

Members – Council Assessment Panel  
**CITY OF MARION**



**NOTICE OF  
COUNCIL ASSESSMENT PANEL MEETING**

Notice is hereby given that a Council Assessment Panel Meeting will be held:

**Wednesday 01 February 2023**

**Commencing at 6.30 p.m.**

**Council Chamber**

**Council Administration Centre**

**245 Sturt Road, Sturt**

A copy of the Agenda for the meeting is attached. Meetings are open to the public and interested members of the community are welcome to attend. Access to the CAP Meeting is via the main entrance to the Administration building, 245 Sturt Road, Sturt.

A handwritten signature in blue ink, appearing to read "Wardle", followed by a horizontal line.

**KAI WARDLE  
ON BEHALF OF THE  
ASSESSMENT MANAGER**

25 January 2023

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**CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 01 FEBRUARY 2023  
COMMENCING AT 6.30PM**

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**1. MEETING PROCEDURES**

**1.1 OPEN MEETING**

**1.2 PRESENT**

**1.3 APOLOGIES**

**1.4 IN ATTENDANCE**

**2. GENERAL OPERATIONS**

No items listed for discussion.

**3. DEVELOPMENT ACT 1993 APPLICATIONS**

**NO ITEMS LISTED FOR DISCUSSION**

**4. PDI ACT APPLICATIONS**

**4.1 DEVELOPMENT NO 22034359**

**15 GARDINER AVENUE WARRADALE SA 5046**

**TWO STOREY DETACHED DWELLING**

Report Reference: CAP010223 - 4.1.....2

**4.2 DEVELOPMENT NO 22020483**

**479 MARION RD SOUTH PLYMPTON SA 5038**

**THREE TWO STOREY GROUP DWELLINGS**

Report Reference: CAP010223 - 4.2.....17

**5. APPEALS UPDATE**

**5.1 APPEALS AGAINST PANEL DECISIONS**

Verbal Update Provided

**5.2 APPEALS AGAINST DELEGATED APPLICATIONS**

Verbal Update Provided

**6. POLICY OBSERVATIONS**

No items listed for discussion

**7. OTHER BUSINESS**

- Delegated powers of Assessment Panel as a Relevant Authority under the Planning, Development and Infrastructure Act 2016 to Assessment Manager
- Amended General Operating Procedures

**8. CONFIRMATION OF THE COUNCIL DEVELOPMENT ASSESSMENT PANEL MEETING HELD ON 01 FEBRUARY 2023**

**9. MEETING CLOSURE**

**2. GENERAL OPERATING PROCEDURES  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 01 FEBRUARY 2023**

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No items listed for discussion.

**REPORT REFERENCE: CAP010223 – 4.1  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 1 FEBRUARY 2023**



<b>Originating Officers:</b>	<b>Nick Lupo</b> Development Officer – Planning <b>Kai Wardle</b> Acting Team Leader – Planning
<b>Applicant:</b>	<b>Williams Building Group Pty Ltd t/a G.J. Gardner Homes</b> <b>Adelaide Northeast</b>
<b>Development Description:</b>	<b>Two Storey Detached Dwelling</b>
<b>Site Location:</b>	<b>15 Gardiner Avenue, Warradale, SA 5046</b>
<b>Zone &amp; Policy Area:</b>	<b>General Neighbourhood Zone</b>
<b>Lodgement Date:</b>	<b>27/10/2022</b>
<b>Planning and Design Code:</b>	<b>27 October 2022 Version 2022.20</b>
<b>Referrals:</b>	<b>Internal - Development Engineer</b>
<b>Application Type:</b>	<b>Performance Assessed</b>
<b>Delegations Policy:</b>	<b>Instrument of Delegation – CAP, Clause 5.1.1.1</b> <i>The delegation of the power to grant or refuse planning consent pursuant to Section 102(1)(a) of the Act is limited to applications in relation to which: Any Performance Assessed application that has undergone Public Notification where at least one representor has expressed opposition to the proposed development and has expressed their desire to be heard by the Panel.</i>
<b>Public Notification</b>	<b>Public Notification required</b> <i>General Neighbourhood Zone, Table 5, Clause 3(f) dwelling, except development that:</i> <ol style="list-style-type: none"><li><i>1. does not satisfy General Neighbourhood Zone DTS/DPF 4.1; or;</i></li><li><i>2. involves a building wall (or structure) that is proposed to be situated on (or abut) an allotment boundary (not being a boundary with a primary street or secondary street or an excluded boundary) and:</i><ol style="list-style-type: none"><li><i>(b) the height of the proposed wall (or post height) exceeds 3m measured from the top of footings (other than where the proposed wall (or post) abuts an existing wall or structure of greater height on the adjoining allotment).</i></li></ol></li></ol>
<b>Application No:</b>	<b>22034359</b>
<b>Recommendation:</b>	<b>That Planning Consent be GRANTED subject to Conditions</b>

