

<b>DEVELOPMENT NO.:</b>	24024260
<b>APPLICANT:</b>	Michael Fogarty
<b>ADDRESS:</b>	UNIT 1 50 KING ST BRIGHTON SA 5048
<b>NATURE OF DEVELOPMENT:</b>	Single level extension to the existing carport, decking and a second storey addition to existing dwelling
<b>ZONING INFORMATION:</b>	<p><b>Zones:</b></p> <ul style="list-style-type: none"> <li>• General Neighbourhood</li> </ul> <p><b>Overlays:</b></p> <ul style="list-style-type: none"> <li>• Airport Building Heights (Regulated)</li> <li>• Affordable Housing</li> <li>• Prescribed Wells Area</li> <li>• Regulated and Significant Tree</li> <li>• Stormwater Management</li> <li>• Urban Tree Canopy</li> </ul>
<b>LODGEMENT DATE:</b>	7 Aug 2024
<b>RELEVANT AUTHORITY:</b>	Assessment panel at City of Holdfast Bay
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	P&D Code (in effect) Version 2024.14 1/8/2024
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Alexander Stamatopoulos Development Officer - Planning
<b>REFERRALS STATUTORY:</b>	Nil
<b>REFERRALS NON-STATUTORY:</b>	Nil

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<b>APPENDIX 1:</b>	<b>Relevant P&amp;D Code Policies</b>
<b>ATTACHMENT 1:</b>	<b>Application Documents</b>
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**DETAILED DESCRIPTION OF PROPOSAL:**

The proposed development involves an extension to the existing carport, decking and an upper-level addition to the existing residence located at Unit 1 / 50 King Street, Brighton, SA 5048. The ground floor will see the extension of the existing carport by 4m<sup>2</sup>, the construction of a new 24m<sup>2</sup> deck, and various internal modifications, including the removal of certain walls, windows, and fixtures. The upper floor will introduce an additional 87m<sup>2</sup> of living space and a 24m<sup>2</sup> balcony. The external finishes will consist of a combination of bagged brickwork on the lower level, painted white, and James Hardie Stria cladding on the upper level, also in white. The roof will be a custom orb sheeting in a surfmist colour at a 20-degree pitch.

**BACKGROUND:**

The proposed development is located on a strata title, therefore the application must meet the requirements outlined in Schedule 8 Part 8A of the Planning, Development, and Infrastructure (General) Regulations 2017. The applicant has provided documentation of strata approval that align with the requirements outlined in **Schedule 8 Part 8A of the Planning, Development, and Infrastructure (General) Regulations 2017**. This is shown in attachments 1.6 to 1.8.

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

**Location reference:** UNIT 1 50 KING ST BRIGHTON SA 5048

**Title ref.:** CT 5047/971 **Plan Parcel:** S683 UN1 **Council:** CITY OF HOLDFAST BAY

The site at 1/50 King Street, Brighton, SA 5048, is part of a multi-dwelling strata located within the General Neighbourhood Zone. The site is one of 5 units (1/50 to 5/50) situated along a shared driveway that runs centrally between two rows of units. The property is located at the southernmost end of the row of units on the western side of the shared driveway. It is the first unit along King Street, providing it with a direct street frontage. As the front-most unit, 1/50 King Street has a prominent street presence benefiting from direct access to the public road and visibility from King Street.



