

DEVELOPMENT NO.:	24025197
APPLICANT:	Thomas Treloar
ADDRESS:	18 GULF PDE SOUTH BRIGHTON SA 5048
NATURE OF DEVELOPMENT:	Two (2) double storey detached dwellings with rooftop terraces, retaining walls up to 1.4m high and swimming pools.
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • General Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Affordable Housing • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy
LODGEMENT DATE:	27 Aug 2024
RELEVANT AUTHORITY:	Assessment panel at City of Holdfast Bay
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) Version 2024.15 15/8/2024
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Alexander Stamatopoulos Development Officer - Planning
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Council Arborist

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APPENDIX 1:	Relevant P&D Code Policies	ATTACHMENT 2:	Representations
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DETAILED DESCRIPTION OF PROPOSAL:

The proposed development at 18 Gulf Parade, South Brighton, consists of two, two storey detached dwellings with rooftop terraces, swimming pools and retaining walls. Both dwellings feature a similar layout with a private open space of 79m² at the rear, comprising 24% of the site, and a site coverage of 168m², representing 52%. Each dwelling also includes 56m² of soft landscaping, accounting for 17% of the total site area.

The ground floor for both dwellings contains an entry porch, a spacious living and meals area, and a kitchen with a walk-in pantry. These areas open to an alfresco space featuring an outdoor kitchen. The ground floor also includes three bedrooms, with the master bedroom offering an ensuite and walk-in robe, as well as a retreat area, laundry, bathroom, and a garage measuring 5.8m x 5.9m. On the upper level, additional living spaces are provided, with a balcony extending from the living area, equipped with 1.2m high west-facing balustrades. The rooftop terrace, measuring 42.51m², offers further outdoor living opportunities, including an outdoor kitchen, making it ideal for entertaining with coastal views.

Architecturally, the design incorporates modern materials, including rendered foam panels, natural stone accents, and aluminium batten windows. The front elevations are enhanced by a shiplap timber entry doors and timber screening. 1.7m-high privacy screens are shown on the northern and southern ends of the balcony and rooftop. Overall, each dwelling spans 362.10m², providing ample space across multiple levels while maintaining an efficient balance of built form and landscaped areas, suitable for its coastal setting.

The site slopes down from the street towards the rear of the property, requiring the construction of retaining walls to manage the change in ground level. The retaining wall heights, indicated on the civil plan are strategically positioned to accommodate this slope. These walls are at their highest toward the rear of the site at 1.4m. Access into the site will be via an existing crossover to residence 1 and a proposed crossover for residence 2.

BACKGROUND:

A separate land division application was lodged for the site and approved by the Council. Application ID 24028406. Therefore, the site area and frontage will not form part of the assessment, only the built form of the dwellings.

SUBJECT LAND & LOCALITY:**Site Description:**

Location reference: 18 GULF PDE SOUTH BRIGHTON SA 5048

Title ref.: CT 5847/32 **Plan Parcel:** F40927 AL330 **Council:** CITY OF HOLDFAST BAY

The site contains a frontage of 18.36m and a depth of 35.57m resulting in a total site area of 645sqm. The site features a large detached dwelling with a red-tiled roof, characterized by an irregular footprint, reflecting multiple building additions. The existing dwelling presents as a single-storey form from the street frontage but extends to two levels at the rear. The site includes ample space between the dwelling and the boundaries, with a driveway on the southern side leading to a separate garage at the rear. The property has direct frontage to Gulf Parade. There is substantial soft landscaping, particularly in the western and front portions of the site, which include lawned areas and trees.



Figure 1: Aerial image of the subject site



Figure 2: Streetscape image of the subject site

The locality surrounding 18 Gulf Parade, South Brighton, is predominantly residential, characterized by a mix of detached dwellings and medium-density housing developments. The area benefits from its proximity to the coastline, with direct access to the beach along the western side of Gulf Parade, making it an attractive location for both residents and visitors.

The residential properties in the area generally consist of single- and two-storey dwellings, many of which include well-maintained landscaping and private open spaces. Three-storey dwellings are common along the Esplanade. The street layout is structured, with wide roads providing ample space for on-street parking and facilitating easy access to the beachfront. The properties along Gulf Parade and adjacent streets display a variety of architectural styles, reflecting both older homes and more recent contemporary developments.

The locality also benefits from public amenities, including nearby parks and coastal reserves, contributing to the area's appeal for outdoor recreation. Furthermore, the presence of public transport routes, including the Seaford train line to the east of the site, enhances connectivity to the broader metropolitan region, supporting accessibility for residents.