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**Appendices**

*Appendix 1: Planning and Design Code guidelines*

**Attachments**

*Attachment I: Certificate of Title*

*Attachment II: Proposal Plan and supporting documentation*

*Attachment III: Statement of Representations*

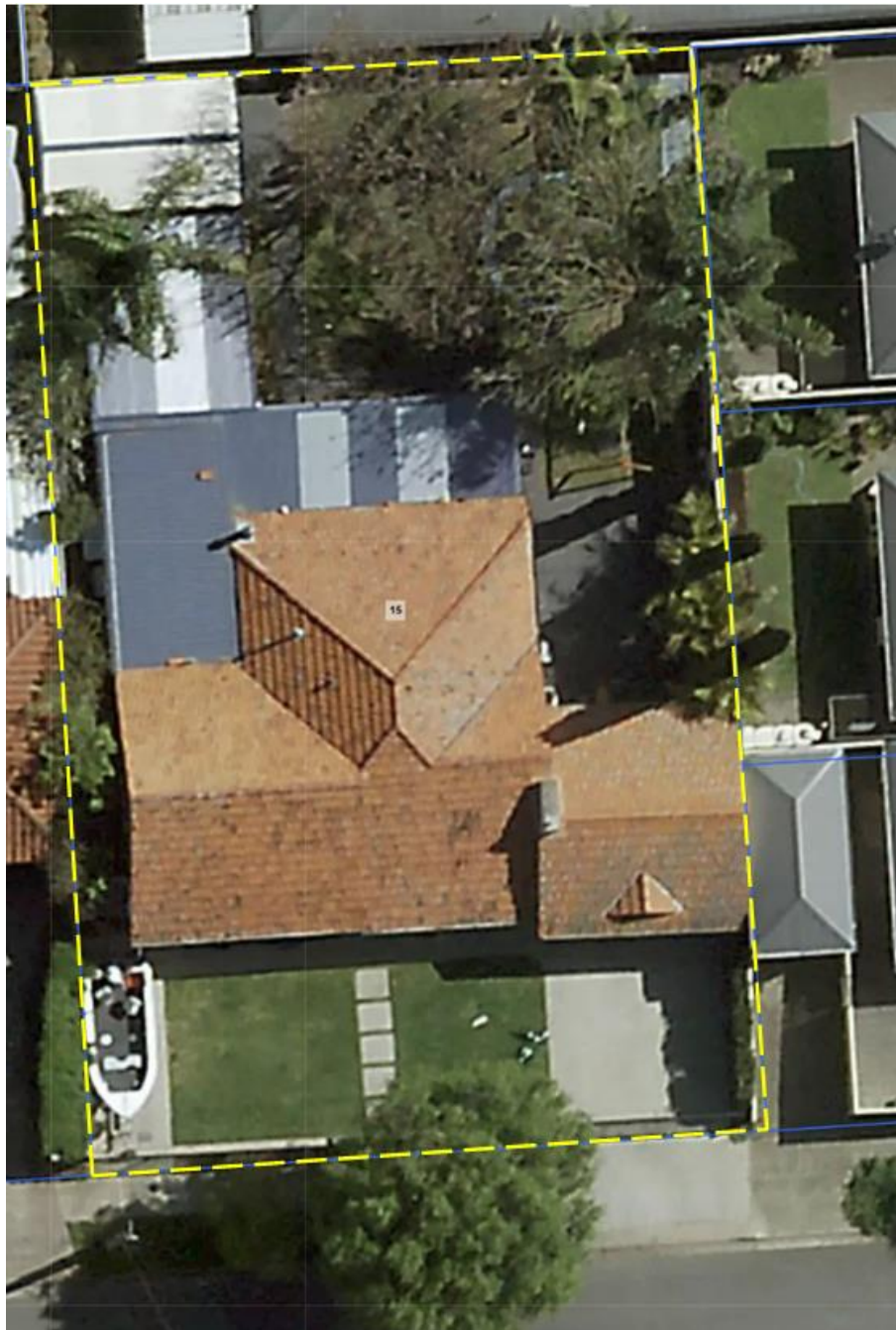
*Attachment IV: Applicant's Response to Representations*

## SUBJECT LAND

The subject land comprises the property at 15 Gardiner Avenue, Warradale. The subject land currently accommodates an existing single storey detached dwelling on a large allotment, with ancillary development in the form of an outbuilding and verandahs.