**Above:** The subject site highlighted amongst the existing units

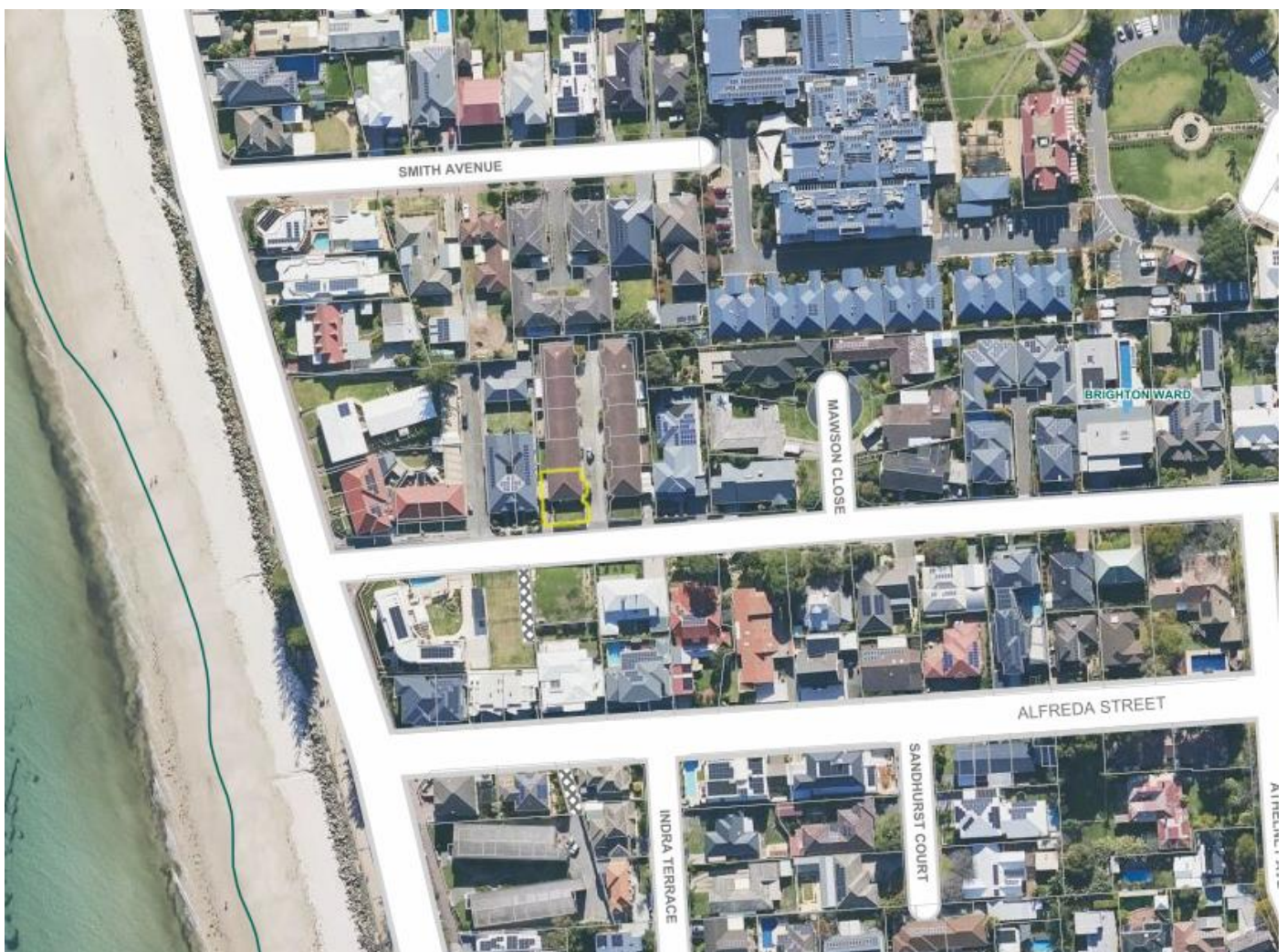


**Above:** Streetscape image of the site as viewed from King Street

The units within the strata are uniformly designed, each with a similar footprint and orientation. The buildings are long and narrow, aligning with the shape of the site. The units appear to be single-story, with gabled roofs and consistent architectural features, contributing to a cohesive appearance. Access to the site is via a shared driveway that provides ingress and egress to all units within the development. This driveway is centrally located between the two rows of units and leads directly to King Street. There is limited vegetation within the immediate vicinity of the unit, consisting of small garden areas or low-maintenance landscaping.

The locality surrounding King Street, is a well-established coastal residential area characterised by its close proximity to the beachfront, a mix of medium-density housing, and well-maintained urban infrastructure. The area is predominantly residential, featuring a variety of housing types including single-family homes, duplexes, and multi-unit developments, reflecting a blend of traditional and modern architectural styles. The street network is organised in a grid pattern, with King Street serving as a primary east-west connector, providing convenient access to both the beach and nearby amenities.

The surrounding streets, including Smith Avenue, Alfreda Street, and Mawson Close, are lined with well-maintained residences, many of which incorporate modern upgrades such as solar panels and landscaped gardens. The area is also enriched by several green spaces and recreational areas, including beachfront access, which enhances the quality of life for residents.



**Above:** Aerial image of the locality

Overall, the locality presents a desirable residential environment with its combination of coastal living, modern amenities, and a well-connected street network. This makes the area highly attractive for both existing residents and potential new developments, aligning with the broader urban planning goals of maintaining high-quality, sustainable, and community-focused residential areas.



