl | Compliers |

54.03-3 Site Coverage Objective

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard A5</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
</table>
| Yes  | NCO Modified requirements  
The site area covered by buildings should not exceed 30%, or 35% where the percentage of building exceeding 30% is unroofed deck only.  
The gross floor area of all buildings should not exceed a plot ratio of 0.4 of the site area.  
The calculation for site area should not include:  
- land common to, or in shared use between, two or more dwellings.  
- land providing vehicular access to a rear dwelling, such as in a battleaxe lot. | Yes | Building Site Coverage: 28.47% approx.. | Complies |

54.03-4 Permeability Objectives

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard A6</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>The site area covered by pervious surfaces should be at least 20% of the site.</td>
<td>Yes</td>
<td>&gt;20%</td>
</tr>
</tbody>
</table>

54.03-5 Energy Efficiency Protection Objectives

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard A7</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
</table>
| Yes  | Buildings should be:  
- Orientated to make appropriate use of solar energy  
- Sited and designed to ensure that the energy efficiency of existing dwellings is maximised | Yes | New 1st floor deck and roof top deck will benefit from eastern and northern aspect.  
The extended study (west) and 1st floor deck (east) will be sited off common property boundaries and will reasonably limit shading of existing dwellings to north and west. | Satisfactory |

Living areas and private open space should be located on the north side of the development if practicable | Yes | New 1st floor deck and roof top deck will have eastern and northern aspect. | Satisfactory |
Dwellings should be designed so that solar access to north facing windows is maximised. Yes New east & north facing windows are proposed for extended study. Satisfactory

<table>
<thead>
<tr>
<th>54.03-6 Significant Trees Objectives</th>
<th>Met?</th>
<th>Standard A8</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>To encourage development that respects the landscape character of the neighbourhood</td>
<td>Yes</td>
<td>NCO Modified requirements</td>
<td>Yes</td>
<td>No NV removal required. Total Surface Coverage: 33.78% approx Complies</td>
</tr>
<tr>
<td>To encourage the retention of significant trees on the site.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>54.04 AMENITY IMPACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>54.04-1 Side and Rear Setback Objective</td>
</tr>
<tr>
<td>------------------------------------------</td>
</tr>
<tr>
<td>To ensure that 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.</td>
</tr>
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<tr>
<td>-------------------------------------</td>
</tr>
<tr>
<td>To ensure that the location, length and height of a wall on a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings</td>
</tr>
</tbody>
</table>

**NCO Modified requirements**

A new wall should not be located on side and rear boundaries.

Where a lot has a boundary width of 14 metres or less or where it can be demonstrated that walls on boundaries cannot be avoided due to site constraints, the following standards apply:

**Length of walls on boundaries**

A new wall constructed on or within 150mm of a side or rear boundary of a lot or a carport constructed on or within 1 metre of a side or rear boundary of a lot should not abut the boundary for a length of more than:

- 25 per cent of one side boundary, and
- 50 per cent of the rear boundary as shown in Diagram 1.

**Location of walls on boundaries**

A new wall constructed on or within 150mm of a side or rear boundary of a lot or a carport constructed on or within 1 metre of a side or rear boundary of a lot should not abut more than:

- one side boundary, and
- one rear boundary.

Where there is a wall constructed on the boundary of an abutting lot a new building should be setback at least 3m from that boundary as shown in Diagram 2.

A new wall or carport may fully abut a side or rear boundary where the slope and retaining walls or fences would result in the effective height of the wall or carport being less than 2 metres on the abutting property boundary.

A building on a boundary includes a building set back up to 200mm from a boundary.

The height of a new wall constructed on or within 200mm of a side or rear boundary or a carport constructed on or within 1 metre of a side or rear boundary should not exceed an average of 3.2 metres with no part higher than 3.6 metres unless abutting a higher existing or simultaneously constructed wall.