The land obtains access from Gardiner Avenue via an existing double width crossover on the eastern side of the frontage. The existing dwelling's garage presents a gable end boundary wall to the eastern boundary. Vegetation within the rear yard is not identified as regulated or significant.

The subject land is a standard rectangular shape, typical of older dwelling stock, with a width of 20.42 metres, and a depth of 32.92 metres, totalling a site area of 672 square metres. The land is generally flat.





## LOCALITY

The locality is residential in nature, with a mix of older detached dwellings on large allotments. This character is gradually changing, owing to redevelopment in the form of newer dwellings on typically smaller, subdivided allotments in the form of detached, semi-detached, and row dwellings. The locality is generally flat.

Nearby amenities include the Warradale Park Reserve immediately to the east, and local shops approximately 250 metres to the south on Sturt Road. Public transport in the broader area includes bus services on Sturt and Morphett Roads, as well as the Warradale Railway Station approximately 700 metres to the north. Marion Shopping Centre is approximately 500 metres to the east.

The subject site and locality can be viewed via this [Google Maps link](#).



## **PROPOSED DEVELOPMENT**

The proposal seeks the construction of a two-storey detached dwelling upon the existing site. Specifically, the dwelling comprises the following internal inclusions:

- Entry hallway and stairwell
- 4 bedrooms
- 1 lounge room
- 1 home office
- 4 bathrooms
- Open plan family/dining/kitchen with void to upper level
- Upper storey retreat
- Scullery, laundry, and walk-in linen closet
- Double garage
- Rear alfresco, front porch and balcony

## **PROCEDURAL MATTERS**

### **Classification**

The subject application is Performance Assessed by virtue of the proposed development not being listed within an Accepted, Deemed to Satisfy or Restricted classification under the Planning and Design Code.

### **Categorisation**

The proposal incorporates a wall height exceeding 3 metres from the footings upon the eastern boundary; and the proposal's maximum building height is 9.52 metres. Dwellings are not excluded from Notification where the building height exceeds the maximum of 9 metres sought by Zone DTS/DPF 4.1, or where the height of a boundary wall exceeds 3 metres in height from the footings of the dwelling.

Having regard to the built form, including the two storey nature of the dwelling, and surrounding dwellings and locality, and the manner in which the development relates to the locality, Council administration were of the view that the proposal was not of a minor nature.

As such, the development was processed in accordance with the Act.

After public notification concluded, the applicant has made amendments to decrease the height of the proposed boundary wall from 3.44 to 2.7 metres from footings for most of its length.