**Above:** Aerial showing the Zone of the locality

**OS:** Open Space Zone

**WN:** Waterfront Neighbourhood Zone

**GN:** General Neighbourhood Zone

**CONSENT TYPE REQUIRED:**

Planning Consent

**CATEGORY OF DEVELOPMENT:**

- **PER ELEMENT:**  
Dwelling alteration or addition  
Dwelling addition: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed
- **REASON**  
P&D Code

**PUBLIC NOTIFICATION**

- **REASON**  
The development involves a building wall that is proposed to be situated on an allotment boundary and the height of the proposed wall exceeds 3m measured from the top of footings
- **LIST OF REPRESENTATIONS**

<b>Summary of Representors</b>			
<b>Address of Representor</b>	<b>Position</b>	<b>Wish to be heard</b>	<b>Concerns</b>
<i>Jaz Gregory of 42 Stopford Road Hove</i>	<i>I support the development</i>	<i>No</i>	<i>- Proposal is fitting for the locality</i>
<i>Jock Whiting of 37 Jervois Terrace Marino</i>	<i>I support the development</i>	<i>No</i>	<i>- Development will look good and increase property value</i>
<i>Amo Cotellessa of 47 King Street Brighton</i>	<i>I support the development</i>	<i>No</i>	<i>- Improves streetscape appearance of King Street - Increases the housing options for families</i>
<i>Dennis Young of 17a Trumara Road Marion</i>	<i>I support the development with some concerns</i>	<i>No</i>	<i>- Public consultation notice omitted that the dwelling is part of a strata title group of five attached units. - Building appearance is regulated by the Strata Titles Act 1988 and Regulations 2003. - Proposed second-story addition alters the appearance of the unit and the entire 1971 building. - New walls and roof do not match the existing double-brick and common property roof. - Significant changes to unit one's appearance affect all units.</i>

			<ul style="list-style-type: none"> <li>- <i>A general meeting with unanimous approval is required for any second-story extension.</i></li> <li>- <i>Approval must accompany plans submitted to a planning authority.</i></li> <li>- <i>Extensions of this nature are not seen in the Holdfast Bay Council area, potentially setting a precedent.</i></li> </ul>
<i>Kate Cotellessa -</i>	<i>I support the development</i>	<i>No</i>	<ul style="list-style-type: none"> <li>- <i>The development will increase the amenity of King Street</i></li> <li>- <i>The additions are well designed</i></li> </ul>

● **SUMMARY**

The applicant has provided a response to the representation raised by Dennis Young (Representor 5). In response, the owners of 1/50 King Street, S. Rossi and S. Calverley, clarified that all unit owners of their strata corporation (Strata inc683) had approved the proposed second-story addition, and they provided written evidence of this consent. They also emphasised that the concerns Dennis raised about the legal process were not applicable, as they pertained to a different strata corporation (Strata 489 inc), which manages 48 King Street. The response also refuted the claim that the second-story addition would set a precedent, providing examples of similar developments in the area, specifically referencing 108 Esplanade, Hove. The response concluded with the presentation of evidence of approval from the owners of all other units in the same strata complex.

**AGENCY REFERRALS**

Nil

**INTERNAL REFERRALS**

Nil

**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 suitable for the subject land as the Desired Outcomes and Performance Outcomes of the General Neighbourhood Zone anticipate residential development as an appropriate form of development. The proposed development is considered to not be 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*.

**Quantitative Provisions**

	<b>Proposed</b>	<b>DPF Requirement</b>	<b>Achieved</b>
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<b>Building Height</b>	2 levels and 8m 6.4m wall height	2 levels and 9m 7m wall height	Yes
<b>Primary Setback</b>	5.8m	52 King street = 5.4m 48 King Street = 8.2m The average setback of the existing buildings on the abutting sites minus 1m = 5.8m	Yes
<b>Rear Setback</b>	Upper level – On boundary	Upper level – 6m	No
<b>Side Setbacks</b>	Upper-level eastern wall – 600mm  Upper-level western wall – 3.6m	Upper-level wall – 2m	No Yes
<b>Site Coverage</b>	42%	60%	Yes
<b>Soft Landscaping</b>	21%	20 percent of the site area	Yes

### Side Setback

The proposed eastern upper-level addition, with a side setback of 600mm from the main wall and 200mm from the stone flue wall to the boundary, falls short of the 2m setback anticipated by DPF 8.1(b). However, the test is whether the proposed development satisfies the Performance Outcome (PO) 8.1, which focuses on ensuring that setbacks provide adequate separation between buildings, contributing to a suburban character, and allowing access to natural light and ventilation for neighbouring properties.