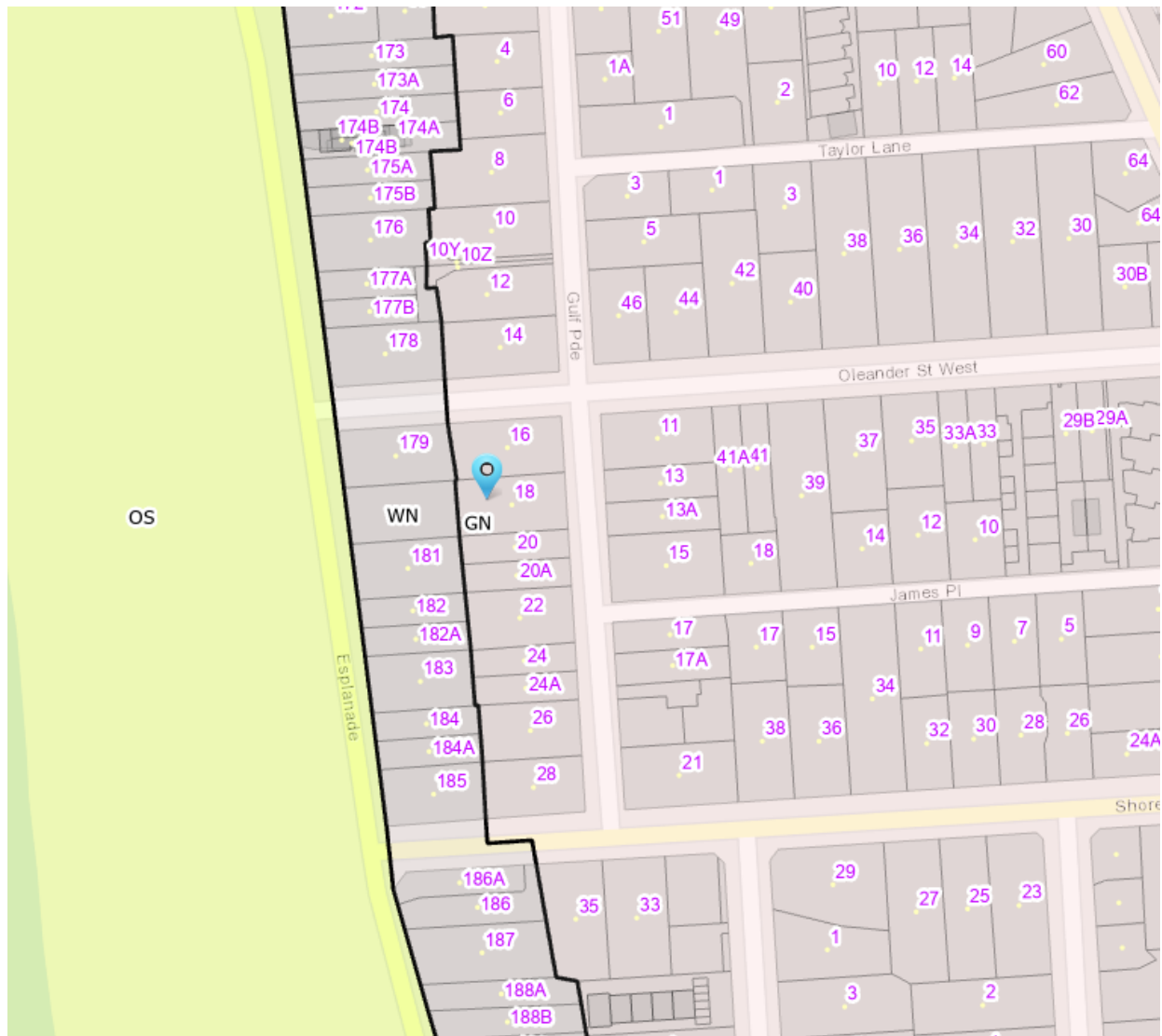


Figure 3: Aerial of the locality with Zone overlays

The subject site is located on the fringe of the General Neighbourhood Zone (GN), where it abuts the Waterfront Neighbourhood Zone (WN), as shown in the attached aerial. The Waterfront Neighbourhood Zone currently contains a range of three-storey dwellings, which aligns with the anticipated building height in the zone's policy for future development. This transition between zones highlights a change in the urban form, with taller, more intensive development encouraged in the Waterfront Neighbourhood Zone due to its coastal location, while the General Neighbourhood Zone is characterized by lower-density residential forms. This juxtaposition of zones plays a key role in shaping the character of the locality and sets expectations for future development on the site and its surrounding areas.