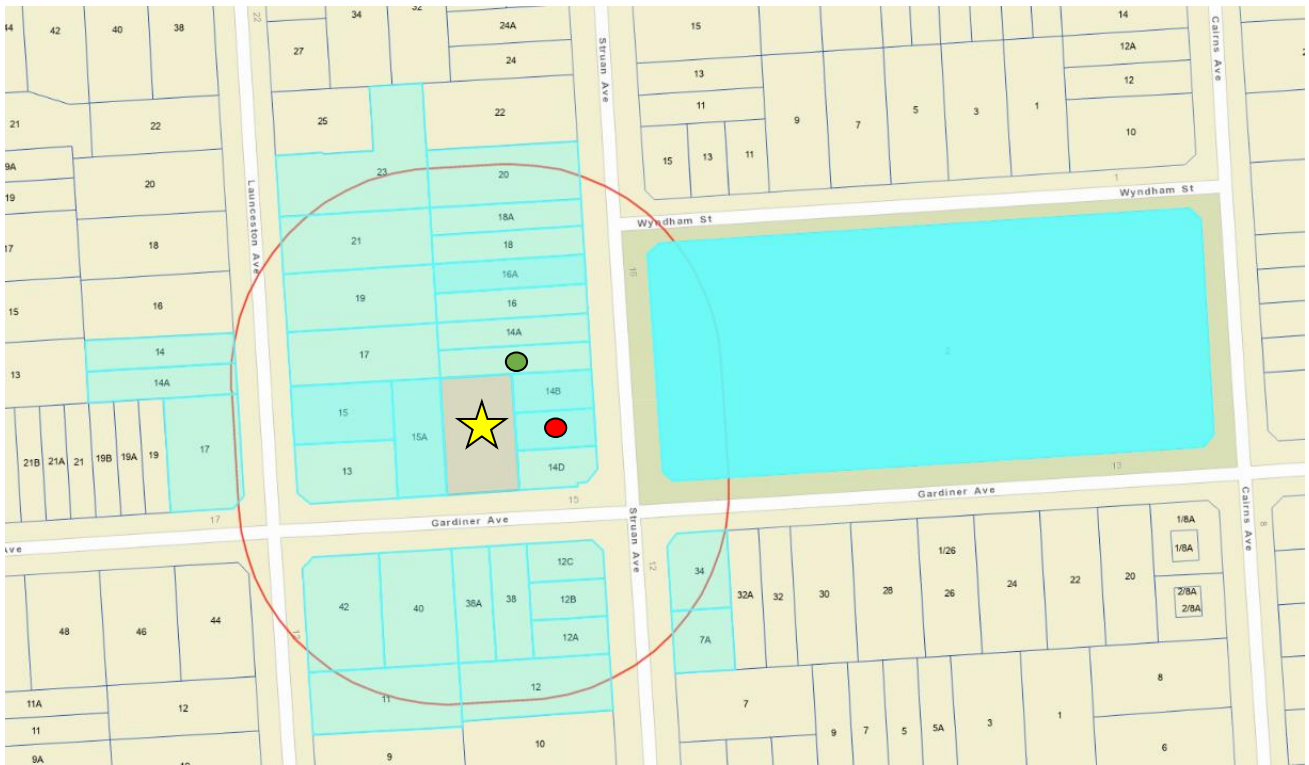
### **Referrals**

### **Development Engineer**

Council's Development Engineer has reviewed the application plans and advised they are satisfied with the proposed FFL height of 100.60.



**PUBLIC NOTIFICATION**



<b>Properties Notified</b>	32 properties notified	
<b>Representations</b>	2 received	
	1 support the development	
	1 oppose the development	
<b>Representations received</b>	<div>1. Particia Mansfield of 14 Struan Avenue, Warradale</div> <div>2. 'The Occupier' of 14C Struan Avenue, Warradale</div>	<div>Wish to be heard</div> <div>X</div> <div>✓</div>
<b>Applicant Response</b>	A response by the applicant is included within the Report attachments.	

## Approach to Assessment

Part 1 – Rules of Interpretation of the Planning and Design Code (the Code) provides clarity on how to interpret the policies in the Code. Of particular note, 'Designated Performance Features' (DPF) assist Councils to interpret Performance Outcomes (PO).

The Rules of Interpretation clearly state that a DPF provides a guide but does not need to necessarily be satisfied in order for a certain development to meet the PO – i.e. the outcome can be met in another way:

***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.***

(underline my emphasis)

A DPF provision should not be interpreted as quantitative requirements, instead they simply present one way in achieving the corresponding PO. There can be variation from DPF policies, and not just in a minor way. Emphasis should be placed on satisfying the qualitative Performance Outcome in the circumstances where a specified DPF is not met.

It is with the above approach in mind that I have assessed this development.

## ASSESSMENT

Part 1 - Rules of Interpretation of the Code advises that for each Zone, Table 3 specifies the policies and rules that apply to classes of development within the zone. I note:

***The policies specified in Table 3 constitute the policies applicable to the particular class of development within the zone to the exclusion of all other policies within the Code, and no other policies are applicable.***

***For the avoidance of doubt, the relevant authority may determine that one or more of the listed policies are not relevant to a particular development.***

The Code policies applicable to this development can be reviewed in Appendix 1.

In my view the most pertinent planning considerations for this assessment relate to:

- Building siting and height
- Design and appearance
- Visual impact and amenity

Policies relating to the above planning considerations are found in the Zone, Overlays and General sections of the Code.