#### *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.*

#### *DTS/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*

The subject site is part of a multi-unit development where the character of the area is defined not only by the individual setbacks but also by the overall spatial arrangement of buildings. The existing site layout includes a shared driveway running between two rows of units, which effectively provides a substantial separation between the built forms. The upper-level addition, although closer to the boundary than the DPF suggests, will still maintain a clear visual separation between buildings due to the presence of this driveway. This separation ensures that the suburban character of the area is preserved, as the spatial openness provided by the driveway mitigates the reduced setback of the upper-level addition. Furthermore, the design of the addition, including the minimal projection of the stone flue wall, is negligible and consistent with the character of the locality.



As the wall in question is adjacent to the communal driveway it ensures that the impact on natural light and ventilation for neighbouring properties is negligible. The driveway provides a buffer zone that allows for unobstructed airflow and light penetration, minimizing any potential adverse effects of the reduced setback. Additionally, the north-south orientation of the site and the proposed height of the addition mean that shadowing effects are likely to be minimal, further supporting the argument that access to natural light for neighbouring properties will remain largely unaffected.

The urban context in which the development is situated also plays a crucial role in assessing the impact of the setback shortfall. Given that the shared driveway is a significant element of the site, the reduced setback does not detract from the functional and aesthetic qualities of the development. Instead, it contributes to a more efficient use of space within the constraints of the site, which is a common characteristic of higher-density urban environments like the one in which this property is located.

While the proposed upper-level side setback does not meet the specific numeric requirement of DPF 8.1(b), the broader objectives of PO 8.1 are satisfied. The separation between buildings, achieved through the shared driveway, ensures that the suburban character of the area is preserved. The design and orientation of the addition safeguard access to natural light and ventilation for neighbouring properties, thereby minimizing any potential adverse impacts. The overall development is in harmony with the existing urban context, and the setback shortfall is, therefore, justified as negligible and acceptable.

### **Rear Setback**

The proposed upper-level rear addition, with a 0m setback from the rear boundary, does not align with the 6m setback anticipated by DPF 9.1(b). However, the critical assessment lies in determining whether the development satisfies Performance Outcome (PO) 9.1 of the Zone.

#### *PO 9.1*

*Building walls (excluding ancillary buildings and structures) are set back from rear boundaries to provide:*

- a) separation between buildings in a way that contributes to a suburban character*
- b) access to natural light and ventilation for neighbours*
- c) private open space*
- d) space for landscaping and vegetation.*

#### *DTS/DPF 9.1*

*Building walls (excluding ancillary buildings and structures) are set back from the rear boundary at least:*

- a) if the size of the site is less than 301m<sup>2</sup>—*
  - i. 3m in relation to the ground floor of the building*
  - ii. 5m in relation to any other building level of the building*
- b) if the size of the site is 301m<sup>2</sup> or more—*
  - i. 4m in relation to the ground floor of the building*
  - ii. 6m in relation to any other building level of the building.*

The subject site is part of a multi-unit development where the rear boundary directly abuts the roofline of the neighbouring unit rather than an open space or another habitable area. In this context, the 0m setback does not disrupt the separation between living spaces that typically defines suburban character. Since the addition is aligned with the neighbouring roof rather than an external wall or window, the sense of separation between habitable areas

is maintained. This configuration ensures that the suburban character is not compromised, as the physical and visual separation between the two living environments remains intact.

The 0m rear setback does not adversely impact the access to natural light and ventilation for the neighbouring unit. The adjacent structure is a roof, which does not rely on direct sunlight or ventilation through this boundary. The upper-level addition's design ensures that it does not overshadow or block airflow to any windows, open spaces, or other essential areas of the neighbouring property. Consequently, the natural light and ventilation that PO 9.1 seeks to protect are preserved despite the reduced setback.

While PO 9.1 includes a provision for private open space, it is important to consider that the setback in question pertains to an upper-level addition that does not encroach on the ground-level open space. The existing private open space on the subject site remains unaffected by the addition, as the encroachment is at the upper level. Therefore, the function and availability of private open space are preserved, ensuring compliance with this aspect of PO 9.1.

Landscaping and vegetation considerations are generally more relevant to ground-level setbacks, where planting can occur. Since the proposed upper level addition does not occupy or reduce any ground-level space that could be used for landscaping, the opportunity for greenery and vegetation remains unchanged. The 0m upper-level setback does not impede any potential or existing landscaping efforts on the site, allowing for continued or enhanced landscaping where applicable.