CONSENT TYPE REQUIRED:

Planning Consent

CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**
New housing
Detached dwelling: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**
Code Assessed - Performance Assessed
- **REASON**
P&D Code

PUBLIC NOTIFICATION

- **REASON**
The development does not satisfy General Neighbourhood Zone DTS/DPF 4.1 as the wall height of the dwellings are greater than 7m.
- **LIST OF REPRESENTATIONS**

Summary of Representors			
Address of Representor	Position	Wish to be heard	Concerns
<i>Janet Maitland of 20 Gulf Parade South Brighton</i>	<i>I support the development with some concerns</i>	<i>Yes</i>	<i>Supports the development with concerns about privacy, noise, and overshadowing. Requests changes, such as obscuring a kitchen window and aligning balconies to minimize overlooking and shadowing impacts on her property at 20 Gulf Parade.</i>
<i>Robert Beaumont of 180 Esplanade South Brighton</i>	<i>I support the development with some concerns</i>	<i>No</i>	<i>Supports the development with concerns about privacy. Worried about the rooftop terrace and western windows overlooking his property at 180 Esplanade, particularly into private rooms like the second-floor bedroom and bathroom. Requests increased screening.</i>
<i>Adel Naguib of 183 Esplanade South Brighton</i>	<i>I oppose the development</i>	<i>No</i>	<i>Opposes the development due to concerns about the rooftop terraces impacting the privacy of neighbouring properties. Worried that even with privacy screens, they could be damaged</i>

			<i>or removed, leading to long-term privacy issues.</i>
<i>Kate France of 182a Esplanade South Brighton</i>	<i>I oppose the development</i>	<i>No</i>	<i>Opposes the development, particularly the rooftop terrace and first-floor balcony. Raises concerns about privacy, noise, and the impact on the use of backyards of adjacent properties. Fears the development will devalue properties and set a negative precedent.</i>
<i>Kylie Grigg of 181 Esplanade South Brighton</i>	<i>I oppose the development</i>	<i>Yes</i>	<i>Opposes the development, emphasizing that the rooftop terrace will overlook her backyard, pool, and living areas at 181 Esplanade. Argues the development does not comply with setback and privacy requirements of the Planning and Design Code.</i>
<i>Connie Boravos of 182 Esplanade South Brighton</i>	<i>I oppose the development</i>	<i>No</i>	<i>Opposes the development due to privacy concerns, especially regarding the rooftop terrace and balcony, which overlook her property. Mentions noise concerns from entertainment spaces and the potential precedent it could set for future developments.</i>
<i>Justine Crawford of 42 Moseley Street Glenelg</i>	<i>I oppose the development</i>	<i>No</i>	<i>Opposes the development, particularly the rooftop terraces. Fears it will set a precedent for extra-level allowances and negatively impact privacy for properties on Gulf Parade. Also raises concerns about the developer's previous non-approved actions.</i>

● **SUMMARY**

A response to representations was provided by Botten Levinson Lawyers. In response to the representations received, amendments have been made to the proposal, including the addition of frosted glass to upper-level kitchen splashback windows, an increase in balcony balustrade height to 1.2m with obscured glass, a 2.1m high fence, and screen landscaping to mitigate privacy concerns on the rear boundary.

The response addresses key issues raised by the representors, such as privacy, overshadowing, setbacks, noise, potential precedents, and impacts on land value. Regarding privacy and overlooking, the applicant highlights the use of obscured glass and the increased balustrade height to ensure privacy is adequately preserved. On the issue of overshadowing, the response provides shadow diagrams and asserts that while some overshadowing is inevitable, it is consistent with other developments in the area.

In terms of setbacks, the response argues that the proposed setbacks align with nearby properties and meet relevant planning provisions. Other concerns, such as noise and potential impact on land values, are dismissed as either irrelevant to the planning assessment or unsubstantiated. Overall, the response concludes that the proposed development, as amended, complies with the planning provisions and should be granted approval.

AGENCY REFERRALS

Nil

INTERNAL REFERRALS

Council Arborist – No objections to the location of the crossover associated with residence 2.

PLANNING ASSESSMENT

The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in Appendix One.