## ZONE CONSIDERATIONS

*General Neighbourhood Zone: DO 1, PO 1.1, PO 2.1, PO 3.1, PO 4.1, PO 5.1, PO 7.1, PO 8.1, PO 9.1*

## OVERLAY CONSIDERATIONS

*Affordable Housing Overlay: PO 1.1*

*Airport Building Heights (Regulated) Overlay: DO 1, PO 1.1*

*Hazards (Flooding – General) Overlay: DO 1, PO 2.1*

*Stormwater Management Overlay: DO 1, PO 1.1*

*Traffic Generating Development Overlay: DO 1, DO 2, PO 1.1, PO 1.2, PO 1.3*

*Urban Tree Canopy Overlay: DO 1, PO 1.1*

## GENERAL DEVELOPMENT POLICIES CONSIDERATIONS

*Clearance from Overhead Powerlines: DO 1, PO 1.1*

*Design in Urban Areas: DO 1, PO 8.1, PO 8.5, PO 10.1, PO 10.2, PO 17.1, PO 17.2, PO 20.1, PO 20.2, PO 20.3, PO 21.1, PO 21.2, PO 22.1, PO 23.1, PO 23.2, PO 23.3, PO 23.4, PO 23.5, PO 23.6, PO 24.1*

*Infrastructure and Renewable Energy Facilities: DO 1, PO 11.2, PO 12.1, PO 12.2*

*Interface between Land Uses: DO 1, PO 3.1, PO 3.2, PO 3.3*

*Site Contamination: DO 1, PO 1.1*

*Transport, Access and Parking: DO 1, PO 5.1*

Quantitative Snapshot			
Existing Site Features			
Site Area	672sqm		
Frontage Width	20.42m		
Depth	32.92m		
Proposed Elements			
Element	Suggested DPF	Proposed	Comment
Site Coverage	60%	42% (282sqm)	
Building Height	9m	9.55m (8.8+0.75)	
Wall Height	7m	5.85m	
Primary Street Setback	6.39m (Western adjoining dwelling minus 1m)	5.75m (7.07m garage)	
Side Setbacks	0.9m	4.4m min west; 1.88m east	
Side Setbacks (Upper)	1.85m	4.4m min west; 2.53m east	
Rear Setback	4m	6.38m min	
Rear Setback (Upper)	6m	6.38m min	
Wall on Boundary	Height (from footings): 3m Length: 11.5m Total length (% of boundary): 45%	Height: 3.44m at front parapet; 2.7m for remainder Length: 8.29m Total length (% of boundary): 25%	
Private Open Space	60sqm	276sqm	
Soft Landscaping	25%	39.6%	
Soft Landscaping forward of dwelling	30%	49.4%	

*Note: As the application is 'Performance Assessed', satisfaction of the suggested DPF is 'one way' of achieving the corresponding 'Performance Outcomes'.*

## **Building Siting and Built Form**

### **Building Siting**

General Neighbourhood Zone, Desired Outcome 1 seeks the following:

**Low-rise, low and medium-density housing that supports a range of needs and lifestyles located within easy reach of services and facilities. Employment and community service uses contribute to making the neighbourhood a convenient place to live without compromising residential amenity.**

The proposal is for a low-rise, two-storey detached dwelling on an existing allotment. Whilst the proposal is of greater height than the existing single storey dwelling, the proposal maintains a low-rise nature and a low density as defined by the Planning and Design Code.

General Neighbourhood Zone, Performance Outcome 4.1 seeks the following:

**Buildings contribute to a low-rise suburban character.**

'Low-rise' is defined by the Planning and Design Code as 'up to and including 2 building levels'. The proposed building's two storey form contributes to a low-rise suburban character and will be compatible with the height of other two storey dwellings within the locality, despite the proposed maximum building height of 9.52 metres exceeding the maximum guideline of 9 metres sought by Zone DTS/DPF 4.1.

The maximum 'building height' as defined by the Planning and Design Code requires measurement from the lowest point of natural ground level beneath the footprint of the proposed dwelling (99.85), and the highest point of the proposed dwelling (roof peak). The proposed dwelling's roof peak is centralised above the built form with a typical hipped roof pitch, and therefore is well separated from adjoining properties. Proposed maximum wall heights of are below the maximum guideline of 7 metres sought by Zone DTS/DPF 4.1.

