

TO: **COUNCIL ASSESSMENT PANEL**  
 DATE: **24 OCTOBER 2018**  
 SUBJECT: **COUNCIL ASSESSMENT REPORT**  
 AUTHOR: **ALEXANDER STAMATOPOULOS**  
**DEVELOPMENT OFFICER - PLANNING**

ATTACHMENTS:

- 1. LOCALITY PLAN**
- 2. PROPOSED PLANS**
- 3. HEYDEN PLANNING SUPPORTING LETTER**
- 4. STATEMENTS OF REPRESENTATIONS**
- 5. APPLICANT'S RESPONSE TO REPRESENTATIONS**

---

DA NO.	:	<u>110/00637/18</u>
APPLICANT	:	<u>ROSSDALE HOMES CARE OF HEYDEN PLANNING CONSULTANTS</u>
LOCATION	:	<u>1 WARWICK COURT, NORTH BRIGHTON</u>
DEVELOPMENT PLAN	:	<u>CONSOLIDATED 2 JUNE 2016</u>
ZONE AND POLICY AREA	:	<u>RESIDENTIAL ZONE</u>
NATURE OF DEVELOPMENT:		<u>MERIT</u>
PROPOSAL	:	<u>TWO, TWO STOREY DWELLINGS (RESIDENTIAL CODE)</u>
EXISTING USE	:	<u>RESIDENTIAL</u>
REFERRALS	:	<u>NOT APPLICABLE</u>
CATEGORY	:	<u>TWO</u>
REPRESENTATIONS	:	<u>THREE</u>
RECOMMENDATION		<u>DEVELOPMENT PLAN CONSENT SUBJECT TO CONDITIONS</u>

## 1. Site and Locality

The subject site is located in the south-eastern section of Warwick Court, which is a small Court (containing only 4 properties) off Warwick Avenue. 3 Warwick Court, which is a Local Heritage Place set behind the street on a large hammerhead allotment, is not materially affected by the proposed development. 110 metres west of the subject land is Brighton Road and Brighton High School, whilst 120 metres east of the subject land is Paringa Park Primary School. 110 metres to the north of the subject site is the Light Industry Zone. The immediate locality (i.e. within 100 metres of the subject land), is predominately defined by single storey detached dwellings on larger allotments with the presence of some infill development, including some examples of two storey built form.

*Refer to Attachment 1*

## 2. Proposed Development and Background

The proposed development comprises the construction of a pair of two storey dwellings with integral garages and walls located on each respective western side boundary. An application was previously lodged on the subject land (DA 110/00787/17) which was refused by the Council Assessment Panel on the 28 February 2018. A land division for the subject land was granted development approval as per DA 110/00923/17. The allotments on the proposed land use plans and approved land division are consistent.

The assessment pathway of this current application differs to the initial land use (DA 110/00787/17) that was deemed refused by the Council Assessment Panel. This application was lodged to be assessed under the Residential Code requesting limited assessment on the primary setbacks of the dwellings. An assessment against the Residential Code was conducted and revealed that the primary setbacks of the dwellings were the only component that did not meet the criteria set out in the code.

As a result this component is to be assessed “on merit” pursuant to Section 35(1c) of the Development Act, 1993 which states that:

*s35(1c) If a proposed development meets all but 1 criteria necessary for the development to be complying development, the aspect or aspects of the development that are consistent with the development being complying development must be regarded accordingly and the balance of the development will be assessed as merit development.*

Accordingly, this sets a process whereby only the proposed front boundary setback is to be considered “on merit” and that all other aspects of the proposed dwelling “must be” regarded as “complying” given they satisfy the relevant provisions of the Residential Code.