Question of Seriously at Variance

The application is not seriously at variance with the provisions of the Planning and Design Code as the Desired Outcomes and Performance Outcomes of the General Neighbourhood Zone anticipate residential development as an appropriate form of development

Quantitative Provisions

	Proposed	DPF Requirement	Achieved
Building Height	Two levels and 8.4m Wall Height 8.4m	2 levels and 9m Wall Height 7m	Yes No
Boundary Development	6.18 or 17% of the total boundary 3m height from footing	11.5m and 45% 3m height from footing	Yes Yes
Front Setback	5.5m (Res 1) and 5.75m (Res 2)	1m in front of average of adjoining 20 Gulf – primary setback 4.3m 16 Gulf – primary setback 6.5m <u>Quantitative requirement = 4.4m</u>	Yes
Rear Setback	6.9m – lower level 5.8m - upper level 9m – rooftop deck	4 metres at ground level and 6 metres at upper level	Minor 200mm shortfall to the upper level
Side Setbacks	Ground level northern walls 950mm (Res 1 & 2) Ground level southern walls 980mm (Res 1) and 950mm (Res 2) Upper level northern walls 950mm (Res 1) and 1.86m (Res 2) Upper level southern wall 1.94 (Res 1) and 950mm (Res 2) Roof top northern walls 950mm (Res 1) and 2.71m (Res 2) Roof top southern walls 1.94m & 2.84m (Res 1) and 950mm (Res 2)	Ground level wall 900mm Ground level wall 900mm Upper level northern wall 2.2m Upper level southern wall 3.2m Rooftop northern wall 2.6m Rooftop southern wall 3.6m	Yes Yes No No No No

Site Coverage	52%	60%	Yes
Private Open Space	79 square metres	60 square metres	Yes
Soft Landscaping	17 percent of the site area	20 percent of the site area	Minor 3% shortfall
Front Yard Landscaping	31 percent	30 percent	Yes
Tree Planting	1 small tree	1 small tree	Yes

Building Height

The application seeks the construction of two, two-storey detached dwellings, each incorporating a rooftop terrace. It is important to clarify that the rooftop terraces are not defined as an additional building level under the relevant definition as shown below:

Building Level

Means that portion of a building which is situated between the top of any floor and the top of the next floor above it, and if there is no floor above it, that portion between the top of the floor and the ceiling above it. It does not include any mezzanine or any building level having a floor that is located 1.5m or more below finished ground level.

Crucially, this definition excludes mezzanines and any level with a floor situated 1.5m or more below the finished ground level. As the rooftop terraces in this proposal do not include enclosed spaces or ceilings, they are consistent with the definition of a two-level building and do not constitute an additional level.

While the rooftop terraces extend beyond the 7m wall height anticipated in DPF 4.1 of the General Neighbourhood Zone, the development still satisfies PO 4.1, which requires buildings to contribute to a low-rise suburban character.

PO 4.1

Buildings contribute to a low-rise suburban character.

DPF 4.1

Building height (excluding garages, carports and outbuildings) no greater than 2 building levels and 9m and wall height that is no greater than 7m (not including a gable end).

The definition of low-rise is shown below

Low-rise

In relation to development, means up to and including 2 building levels.

Since the terraces are not considered additional levels, the dwellings maintain the intended low-rise form, with only two building levels as specified in the policy.

The side elevation plan demonstrates that the main dwelling height is 7.1m, while the height of the rooftop deck wall, including the privacy screening, reaches 8.4m. The modest scale of the deck wall ensures it does not dominate the built form and maintains visual harmony with the surrounding dwellings. Having it recessed in below the level below also provides visual relief. This approach ensures that the overall appearance of the development remains in keeping with the scale of the existing streetscape.

The subject site is located on the fringe of the General Neighbourhood Zone (GN), abutting the Waterfront Neighbourhood Zone (WN), as indicated in figure 3. The Waterfront Neighbourhood Zone is characterized by an array of three-storey dwellings, which align with the zone's policy, anticipating taller building heights to take advantage of the coastal location. This provides a contrasting backdrop to the General Neighbourhood Zone, where lower-density and typically two-storey developments are encouraged.

As the site is located at the boundary of two zones, it is reasonable that the assessment approach should seek to balance the various policy expectations. In this regard, the decision of *Papadopoulos v City of Woodville* (1985) 39 SASR 569 (at 575) is relevant which states:

"... it must be remembered that zone boundaries are only lines on a map, and the residential integrity of a residential zone at its perimeter might be very different from its residential integrity elsewhere..."

The judgment in *Papadopoulos v City of Woodville* (1985) reinforces the concept that zone boundaries, while necessary for planning control, are ultimately "lines on a map" and that the character of a zone can differ significantly at its edges. This case supports the interpretation that development at the fringe of a zone, such as this site at the boundary of the General Neighbourhood and Waterfront Neighbourhood Zones, may allow for more flexibility in building height and design compared to development within the core of the zone. Given the proximity to the Waterfront Neighbourhood Zone, which supports three-storey developments, the inclusion of rooftop terraces and higher wall heights in this proposal can be viewed as consistent with the transitioning character between the zones.