General Neighbourhood Zone, Performance Outcome 5.1 seeks the following:

**Buildings are setback from primary street boundaries to contribute to the existing/emerging pattern of street setbacks in the streetscape.**

The proposal incorporates a minimum front setback of 5.75 metres, stepping to 7.07 metres for the eastern half, comprising garage and upstairs Bedroom 4. The front porch and balcony project forwards of the building line to 4.35 and 4.5 metres.

The immediate streetscape comprises varied setbacks to Gardiner Avenue, and is a mixture of original and redeveloped dwelling stock. Within the immediate streetscape, the subject land forms one of only two properties with a primary frontage on the northern side of Gardiner Avenue, wedged in between two secondary street frontages. The eastern adjoining dwellings face Struan Avenue, with 14D Struan Avenue demonstrating a secondary street setback to Gardiner Avenue of approximately 2.7 metres to the dwelling and 5 metres to the carport. The majority of its Gardiner Avenue frontage comprises privacy fencing on the road boundary. The western adjoining dwelling at 15A Gardiner Avenue is an established dwelling with a front setback of approximately 7.9 metres. To its western side is another secondary street frontage (of 13 Launceston Avenue), with privacy fencing and minimal setbacks to outbuildings facing Gardiner Avenue. Dwellings on the opposite side of Gardiner Avenue demonstrate front setbacks of between approximately 6 to 9 metres, and a secondary street frontage to a new two storey dwelling and double carport of between 0.6 and 2.9 metres with privacy fencing.

In considering the Performance Outcome, it is pertinent to note that the front setback should contribute to the existing or emerging pattern of setbacks. The front setback character of the locality is undergoing change, with newer, redeveloped dwellings typically involving lesser front setbacks than original dwelling stock. This forms the 'emerging' front setback pattern within the street. Several dwellings within the nearby streetscape possess front setbacks of approximately 5 to 6 metres, similar to the 5.75 to 7.07 metres proposed in the subject application. Subsequently, the proposed front setback contributes to the emerging pattern of front setbacks, while remaining compatible with the existing and original front setbacks within the streetscape.

General Neighbourhood Zone, Performance Outcome 8.1 seeks the following:

**Building walls are set back from side boundaries to provide:**

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

General Neighbourhood Zone, Performance Outcome 9.1 seeks the following:

**Dwelling walls are set back from rear boundaries to provide:**

- (a) separation between dwellings 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.**

The proposed building provides adequate side and rear setbacks on ground and upper levels to provide adequate space between buildings consistent with a suburban character while retaining access to natural light and ventilation.

The side setbacks are particularly generous to the western side boundary, while are also above the minimum DPF guidelines to the eastern side boundary. Both side setbacks will ensure that overshadowing caused to adjoining properties is not unreasonable in context of Interface between Land Uses criteria (assessed in greater detail in the Overshadowing section of this report).

The rear setback allows adequate space for private open space and vegetation, as evident in the quantitative assessment above where the private open space and soft landscaping provided exceed minimum DPF guidelines by some margin. Accordingly, it is my view the proposed setbacks are considered appropriate.

**Boundary Wall**

General Neighbourhood Zone, Performance Outcome 3.1 seeks the following:

**Building footprints allow sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.**

General Neighbourhood Zone, Performance Outcome 7.1 seeks the following:

**Dwelling boundary walls are limited in height and length to manage visual and overshadowing impacts on adjoining properties.**

The proposal incorporates a boundary wall which exceeds 3 metres in height for a small portion limited to the front parapet return only. The front parapet height is 3.4 metres, with a return length of only 0.6

metres, and located adjacent to the neighbouring boundary carport. The proposed boundary wall is otherwise a DPF compliant 2.7 metres in height (from footings).

The exposed part of the boundary wall is limited to a length of 4.2 metres, which comprises approximately 39% of the width of 14C Struan's rear boundary. The exposed wall location faces the southern corner of 14C Struan's private open space, facing towards the rear of 14C Struan's laundry, and mostly to the side of its main rear outlook from within its living area. The boundary wall height of 2.7 metres (from footings) – or approximately 3 metres from neighbouring ground level – is appropriate. While the wall will impose some visual impact, a reasonable level of visual amenity and outlook for 14C Struan's private open space is considered to be maintained in a north-westerly direction, around the proposed boundary wall.