<table>
<thead>
<tr>
<th>54.04-3 Daylight To Existing Windows Objective</th>
<th>Met?</th>
<th>Standard A12</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>NA</td>
<td>No new walls on a common boundary. Complies</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| To allow adequate daylight into existing habitable room windows | Yes | Buildings opposite an existing habitable room window should provide for a light court to the existing window that has a minimum area of 3sqm and minimum dimensions of 1m clear to the sky. The calculation of the area may include land on the abutting lot | Yes | North side with 50 Narani Way  
The study addition will be sited at least 2.60 metres off the common boundary & the 1st Floor Deck Addition will be sited at least 2.40 metres off the common boundary – providing adequate daylight to any HR windows of this dwelling.  
Complies  
West Side with 9 Bimbadeen Drive  
The study addition will be sited at least 3.80 metres off the common boundary and the Rooftop Terrace will be sited at least 3.80 metres off the common boundary - providing adequate daylight to any HR windows of this dwelling.  
Complies |
Walls or carports more than 3m in height opposite an existing habitable room window should be set back from the window at least 50% of the height of the new wall if the wall is within a 35° arc from the centre of the existing window. The arc may be swung to within 35° of the plane of the wall containing the existing window. Where the existing window is above ground floor level, the wall height is measured from the floor level of the room containing the window. Refer to diagram A2.

<table>
<thead>
<tr>
<th>54.04-4 North Facing Windows Objective</th>
<th>Met?</th>
<th>Standard A13</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>To allow adequate solar access to existing north-facing habitable room windows</td>
<td>NA</td>
<td>If a north-facing habitable window of an existing dwelling is within 3m of a boundary on an abutting lot, a building should be setback from the boundary 1m, plus 0.6m for every metre of height over 3.6m up to 6.9m, plus 1m for every metre of height over 6.9m, for a distance of 3m from the edge of each side of the window. Refer to Diagram A3.</td>
<td>NA</td>
<td>No NFHW of existing dwellings are within 3 metres of the common boundaries.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>54.04-5 Overshadow Open Space Objective</th>
<th>Met?</th>
<th>Standard A14</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure buildings do not significantly overshadow existing secluded private open space</td>
<td>Yes</td>
<td>Where sunlight to secluded private open space of an existing dwelling is reduced, at least 75%, or 40sqm with minimum dimension of 3m, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9am and 3pm on 22 September.</td>
<td>Yes</td>
<td>Shadow Diagrams show maximum off site shading occurs at 9.00am affecting the POS of no 9 Bimbadeen Drive. By noon the shadow falls within the subject site. As no 9 Bimbadeen is a large site the std will be met. No impact on existing dwelling to north at 40 Narani Way. Complies</td>
</tr>
<tr>
<td>54.04-6 Overlooking Objective</td>
<td>Met?</td>
<td>Standard A15</td>
<td>Met?</td>
<td>Comments</td>
</tr>
<tr>
<td>-------------------------------</td>
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</tr>
<tr>
<td>To limit views into existing secluded private open space and habitable room windows</td>
<td>Yes</td>
<td>A habitable room window, balcony, terrace, deck or patio should be located and designed to avoid direct views into the secluded private open space of an existing dwelling within a horizontal distance of 9m (measured at ground level) of the window, balcony, terrace, deck or patio. Views should be measured within a 45(^\circ) angle from the plane of the window or perimeter of the balcony, terrace, deck or patio, and from a height of 1.7m above the floor level</td>
<td>Yes</td>
<td>Study Addition</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The 9m arc from the new north window in the extended study will fall across part of the POS of no 50 Narani Way in the north and par to the POS of no 9 Bimbadeen Drive in the west. The 9m arc from the study slot window (west) will fall across the POS of no 9 Bimbadeen Drive in the west. The window is relatively small and it is noted the POs is not fenced such that it can be considered as SPOS. It is noted the arc does not fall on any primary recreation decks. Satisfactory.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Roof top Terrace</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The 9m arc from the new roof top terrace will fall across part of the POS of the dwelling at 9 Bimbadeen Drive to a depth of around 4 metres. As the boundary is not fenced – technically there is no SPOS and it is noted the arc does not fall on any primary recreation decks. Satisfactory</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1st floor Deck</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The 9m arc from the new 1st floor deck will fall across part of the POS of the dwelling at 50 Narani Way The arc affects only a small area of the POS and because of the proposed side screen the arc is less than currently... Satisfactory</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>A habitable room window, balcony, terrace, deck or patio with a direct view into a habitable room window of an existing dwelling within a horizontal distance of 9m (measured at ground level) of the window, balcony, terrace, deck or patio should be either: • offset a minimum of 1.5m from the edge of one window to the edge of the other, or • have sill heights of at least 1.7m above floor level, or • have obscure glazing in any part of the window below 1.7m above floor level, or • have permanently fixed external screens to at least 1.7m above floor level and be no more than 25% transparent</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>Obscure glazing in any part of the window below 1.7m above floor level may be openable provided that there are no direct views as specified in this standard</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Screens used to obscure a view should:</td>
<td>Yes</td>
<td>Screens to new north window in study extension and to north side of 1st floor deck – to be conditioned to be consistent with std</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- perforated panels or trellis with a maximum of 25% openings or solid translucent panels</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- permanent, fixed and durable</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- designed and coloured to blend with the development</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>This standard does not apply to a new habitable room window, balcony, terrace, deck or patio which faces a property boundary where there is a visual barrier at least 1.8m high and the floor level of the habitable room, balcony, terrace, deck or patio is less than 0.8m above ground level at the boundary Refer to Diagram A4</td>
<td>N/A</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 54.05 ON-SITE AMENITY AND FACILITIES