*Refer to Attachment 2*

#### Development Assessment Data

HOUSE 1	Proposed	Development Plan	Development Plan Satisfied?
Northern primary setback	Garage setback 6.7 to 14.3 metres from the boundary due to the alignment of the Road (Court).	The building should be setback in-line with the setback of the adjacent building with a frontage to the same street. The western adjacent building, 2 Warwick Court, is setback 10 metres from the street boundary.	No
HOUSE 2	Proposed	Development Plan	Development Plan Satisfied?
Northern primary setback	Building setback 4.3 metres to 9.7 metres from the boundary due to the alignment of the Road (Court).	The building should be setback in-line with the setback of the adjacent building with a frontage to the same street. The western adjacent building, 2 Warwick Court, is setback 10 metres from the street boundary.	No

### 3. Public Notification

The proposal was subject to a Category 2 public notification. A total of three statement of representations were received, to which the concerns are summarised as follows:

- K J Baulderstone of 3 Warwick Avenue, North Brighton;
  - B C Lawton of 2 Warwick Court, North Brighton; and
  - M and A O’Grady of 4 Warwick Court, North Brighton.
- 
- Over-development of the site;
  - The second storey not being contained within the roof form;
  - Driveway access issues given the narrow nature of the street;
  - Non-compliance with the site coverage requirements;
  - Insufficient side wall setbacks;
  - Non-compliance with visual privacy requirements;

- The combination of multiple ‘minor’ non-compliances was viewed by the panel as contributing to a single major non-compliance;
- Residential Development Objectives 1 (p76) “Safe, convenient, pleasant and healthy-living environments that meet the full range of needs and preferences of the community”;
- Overshadowing impacts to adjoining residences;
- Privacy will be compromised by front balcony; and
- The application is at variance with the desired character and zone provisions.

*Refer to Attachment 4*

The applicant has sought the services of Heynen Planning Consultants to provide a written reply to the statements of representations received. Heynen Planning replied stating that several of the matters raised within the representations relate to “complying” aspects of the development and are therefore “not open” for assessment against the Development Plan in the conventional matter. The issue of primary setbacks was clarified in a letter dated 23 August by Gregg Jenkins of Heynen Planning Consultants (Refer to Attachment 3).

#### 4. Development Assessment

RESIDENTIAL CODE CHECKLIST	COMPLIES			
<b>Site Area</b>				
If the Development Plan specifies a minimum site area, is it met?	✓			
<b>Site Frontage</b>				
If the Development Plan specifies a minimum site frontage, is it met?	✓			
<b>Primary Street (i.e. front) Setback</b>				
Nearer to an existing boundary of the primary street for the dwelling than any distance that applies in respect of setbacks under the relevant Development Plan in relation to any road or portion of a road that constitutes the primary street frontage; or more than 1 metre in front of—		✓		
<ul style="list-style-type: none"> <li>• The average setbacks of any existing dwellings on any adjoining allotments with the same primary street frontage (or, if there is only 1 such dwelling, the setback of that dwelling); or</li> <li>• If, on any adjoining allotments with the same primary street frontage, there are only existing buildings other than dwellings—the average setbacks of the buildings (or, if there is only 1 such building, the setback of that building); or</li> </ul>				Primary setback to be assessed “on merit” pursuant to Section 35(1c) of the Development Act, 1993
<b>Secondary Street (i.e. side or rear) Setback</b>				
Is the dwelling setback at least as far from the secondary street frontage as the lesser of:			✓	
<ul style="list-style-type: none"> <li>• 900mm; or</li> <li>• The average setback of any existing building(s) on either of the adjoining sites having frontage to the same street?</li> </ul>				
<b>Rear setback for sites ≤ 300m<sup>2</sup> in area</b>				
Is the ground floor setback at least 3m from the rear boundary?			✓	
Is any other floor setback at least 5m from the rear boundary?			✓	
<b>Rear setback for sites &gt; 300m<sup>2</sup> in area</b>				
Is the ground floor setback at least 4m from the rear boundary?	✓			
Is any other floor setback at least 6m from the rear boundary?	✓			