*Above: Approximate length of the proposed boundary wall (indicated with red line), viewed in context of 14C Struan's private open space.*

The overshadowing impacts caused directly by the proposed boundary wall will be limited to the south-western portion of 13C Struan's private open space directly adjacent to the wall, and commence only in afternoon hours.

## **Design and appearance**

### **Front Façade**

Design in Urban Areas, Performance Outcome 17.1 seeks:

**Dwellings incorporate windows facing primary street frontages to encourage passive surveillance and make a positive contribution to the streetscape.**

Design in Urban Areas, Performance Outcome 20.2 seeks:

**Dwelling elevations facing public streets and common driveways make a positive contribution to the streetscape and the appearance of common driveway areas.**

Design in Urban Areas, Performance Outcome 17.2 seeks:

**Dwellings incorporate entry doors within street frontages to address the street and provide a legible entry point for visitors.**



The proposal presents a mix of materials and a high level of fenestration and articulation facing the primary street. A combined porch and balcony projects forwards of the building line and will comprise feature stonework for material variety. The garage incorporates a panel lift door and parapet walls to match the remainder of the façade. The fenestration provided to the front façade enables passive surveillance of the public realm and punctuates front walls. The proposed mix of materials, articulation, and fenestration are considered to combine to positively contribute to the streetscape.

### **Visual impact, Overshadowing, and Overlooking**

Interface between Land Uses, Desired Outcome 1 seeks:

**Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.**

It should be acknowledged that any development – particularly two-storey development – will inevitably result in some amenity impacts upon adjacent property owners. The Planning and Design Code anticipates some degree of impacts to occur with reasonable residential development.

The proposal overall appropriately mitigates adverse visual and amenity impacts upon adjacent property owners and occupiers through a reasonable low-rise building height and form, paired with suitable side and rear setbacks to appropriately mitigate unreasonable visual impact.

In summary, Interface between Land Uses Performance Outcomes 3.1 to 3.3 seek the following in regards to overshadowing:

- Minimisation of overshadowing of habitable rooms of adjacent properties to ensure access to direct winter sunlight.
- Minimisation of overshadowing of the primary area of private open space of adjacent residential properties to ensure access to direct winter sunlight.
- Development to not unduly reduce the generating capacity of adjacent rooftop solar energy facilities.

Considering the proposed overshadowing of adjacent habitable room windows and private open spaces, it should be acknowledged that the proposed dwelling's side setbacks exceed the minimum DPF guidelines. This indicates that the proposal has sought to mitigate overshadowing of the adjacent properties to the east and west. As side adjoining properties are situated to the east and west respectively, overshadowing impacts caused will only occur in either the morning or afternoon respectively. Overshadowing impacts to the north-facing habitable room windows and private open spaces of side adjoining properties are estimated to comply with DPF guidelines.

The western adjoining dwelling contains eight rooftop solar panels, which are oriented north and located approximately 4 metres from the side boundary with the subject land. The proposed western side setback of between 4.4 to 6.9 metres substantially exceeds minimum DPF guidelines and suitably minimises impacts on the adjoining rooftop solar panels. There are no rooftop solar panels on eastern adjoining dwellings.

Accordingly, I am of the view the proposal appropriately mitigates overshadowing impacts upon adjacent property owners.

## **CONCLUSION**

The proposal seeks to construct a two-storey detached dwelling on an existing residential allotment.

The main considerations attributed to the proposed development relate to building siting, height, design and appearance, visual impact, and overshadowing. The proposal is considered to satisfy a majority of the Desired Outcomes and Performance Outcomes of the Planning and Design Code.

The proposed dwelling appropriately responds to the context of the locality in terms of design and appearance and overall built form. The generous setbacks and attractive façade are considered to be complementary to, and positively contribute to the residential character of the locality.

On balance, the proposed development exhibits sufficient merit when assessed against the relevant Desired Outcomes and Performance Outcomes of the Code. As such it is recommended the application be granted Planning Consent.

## RECOMMENDATION

Having considered all relevant planning matters in relation to the subject development application:

- (a) The Panel notes this report and concur with the findings and reasons for the recommendation;
- (b) The Panel concurs that the proposed development is not seriously at variance<sup>1</sup> to the Planning and Design Code, in accordance with Section 126(1) of the Planning, Development and Infrastructure Act 2016; and
- (c) That Planning Consent for Development Application ID: 22034359 Two Storey Detached Dwelling at 15 Gardiner Avenue, Warradale be GRANTED subject to the following Conditions.