Moreover, the *Papadopoulos* decision underlines the importance of context when assessing development near zone boundaries. In this case, the rooftop terraces, though exceeding the 7m wall heights in the General Neighbourhood Zone, are set back adequately from the primary street frontage, rear and side boundaries, as indicated in the plans. This, combined with the fact that the adjacent Waterfront Neighbourhood Zone anticipates taller buildings, suggests that the rooftop terraces and increased wall heights will not detract from the intended low-rise suburban character of the General Neighbourhood Zone.

Thus, the case law provides support for the rooftop terraces and wall heights in this development, emphasizing the importance of flexibility and context-sensitive decision-making, especially when dealing with sites at the boundary of two distinct zones.

Side Setbacks

The proposed side setbacks for the dwellings at 18 Gulf Parade, South Brighton, differ from the Desired Performance Feature (DPF) 8.1 guidelines in the General Neighbourhood Zone, as follows:

DPF 8.1

Other than walls located on a side boundary, building walls are set back from side boundaries in accordance with the following:

- a) where the wall height does not exceed 3m - at least 900mm*
- b) for a wall that is not south facing and the wall height exceeds 3m - at least 900mm from the boundary of the site plus a distance of 1/3 of the extent to which the height of the wall exceeds 3m from the top of the footings*
- c) for a wall that is south facing and the wall height exceeds 3m - at least 1.9m from the boundary of the site plus a distance of 1/3 of the extent to which the height of the wall exceeds 3m from the top of the footings.*

- Upper-Level Northern Walls: The proposed setbacks are 950mm (Res 1) and 1.86m (Res 2), whereas DPF 8.1 anticipates a setback of 2.2m.
- Upper-Level Southern Walls: The proposed setback is 950mm (Res 2) and 1.94m (Res 1), whereas DPF 8.1 requires a setback of 3.2m.
- Rooftop Northern Walls: The proposed setbacks are 950mm (Res 1) and 2.7m (Res 2), whereas DPF 8.1 anticipates a setback of 2.6m.
- Rooftop Southern Walls: The proposed setbacks are 950mm (Res 2), 1.94m (Res 1), and 2.84m (Res 2), whereas DPF 8.1 requires a setback of 3.6m.

Notwithstanding, the test is whether PO 8.1 is satisfied

PO 8.1

Building walls are set back from side boundaries to provide:

- a) separation between buildings in a way that contributes to a suburban character
and*
- b) access to natural light and ventilation for neighbours.*

The primary objective of PO 8.1 (a) is to ensure that building walls are set back from side boundaries to provide adequate separation between buildings, which contributes to a low-rise suburban character. Despite some proposed setbacks being below the Desired Performance Feature (DPF) requirements, the overall design ensures sufficient separation through a combination of setbacks, stepped wall designs, and the placement of the rooftop decks.

It is important to note that all setbacks labelled as 950mm are internal to the site, meaning they occur between the two proposed dwellings and thus have no direct impact on neighbouring properties. This internal separation ensures that the external presentation of the site maintains a sense of openness and space between the proposed development and adjacent properties.

The design of the dwellings features a combination of upper-level and rooftop setbacks that increase as the building height increases. This stepped approach to the setbacks helps mitigate the perception of bulk and scale, which is an important consideration in suburban settings. The separation between the upper levels and rooftop structures contributes to a suburban character by ensuring that the buildings do not appear overly bulky or dominating in the streetscape.

The greater setbacks on the rooftop, with the northern wall at 2.7m and portions of the southern wall at 2.84m, further enhance building separation, particularly at the uppermost level, where bulk could otherwise be more visually imposing. These setbacks reduce the massing effect of the buildings as viewed from neighbouring properties and the streetscape, helping the development blend into the existing suburban character of the area.

In conclusion, PO 8.1 (a) is satisfied as the proposed setbacks, combined with the design strategy, provide adequate separation between the buildings to maintain a suburban character. The thoughtful placement of internal and external walls, particularly at the upper and rooftop levels, ensures that the development contributes to the suburban context while balancing the need for contemporary, functional living spaces in this coastal location.

PO 8.1 (b), which addresses access to natural light and ventilation for neighbours, will be assessed in conjunction with PO 3.1 and PO 3.2 from the *Design in Urban Areas* provisions. These policies focus on minimizing overshadowing impacts on adjacent residential properties.

Overshadowing

DPF/PO 3.1 and 3.2 of Design in Urban Areas are listed below:

PO 3.1

Overshadowing of habitable room windows of adjacent residential land uses in:

- a. a neighbourhood-type zone is minimised to maintain access to direct winter sunlight*
- b. other zones is managed to enable access to direct winter sunlight.*

DPF 3.1

North-facing windows of habitable rooms of adjacent residential land uses in a neighbourhood-type zone receive at least 3 hours of direct sunlight between 9.00am and 3.00pm on 21 June.

