

DEVELOPMENT NO.:	24004969
APPLICANT:	MyHomeBuild
ADDRESS:	3 LEWIS ST GLENELG NORTH SA 5045
NATURE OF DEVELOPMENT:	Appeal Report – Two-storey detached dwelling
ZONING INFORMATION:	<p>Zones:</p> <ul style="list-style-type: none"> • General Neighbourhood <p>Overlays:</p> <ul style="list-style-type: none"> • Hazards (Flooding - General) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy • Aircraft Noise Exposure • Aircraft Noise Exposure • Airport Building Heights (Regulated) • Affordable Housing • Building Near Airfields
LODGEMENT DATE:	15 Apr 2024
RELEVANT AUTHORITY:	Environment, Resources and Development Court
PLANNING & DESIGN CODE VERSION:	P&D Code (in effect) Version 2024.6 04/04/2024
CATEGORY OF DEVELOPMENT:	Code Assessed - Performance Assessed
NOTIFICATION:	Yes
RECOMMENDING OFFICER:	Alexander Stamatopoulos Development Planner
REFERRALS STATUTORY:	Nil
REFERRALS NON-STATUTORY:	Nil

CONTENTS:

ATTACHMENT A:	Amended plans
ATTACHMENT 1:	Initial application attachments

Background

At its meeting held on 26 June 2024, the Council Assessment Panel resolved as follows to refuse application Number 24004969 for a two-storey detached dwelling located at 3 Lewis Street Glenelg North.

That Development Application Number 24004969, by MyHomeBuild is REFUSED Planning Consent for the following reasons:

- 1. Does not satisfy General Neighbourhood Zone PO 7.1. The design has excessive boundary length and height, and unsatisfactory visual overshadowing impacts on adjoining properties.*
- 2. Does not satisfy Interface between land use PO 3.1 does not minimise overshadowing of habitable rooms (particularly neighbours ground floor rooms).*

Since the refusal was issued an appeal was lodged to the ERD Court to seek a compromise. The applicant has provided amended plans to address the reasons for refusal.

Plan Amendments

The changes to the proposal comprise:

- The height of the rear western boundary wall has been amended in height from 3.3m to 3m.
- The inclusion of overshadowing diagrams that show shadows cast by the dwelling and as a comparison a 1.8m high fence on the western side boundary of the site.

Planning Assessment

Refusal Reason 1

PO/DPF 7.1 of the General Neighbourhood Zone

PO 7.1

Walls on boundaries are limited in height and length to manage visual and overshadowing impacts on adjoining properties.

DTS/DPF 7.1

Except where the building is a dwelling and is located on a central site within a row dwelling or terrace arrangement, side boundary walls occur only on one side boundary and satisfy (a) or (b) below:

- a) side boundary walls adjoin or abut a boundary wall of a building on adjoining land for the same or lesser length and height*
- b) side boundary walls do not:*
 - i. exceed 3m in wall height*
 - ii. exceed 11.5m in length*
 - iii. when combined with other walls on the boundary of the subject development site, exceed a maximum 45% of the length of the boundary*
 - iv. encroach within 3m of any other existing or proposed boundary walls on the subject land.*

The boundary wall located to the rear of the western side boundary, extends for a length of 13.9m and constitutes 54% of the boundary development as initially lodged. However, the wall height has been reduced from 3.3m to 3m to comply with DPF 7.1(b)(i). While DPF 7.1 provides specific criteria for boundary walls, the overarching test is

whether the development satisfies PO 7.1, which aims to ensure that walls on boundaries are limited in height and length to manage visual and overshadowing impacts on adjoining properties.

By reducing the wall height to 3m, the application better aligns itself with the intent of the policy to mitigate the visual appearance of the structure. It is also important to consider that the boundary wall in question is adjacent to a common driveway used for vehicle access associated with a two-storey flat building. This section of the neighbouring allotment is not considered to be an area of high amenity where visual impacts would be deemed unreasonable for the neighbouring occupants. The presence of the common driveway reduces the potential for adverse effects on the amenity of the adjoining property, as it is primarily a functional space rather than a living or recreational area.

Concerning the overshadowing impacts of the lower-level wall, after reviewing the shadowing diagrams provided by the applicant, it is evident that the upper level of the dwelling casts a greater shadow. Consequently, the overshadowing impact of the single-story boundary wall is relatively insignificant. Therefore, assessment against PO 7.1 should be limited to visual impacts and overshadowing be considered with PO/DPF 3.1 as discussed below.

Refusal Reason 2

PO/DPF 3.1 of Interface Between Land Uses

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.*

DTS/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.

The below statement is taken from the rules of interpretation of the Planning and Design Code which states the role of Performance Outcomes (PO) and Designated Performance Features (DPF'S)

In order to assist a relevant authority to interpret the performance outcomes, in some cases the policy includes a standard outcome which will generally meet the corresponding performance outcome (a designated performance feature or DPF). A DPF provides a guide to a relevant authority as to what is generally considered to satisfy the corresponding performance outcome but does not need to necessarily be satisfied to meet the performance outcome, and does not derogate from the discretion to determine that the outcome is met in another way, or from the need to assess development on its merits against all relevant policies.

The application for the two-storey dwelling results in overshadowing of the eastern-facing windows of the western adjoining dwelling during the earlier hours of the morning. According to the rules of interpretation, a designated performance feature (DPF) is intended to provide guidance to relevant authorities on what is generally considered to satisfy the corresponding performance outcome (PO).

DPF 3.1 specifically refers to the requirement for north-facing windows of habitable rooms in neighbourhood-type zones to receive at least three hours of direct sunlight between 9.00am and 3.00pm on 21 June. This guideline

ensures that these north-facing windows have adequate access to direct winter sunlight. However, the proposed two-storey dwelling impacts only the eastern-facing windows of the neighbouring dwelling, not the northern ones. Therefore, in this context, it is clear that DPF 3.1 does not apply to the eastern-facing windows.

Given that DPF 3.1 is only concerned with north-facing windows and the proposed development does not affect these, it can be considered that PO 3.1 is satisfied. This approach is consistent with the rules of interpretation, which allow for a flexible approach to evaluating whether performance outcomes are met. Thus, the application should be assessed in this context, acknowledging that the overshadowing of eastern-facing windows does not negate compliance with PO 3.1.

RECOMMENDATION

Planning Consent

It is recommended that the Council Assessment Panel advise the Environment, Resources and Development Court in the matter of Case Number ERD-24-000066 that the Council supports Application ID 24004969 as amended subject to the conditions below:

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.
2. 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.
3. 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).
4. That all upstairs windows, other than facing the street, 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.
5. 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.

OFFICER MAKING RECOMMENDATION

Name: Alexander Stamatopoulos

Title: Development Planner

Date: 10/07/2024