Although the proposed 0m upper-level rear setback does not meet the specific numeric requirement of DPF 9.1(b), the broader objectives of PO 9.1 are satisfied. The design and orientation of the addition ensure that the essential characteristics of suburban separation are maintained, as the setback aligns with the neighbouring roof rather than habitable space. Access to natural light and ventilation is preserved, as the addition does not interfere with any critical openings or living areas. Furthermore, the private open space and landscaping opportunities remain unaffected, as the addition only impacts the upper level.

Given these considerations, the impact of the setback shortfall is negligible, and the proposal successfully aligns with the intent of PO 9.1.

### **Overlooking**

The proposed upper-level front balcony, which lacks privacy screening, does not satisfy DPF 10.2(b)(i) as it faces a public road less than 15 meters wide and lacks the necessary screening measures. However, the primary test for compliance is whether the development satisfies Performance Outcome (PO) 10.2 of Design In Urban Areas.

#### *PO 10.2*

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

#### *DTS/DPF 10.2*

*One of the following is satisfied:*

- a) the longest side of the balcony or terrace will face a public road, public road reserve or public reserve that is at least 15m wide in all places faced by the balcony or terrace*  
*or*
- 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

PO 10.2 requires that direct overlooking be mitigated, where "direct overlooking" which is define below:

*Direct overlooking*

*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.*

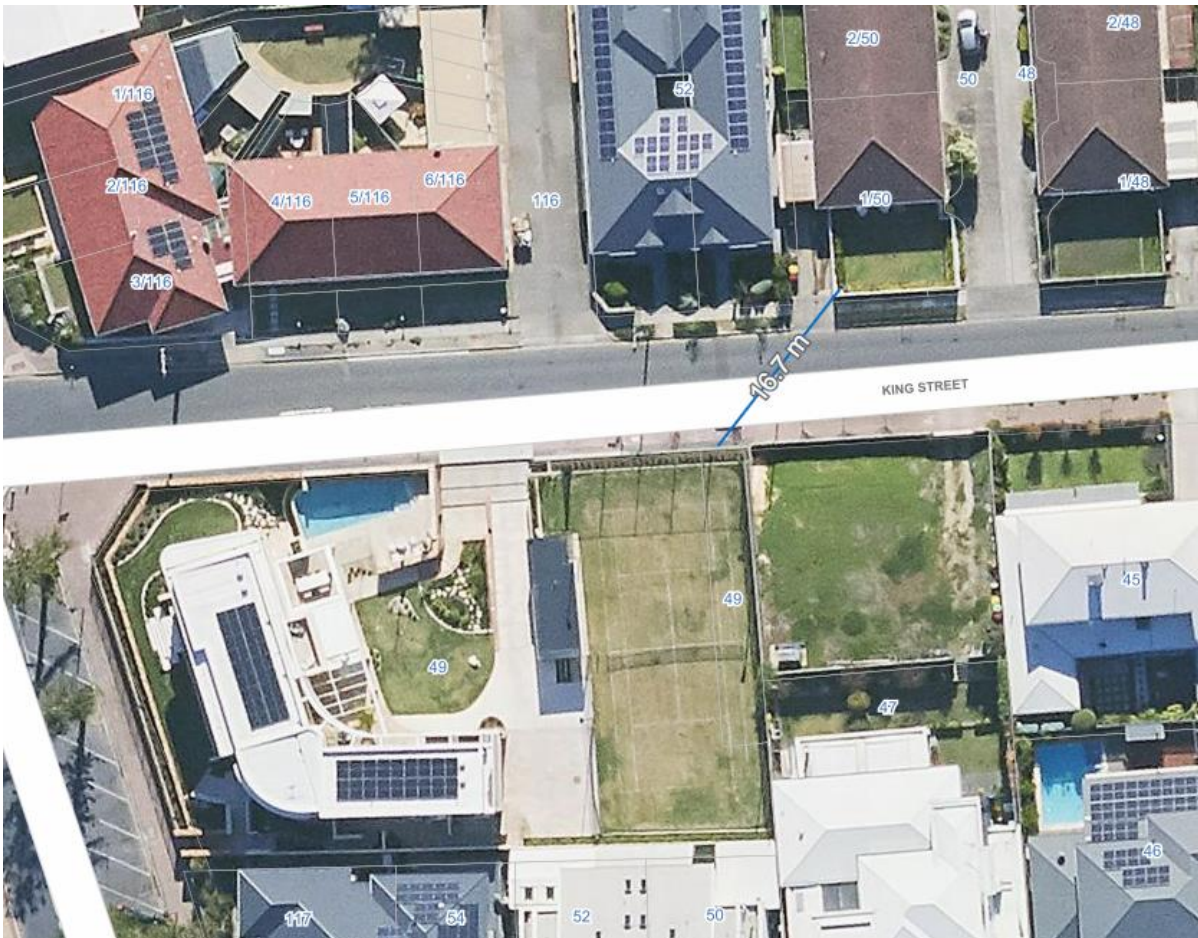
In the case of the proposed development, the only potential for overlooking is toward the rear yard of 49 King Street, located on the southern corner of King Street and the Esplanade. Importantly, the distance from the proposed balcony to this area far exceeds 15 meters. This substantial distance ensures that any potential overlooking does not fall within the prescribed 15 Zone as defined by the policy, thus significantly reducing the potential for privacy intrusion.