PO 3.2

Overshadowing of the primary area of private open space or communal open space of adjacent residential land uses in:

- a. a neighbourhood type zone is minimised to maintain access to direct winter sunlight*
- b. other zones is managed to enable access to direct winter sunlight.*

DPF 3.2

Development maintains 2 hours of direct sunlight between 9.00 am and 3.00 pm on 21 June to adjacent residential land uses in a neighbourhood-type zone in accordance with the following:

- a. for ground level private open space, the smaller of the following:*

- i. half the existing ground level open space*

or

- ii. 35m² of the existing ground level open space (with at least one of the area's dimensions measuring 2.5m)*

- b. for ground level communal open space, at least half of the existing ground level open space.*

A dwelling which is currently being constructed on the adjoining southern side contains two habitable room windows that are north-facing. The applicant has provided two sets of overshadowing diagrams. One shows the shadows cast by the current proposal and the other shows the shadows cast by a two-storey dwelling with a compliant 2.9m setback. Drawing comparisons to both set of plans shows the difference in impacts of overshadowing. The diagrams on the left hand side show compliant dwellings and the right hand side the shadows cast from the proposed dwellings. The dwelling under construction to the south has been superimposed on the site with its lower level habitable rooms windows marked red. The overshadowing from fencing is not shown on the proposed dwelling to highlight shadows cast form the dwellings only.

9am Shadows Below (left compliant setback dwellings, right proposed dwellings)



12pm Shadows Below (left compliant setback dwellings, right proposed dwellings)



3pm Shadows Below (left compliant setback dwellings, right proposed dwellings)



In analysing the overshadowing diagrams provided for the proposed development at 18 Gulf Parade, South Brighton, both the proposed and compliant shadowing plans show relatively similar impacts throughout the day.

1. **9:00 AM:**

- The shadows cast at this time extend significantly towards the neighbouring southern property, particularly affecting the area where the north-facing habitable room windows are located.
- The proposed shadowing and compliant shadowing diagrams show almost identical shadow lengths and coverage over these windows. This suggests that the difference between the proposed setbacks and a compliant 2.9m setback has minimal impact in the early morning.

2. **12:00 PM:**

- At noon, the sun is higher in the sky, resulting in shorter shadows. Both the proposed and compliant diagrams display shadows primarily affecting the lower levels of the southern neighbouring dwelling.
- Once again, the comparison reveals very little difference between the proposed and compliant shadows.

3. **3:00 PM:**

- In the afternoon, the shadows extend further east, with some lengthening along the southern boundary.
- The difference between the proposed and compliant shadowing is minimal. Both diagrams show that while some portions of the neighbouring property experience overshadowing, the habitable room windows will not contain access to some natural light during this time.

The overshadowing diagrams demonstrate that even a compliant two-storey detached dwelling, with the required 2.9m upper-level setback, would result in overshadowing of the southern adjoining dwelling. The proposed design, with reduced setbacks, shows a negligible difference in the extent of overshadowing when compared to the compliant scenario. At all critical times of the day (9 AM, 12 PM, and 3 PM), the shadows cast by the proposed development do not result in substantially more overshadowing than what would occur with a compliant two-storey dwelling.

Given that the General Neighbourhood Zone anticipates and accommodates two-storey dwellings, the presence of overshadowing is not inherently unreasonable. The zone is designed to allow for low-rise suburban development, including dwellings of two storeys. Thus, some degree of overshadowing, particularly to properties located to the south of two-storey developments, is expected within the context of this zone.

Additionally, while the proposed development includes rooftop terraces, which result in a slightly increased wall height, the overshadowing impacts are not substantially greater than those from a compliant two-storey dwelling. The rooftop terraces are set back further from the boundaries and the streetscape, which helps mitigate the visual bulk and overshadowing effects.



Above: Recently constructed two storey dwelling at 24 Gulf Parade. Aerial photo take in October 2023

The aerial image above shows a recently constructed dwelling at 24 Gulf Parade, which was approved with a 6.1m high wall and an upper-level southern setback of 1.9m. This approval provides a relevant point of comparison to the current application at 18 Gulf Parade, as it demonstrates that the Council has previously accepted developments with reduced upper-level setbacks in the locality.

The shadow cast by the dwelling at 24 Gulf Parade, visible in the aerial, indicates that a similar form of development, results in overshadowing. It is important to note that the level of overshadowing is shown during the month of October where shadows cast are lesser than June 21 being the middle of the winter Solstice. This reinforces the argument that some level of shadowing is expected and unavoidable in the General Neighbourhood Zone, especially with two-storey dwellings.