RESIDENTIAL CODE CHECKLIST	COMPLIES			
<b>Side Setback</b>				
Is the dwelling setback at least 900mm from at least one boundary?	✓			
For any side wall exceeding 3m in height, is the side setback equal to 900mm + 1/3 of the remaining height over 3m (from top of the footings)?	✓			
For south facing side wall (other than to a secondary street), if there is an upper storey component, is it setback a distance equivalent to that required by the above <u>plus</u> 1m?			✓	
<b>For any wall on a side boundary</b>				
Is the wall $\leq$ 3m from the top of the footings?	✓			
Is the wall $\leq$ 8m in length?	✓			
Is the total wall length of the walls on that side boundary $\leq$ 45% of the length of the boundary (disregarding the distance of any front setback)?	✓			
Is a clearance of $\geq$ 3m provided between the proposed wall and any other wall or structure located along the boundary?	✓			
<b>Height</b>				
Is every part of the dwelling $\leq$ 9m in height (from the top of the footings)?	✓			
Are the walls $\leq$ 6m in height (from the top of the footings)?	✓			
<b>Private Open Space</b>				
<i>NOTE: Private open space excludes any area covered by buildings (dwelling, verandah, outbuildings, sheds), any area at the front of the dwelling and any area at ground level that is &lt; 2.5m in width. Balconies may be included if <math>\geq</math> 2m in width.</i>				
Is private open space provided for the site that: <ul style="list-style-type: none"> <li>• For sites &lt; 300m<sup>2</sup> is at least 24m<sup>2</sup> in area with a minimum dimension of 3m?</li> <li>• For sites 300m<sup>2</sup> - 500m<sup>2</sup> is at least 60m<sup>2</sup> in area with a minimum dimension of 4m?</li> <li>• For sites &gt; 500m<sup>2</sup> is at least 80m<sup>2</sup> in area with a minimum dimension of 4m?</li> <li>• For all sites is at least 24m<sup>2</sup> in area situated at the rear or side of the dwelling and with access directly from a habitable room?</li> </ul>	✓			
<b>Upper Storey Windows</b>				
Where any upper storey window faces a side or rear boundary (other than in relation to a boundary adjoining a road or reserve that has a width exceeding 15m): <ul style="list-style-type: none"> <li>• Is the sill height less than 1.5m above the Finished Floor Level?</li> <li>• Is any part of the window that is below 1.5m from the Finished Floor Level fitted with permanent obscure glazing AND (if capable of opening) is it a top hinged awning window with maximum opening limited to 200mm?</li> </ul>	✓			
<b>Upper Storey Balconies and Terraces</b>				
Do any upper storey balconies or terraces face onto a road or reserve that is at least 15m wide where it faces the dwelling?	✓			
<b>Garages and Carports</b>				
Will any proposed garage/carport: <ul style="list-style-type: none"> <li>• Be setback at least 5.5m from the primary street (i.e. front) boundary?</li> <li>• Be setback at least as far as the dwelling line facing the primary street?</li> <li>• Have opening(s) for vehicle access that total &lt; 7m in width?</li> <li>• If located so as to provide vehicle access from an alley, lane or right of way, is the route &gt; 6.2m along the boundary of the allotment?</li> <li>• Utilise an existing or authorised driveway access or crossover point?</li> <li>• Utilise a driveway with a gradient &lt; 1:5 in any place and 1:8 average?</li> </ul>	✓			

RESIDENTIAL CODE CHECKLIST	COMPLIES			
<b>Parking</b>				
If a 1 bedroom dwelling, is there a minimum of 1 car parking space that is (or can be) enclosed or covered?			✓	
If a 2 or more bedroom dwelling, is there a minimum of 2 car parking spaces with at least 1 that is (or can be) enclosed or covered?	✓			
<b>Windows to Primary Street</b>				
Is there at least 1 habitable room window that faces the primary street?	✓			
<b>Site Coverage</b>				
Is the total roofed area of the buildings on the site $\leq$ 60% of the total site area?	✓			
<b>Cut and Fill</b>				
The development does not involve excavation or fill exceeding a vertical height of 1 metre and if the development includes both excavation and filling, the total combined excavation and filling must not exceeds a vertical height of 2 metres.	✓			
<b>Services</b>				
Does there exist for the purpose of a dwelling, at least to a point immediately adjacent to the allotment, the availability of connections to: <ul style="list-style-type: none"> <li>• Permanent water supply (i.e. drinking standard) water?</li> <li>• A sewerage or waste control system which complies with the Public and Environmental Health Act 1987 and is installed in a manner approved by the council?</li> <li>• Permanent electricity supply?</li> </ul>	✓			