The area of 49 King Street potentially visible from the balcony is predominantly occupied by a tennis court, which is enclosed by a chain mesh fence. This part of the property is not typically considered a sensitive private open space area, as it is already exposed to the public realm. The chain mesh fence, which provides no substantial screening, indicates that this area is not used for activities requiring privacy. Therefore, any views from the proposed balcony would not intrude upon a space that necessitates privacy protection, further supporting the argument that the impact of the balcony is negligible.



**Above:** Tennis court of 49 King Street

**Below:** Aerial showing the distance between the subject site and 49 King Street



PO 10.2 specifically references "adjoining" residential uses. The term "adjoining" implies a direct and immediate boundary with the subject site. In this instance, 49 King Street does not directly adjoin the site; it is separated by the road reserve. This separation by a public road acts as an additional buffer, further mitigating any potential overlooking concerns. The physical and visual separation provided by the road enhances the privacy of 49 King Street, making any potential impact from the balcony even less significant.

The context of the locality also supports the acceptability of the proposed balcony. The urban setting, characterised by its proximity to the beach and relatively open streetscape, is not one where high levels of privacy measures are typically expected for front-facing balconies. The design and orientation of the proposed balcony, facing a public road and the distant Brighton coastline, align with the broader urban character of the area, where front-facing balconies orientated to capture beach views are a common occurrence.

While the proposed balcony does not meet the specific numerical requirements of DPF 10.2(b), it satisfies the broader objectives of PO 10.2 by mitigating any potential for direct overlooking. The significant distance between the balcony and the private open space of 49 King Street, coupled with the nature of the overlooked area (a publicly visible tennis court), ensures that privacy impacts are minimal and not unreasonable. Moreover, the separation provided by the road reserve further reduces any potential for intrusion into private spaces.

Given these factors, the proposed balcony is consistent with the intent of PO 10.2. The design respects the privacy of neighbouring properties while integrating well with the character of the immediate locality.

## CONCLUSION

The proposed development is largely consistent with the overall intent of the Planning and Design Code. The design thoughtfully addresses key Performance Outcomes (POs) by maintaining the suburban character of the area, ensuring adequate separation between buildings, and preserving access to natural light and ventilation for neighbouring properties. Despite certain deviations from Designated Performance Feature (DPF) criteria—such as the rear and side setbacks and the absence of privacy screening for the balcony—the development demonstrates that the impact of these shortfalls is negligible.

The side and rear setbacks, though less than the minimum anticipated by the Code, do not result in unreasonable impacts on neighbouring properties due to the existing site context, including the shared driveway and the adjacent roofline. These elements provide sufficient separation and maintain the character of the locality, while also preserving access to light and ventilation. The front balcony, although lacking the required screening, does not contribute to direct overlooking of sensitive private spaces due to the significant distance from the nearest potentially affected property and the nature of the areas overlooked, which are already exposed to public view.

In summary, the proposed development aligns with the intent of the Planning and Design Code by integrating harmoniously with its surroundings, preserving the amenity of neighbouring properties, and contributing positively to the existing suburban character. The thoughtful design and site-specific considerations ensure that the development's impact is minimal, supporting its overall compliance with the broader objectives of the Planning and Design Code.

## 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 24024260, by Michael Fogarty 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 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.
3. 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

**OFFICER MAKING RECOMMENDATION**

**Name:** Alexander Stamatopoulos  
**Title:** Development Officer - Planning  
**Date:** 09/09/2024