In conclusion, the proposed setbacks, while below the DPF standards, still maintain an acceptable level of separation between buildings and do not significantly worsen overshadowing impacts in comparison to a dwelling with compliant setbacks. Given the negligible difference in shadowing between the compliant and proposed setbacks, there is clear merit in supporting the proposal.

Visual Privacy

The subject site was inspected and photos were taken from the existing upper level balcony looking, west, south-west and north west. See images below:



Image 1: Views south-west toward 181 Esplanade South Brighton

Image 2: Views west to 180 Esplanade South Brighton



Image 3: Views north-west over 179 Esplanade South Brighton

Further, the applicant has provided an array of images in Appendix 1 of their response to representations.

While the photos shown above are not a direct reflection of the potential views from the proposed rear balconies, they provide context to the existing context. The side upper level windows of the dwellings have been appropriately obscured, therefore the discussion below will focus on the views from the rear upper-level balconies and the rooftop decks of each dwelling. DPF/PO 10.2 of Design in Urban Areas is the relevant policy regarding overlooking/visual privacy from balconies/decks.

PO 10.2

Development mitigates direct overlooking from balconies to habitable rooms and private open space of adjoining residential uses in neighbourhood type zones.

DPF 10.2

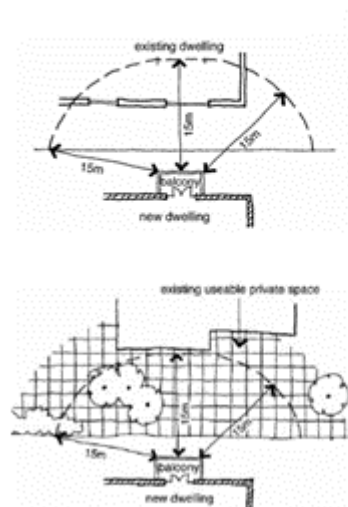
One of the following is satisfied:

- (b) all sides of balconies or terraces on upper building levels are permanently obscured by screening with a maximum 25% transparency/openings fixed to a minimum height of:*
- i. 1.5m above finished floor level where the balcony is located at least 15 metres from the nearest habitable window of a dwelling on adjacent land*
 - or*
 - ii. 1.7m above finished floor level in all other cases*

Direct overlooking is defined as:

In relation to direct overlooking from a deck, balcony or terrace, is limited to an area that falls within a horizontal distance of 15 metres measured from any point of the overlooking deck, balcony or terrace.

Overlooking deck, balcony or terrace



The applicant has provided line of sight diagrams from the balcony and rooftop decks that show the extent of views consistent with the definition of direct overlooking (attachments 1.16 to 1.17). The dwelling located directly to the west of the subject land, 180 Esplanade, contains its useable outdoor areas to the front where a swimming pool and front verandah/balconies are located. The rear of the property contains a garage and a driveway which functions more as an access area for vehicles as opposed to an area of private amenity. The rear upper-level windows of 180 Esplanade contain obscured glazing to appropriate heights therefore no overlooking will occur into habitable room windows.



Above: Aerial image of 180 Esplanade South Brighton

The views within the 15m radius into 179 Esplanade which is located on the southern corner of Oleander Street West and the Esplanade are screened by the existing outbuildings as seen in Image 3. Further, the existing dwelling located at 16 Gulf Parade, north of the subject site, contains an upper-level rear balcony that contains no screening and has views into the private open space of 179 Esplanade South Brighton. Therefore, overlooking as a result of the proposal will not be exacerbated.

Both overlooking diagrams from the balcony and roof deck show a portion of the 15m viewing radius falling within the private open space area of 181 Esplanade South Brighton. The balcony diagram also shows the extent of views from the dwelling under construction at 20 Gulf Parade. However, this rear balcony contains appropriate screening to 1.5m from the finished floor level.

The submitted overlooking diagrams illustrate that portions of the rear yard at 181 Esplanade may be subject to overlooking from the proposed development. While the views from the existing balcony were reviewed during a site inspection, it is important to note that the existing and proposed balconies differ in both location and setback from the rear boundary. Specifically, the existing balcony is set back 12.7m from the rear boundary, whereas the proposed balcony contains a setback of 5.8m. Additionally, the site will undergo level changes of up to 2m of fill at the rear, which could result in variations in the height of the proposed balcony compared to the existing one.

These factors present a challenge in accurately assessing the degree of overlooking from the proposed balcony. To mitigate potential privacy impacts, it is recommended that a condition of approval be imposed, requiring the installation of obscured screening on the first floor balcony. If the applicant believes that the views from the dwelling do not pose unreasonable privacy concerns, the Council may conduct a site visit during construction to accurately assess impacts on the assumption that consent for the application is issued. At that stage, an application could be lodged to vary the condition.