The following table contains an assessment of the proposal against the relevant primary setback provision in the Holdfast Bay (City) Development Plan consolidated 2 June 2016:

#### HOLDFAST BAY (CITY) DEVELOPMENT PLAN – ASSESSMENT

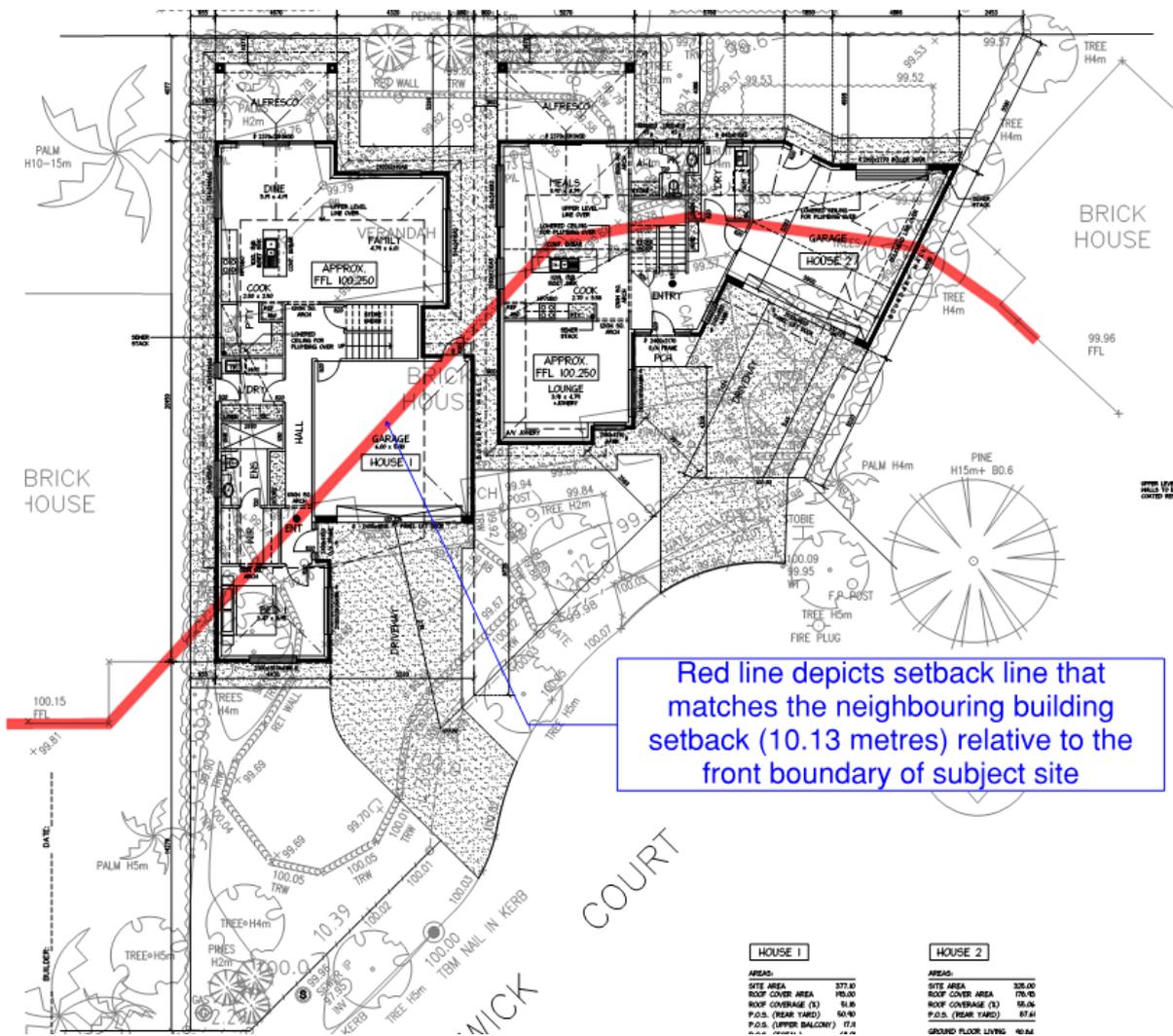
Residential Development		
<p>19. Except where specified in a particular zone, policy area or precinct or <b>Residential High Density Zone</b>, the main face of a building should be set back from the primary road frontage in accordance with the following table: <b>Setback difference between buildings on adjacent allotments with frontage to the same primary street</b></p> <p>Up to 2 metres</p> <p>Greater than 2 metres</p>	<p><b>Setback of new building</b></p> <p>The same setback as one of the adjacent buildings, as illustrated below:</p> <p>At least the average setback of the adjacent buildings.</p>	Does not comply