#### 54.05-1 Daylight To New Windows Objective

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard A16</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>A window in a habitable room should be located to face:</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• an outdoor space clear to the sky or a light court with min. area of 3sqm and min. dimension of 1m clear to the sky, not including land on an abutting lot, or</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• a verandah provided it is open for at least one third its perimeter, or</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• a carport provided it has two or more open sides and is open for at least one third of its perimeter</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

#### 54.05-2 Private Open Space Objective

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard A17</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Dwelling should have private open space:</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• of 80sqm or 20% of the lot area, whichever is the lesser but not less than 40sqm</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• at least one part of the POS should consist of 25sqm secluded POS with a min. width of 3m at the side or rear with convenient access from a living room</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

#### 54.05-3 Solar Access To Open Space Objective

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard A18</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>The private open space should be located on the north side of the dwelling, if practicable</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The southern boundary of secluded private open space should be set back from any wall on the north of the space at least (2 + 0.9h) metres, where h is the height of the wall Refer to Diagram A5</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

### 54.06 DETAILED DESIGN

#### 54.06-1 Design Detail Objective

<table>
<thead>
<tr>
<th>Met?</th>
<th>Standard A19</th>
<th>Met?</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>The design of buildings, including:</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Facade articulation and detailing,</td>
<td>Design of alts &amp; adds complements the contemporary coastal style of the existing dwelling.</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Window and door proportions,</td>
<td>Of suitable scale and adds detail and articulation to the elevations.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Roof form, and</td>
<td><strong>Satisfactory</strong></td>
<td></td>
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<tr>
<td></td>
<td>Verandahs, eaves and parapets,</td>
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<td></td>
<td>should respect the existing or preferred neighbourhood character.</td>
<td></td>
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<tr>
<td></td>
<td>Garages and carports should be visually compatible with the development and the existing or preferred neighbourhood character.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**NCO Modified requirements**

In addition to the attributes in clause 54.06, the design of buildings should reflect the preferred neighbourhood character attributes, including:

- Landscape setting
- Building massing
- Height
- Colours, materials and finishes
- Space around buildings and setbacks.

<table>
<thead>
<tr>
<th>Objective</th>
<th>Standard A20</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>To encourage front fence design that respects the existing or preferred</td>
<td>The design of front fences should complement the design of the dwelling and</td>
<td>N/A</td>
</tr>
<tr>
<td>neighbourhood character</td>
<td>any front fences on adjoining properties</td>
<td>NA</td>
</tr>
<tr>
<td>A front fence within 3m of a street should not exceed:</td>
<td>Streets in a Road Zone – 2m</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Other Streets – 1.5m</td>
<td>NA</td>
</tr>
</tbody>
</table>
## 52.48 Bushfire Protection: Exemptions

<table>
<thead>
<tr>
<th>Clause</th>
<th>Proposal</th>
<th>Applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.48-1 Exemption to create defendable space around buildings used for accommodation</td>
<td>Construct alts &amp; adds to existing dwelling &amp; vary registered restriction</td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>52.48-2 Exemption for vegetation removal along a fenceline</td>
<td></td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>52.48-3 Exemption for buildings and works associated with a community fire refuge</td>
<td></td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>52.48-4 Exemption for buildings and works associated with a private bushfire shelter</td>
<td></td>
<td>Yes ☒ No ☐</td>
</tr>
<tr>
<td>52.48-5 Exemption to create defendable space for a dwelling approved under Clause 44.06 of this planning scheme</td>
<td></td>
<td>Yes ☒ No ☐</td>
</tr>
</tbody>
</table>