In terms of the upper-level roof deck, the views captured are limited to a portion of the rear yard of 181 Esplanade. The roof deck balustrade is setback 3.2m from the roof level beneath it, which effectively screens downward views to the southwest together with the screens on the southern sides, reducing any potential privacy impacts from that vantage point.

This approach ensures that privacy concerns are addressed while providing flexibility for further assessment during the construction phase, if necessary.

CONCLUSION

The dwellings will be situated on individual sites, each featuring private open space areas and carefully designed to balance modern living needs with the character of the General Neighbourhood Zone. The proposed setbacks include some variations from the Desired Performance Features (DPF) for side boundaries, with internal setbacks of 950mm between the two dwellings and varying setbacks along the northern and southern external boundaries. These variations have been justified based on the minimal difference in overshadowing impacts compared to a compliant two-storey dwelling and the location at the transition between the General Neighbourhood and Waterfront Neighbourhood Zones.

The overshadowing analysis, which compares the proposed design with a compliant setback scenario, demonstrates that even a compliant design would result in overshadowing of the southern adjoining property. The differences in shadow impact are minimal at all critical times of the day (9 AM, 12 PM, and 3 PM). The development is also consistent with the pattern of similar approvals in the area, such as the dwelling at 24 Gulf Parade, which has a similar wall height and upper-level setbacks.

The rooftop terraces, which are integrated into the overall design, are set back significantly from boundaries (18.7m from the primary street and 9m from the rear boundary). Privacy is managed through setbacks and 1.7m-high privacy screens, minimizing any overlooking concerns for neighbouring properties. Additionally, the rooftop terraces do not constitute an additional building level, as they do not include enclosed space beneath a ceiling, which aligns with the definition of a two-storey building and maintains the intended low-rise suburban character of the zone.

The proposed development raises potential overlooking concerns, particularly from the first-level balcony and upper-level roof deck into the rear yard of 181 Esplanade. The existing and proposed balconies differ in setback and height, making it difficult to accurately assess overlooking impacts. To address this, a condition is recommended for obscured screening on the first-level balcony. If the applicant disagrees with the need for screening, the Council can reassess during construction, with the option to vary the condition. The roof deck's design, with a 3.2m setback from the lower roof, limits downward views, reducing privacy impacts.

In summary, the application has been designed to integrate with the surrounding built environment while taking advantage of the site's coastal location. The proposed setbacks, design elements, and overshadowing analysis support the merits of the proposal, ensuring that it aligns with the planning objectives of the General Neighbourhood Zone and contributes positively to the local area.

RECOMMENDATION

Planning Consent

It is recommended that the Council Assessment Panel resolve that:

1. The proposed development is not considered seriously at variance with the relevant Desired Outcomes and Performance Outcomes of the Planning and Design Code pursuant to section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016*.
2. Development Application Number 24025197, by Thomas Treloar is granted Planning Consent subject to the following conditions:

CONDITIONS

Planning Consent

1. The development granted approval shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).
2. That the finished level of the crossover at the property boundary shall be a minimum of 75mm above the top of kerb in accordance with AS2890.1, and the maximum gradient of the driveway shall not be greater than 5% across the footpath, with the invert profile conforming to AS2876.

Furthermore, the footpaths on either side shall be graded to the driveway preventing tripping hazards at this junction, without any steep grades along the footpath.

The provision for vehicle crossovers and inverts, and reinstatements of existing crossovers not required by the development, be constructed at the owner's expense.

3. That all side upstairs windows, shall have minimum window sill heights of 1.5 metres above finished floor level, or any glass below 1.5 metres shall be obscure and fixed shut and be installed prior to occupation of the dwelling.
4. Tree(s) must be planted and/or retained in accordance with DTS/DPF 1.1 of the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). New trees must be planted within 12 months of occupation of the dwelling(s) and maintained.
5. Rainwater tank(s) must be installed in accordance with DTS/DPF 1.1 of the Stormwater Management Overlay in the Planning and Design Code (as at the date of lodgement of the application) within 12 months of occupation of the dwelling(s).
6. The stormwater disposal system shall cater for a 5 year rainfall event with discharge to the street not to exceed 10 litres per second. Any excess above this flow is to be detained on site. All stormwater collected on the site must only be discharged to the street and not on to any adjacent properties
7. That a fixed obscured glass balustrade shall be erected on the western end of the first floor balcony to a minimum height of 1.5 metres above finished floor level.

OFFICER MAKING RECOMMENDATION

Name: Alexander Stamatopoulos
Title: Development Officer - Planning
Date: 03/10/2024