## 5. Summary of Assessment

### Northern Primary Street Setback

The subject site is unique in that it is located on a small Court which accommodates only four dwellings. Further, the nature of the Court is such that the road, and therefore front property boundary has an irregular alignment, resulting in site dimensions and shapes that are not conventional (i.e. a rectangular shaped allotment, as is most often found within the locality). The Development Plan guidelines, and specifically those associated with street setbacks, are generally designed for a conventional site with a straight and uniform road and front boundary alignment. Where a development is found on a more unconventional site, such as in the case of this proposal, it is reasonable for primary street setback guidelines to be viewed in conjunction with the characteristics of the subject land. In the case of the subject land, the Court has an irregular alignment, thus there is a notable visual break with respect to building siting relative to the street boundary.

When strictly considering the Development Plan guidelines, the proposed dwellings should be setback in-line with the western and eastern adjoining dwellings. The figure below contains the allotments with a red line superimposed showing the setback distance required to satisfy PDC 19 of General Section Residential Development provisions.



It is considered unreasonable for any new dwellings to be setback in line with the adjoining dwellings given the circumstances of the unorthodox shaped allotments and nature of Warwick Court. The proposed buildings are setback anywhere between 4.3 and 14.3 metres, as a direct result of the alignment of the road and allotment boundary. When considering the position of the proposed dwellings as viewed from Warwick Avenue, their visual dominance is diminished as a result of the alignment of the Court. Finally, the Court does not have a strong street setback character, highlighted by the fact that number 2 is setback some 10 metres, number 3 is setback some 22 metres and number 4 is setback between approximately 5 and 20 metres from the street boundary.

### Conclusion

When assessed against the relevant provisions of the Development Plan and having regard to the context of the locality and the nature of the proposed development, it is considered that the proposal on balance satisfies the relevant provisions of the Development Plan. Accordingly, the proposal warrants Development Plan Consent subject to conditions.

**6. RECOMMENDATION**

1. The proposed development is NOT seriously at variance with the policies in the Development Plan.
2. Following a detailed assessment of the proposal against the provisions of the Holdfast Bay (City) Development Plan, the Development Assessment Panel resolves to grant Development Plan Consent to Development Application 110/00637/18 for the construction of a pair of two storey dwellings with integral garages located on each respective western side boundary at 1 Warwick Court, North Brighton, subject to the following conditions:

**PLANNING CONDITIONS:**

1. That the design and siting of all buildings and structures and site works shall be as shown on the plans prepared by GSD Design for Rossdale Homes, Job No. 17234 submitted to and approved by Council unless varied by any subsequent conditions imposed herein.
2. That construction shall take place between 7am and 7pm Monday to Saturday and not on Sundays or public holidays. All such work shall be undertaken in such a manner so as not to, in the reasonable opinion of Council, cause any nuisance or annoyance to any of the occupiers of buildings within the locality. Any work outside of these hours requires the written approval of Council.