## CONDITIONS

- 1. The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).
- 2. 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).
- 3. Prior to the use and/or occupation of the structure(s), all stormwater from buildings and paved areas shall be disposed of in accordance with the approved plans and details.
- 4. All car parking areas, driveways and vehicle manoeuvring areas must be constructed in accordance with the approved plans and recognised engineering practices prior to the occupation of the premises or the use of the development herein approved and maintained in a good condition at all times.
- 5. 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.
- 6. Any form of development on the property boundary (such as mortar joints on any face brickwork, blueboard material or similar, render etc) shall be finished in a professional manner and to the same standard as the remainder of the subject dwelling.
- 7. All devices/treatments proposed and nominated on the approved plans, and forming part of the Development Application, to protect the privacy of adjoining properties shall be

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<sup>1</sup> Pursuant to Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016* (or Section 35(2) of the *Development Act 1993* for applications under that Act), a “development must not be granted planning consent if it is, in the opinion of the relevant authority, seriously at variance with the Planning and Design Code” (or the Development Plan if under the Development Act).

What is ‘seriously at variance’ is not a defined legislative term and is not synonymous with a proposal that is merely ‘at variance’ with certain provisions of the Code (or Plan), which many applications will be. Instead, it has been interpreted to be an important or grave departure in either quantity or degree from the Code (or Plan) and accordingly not worthy of consent under any circumstances and having the potential to undermine the objectives of the Code (or Plan) for the land or the Zone.

installed and in use prior to occupation of the premises and maintained for the life of the building.

## NOTES

1. The applicant is reminded that Development Approval is required for any retaining wall over one metre in height, any masonry fence over one metre in height, any non-masonry fence (eg colorbond, wood paling, brush etc) over 2.1 metres in height, and any retaining wall with a fence on top with a total height over 2.1 metres in height (measured from the lower of the two adjacent ground levels).
2. The Fences Act 1975 details certain requirements and procedures in order to remove, replace or repair boundary fencing. If you intend to remove or repair an existing boundary fence, you are obligated to give the other affected neighbours 30 days notice to comment and respond as per a "Form 2". If a fence is removed (even if only temporarily) by a neighbour without the consent of the adjoining owner, or without following the procedure under the Fences Act, you may be liable to compensate the other owner.

For more information, please refer to the Legal Services Commission brochure titled "Fences and the Law". Copies are available at Council's Administration Centre, or online at <http://www.lawhandbook.sa.gov.au/ch31s02.php>.

3. As the proposal involves work on or near the boundary, it is recommended that the boundaries are clearly defined by a Licensed Surveyor prior to the commencement of any building work.
4. Any portion of Council's infrastructure damaged as a result of work undertaken on the allotment or associated with the allotment must be repaired/reinstated to Council's satisfaction at the developer's expense.

## **Appendix 1 – Planning and Design Code guidelines**

**REPORT REFERENCE: CAP010223 – 4.1  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 1 FEBRUARY 2023**



<b>Originating Officers:</b>	<b>Kai Wardle Acting Team Leader – Planning</b>
<b>Applicant:</b>	<b>Mr Amrit Sidhu</b>
<b>Development Description:</b>	<b>Three two storey group dwellings</b>
<b>Site Location:</b>	<b>479 Marion Rd, South Plympton, SA 5038</b>
<b>Zone &amp; Policy Area:</b>	<b>General Neighbourhood Zone</b>
<b>Lodgement Date:</b>	<b>23/09/2022</b>
<b>Planning and Design Code:</b>	<b>15 September 2022 Version 2022.17</b>
<b>Referrals:</b>	<b>External - Commissioner of Highways (DIT) Internal - Development Engineer - Council Arborist - Coordinator Transport</b>
<b>Application Type:</b>	<b>Performance Assessed</b>
<b>Delegations Policy:</b>	<b>Instrument of Delegation – CAP, Clause 5.1.1.1</b> <i>The delegation of the power to grant or refuse planning consent pursuant to Section 102(1)(a) of the Act is limited to applications in relation to which:</i> <ol style="list-style-type: none"><li><i>Planning consent is not sought for:</i><ol style="list-style-type: none"><li><i>three or more dwellings (including detached, semi-detached, row and residential flat) where one or more dwelling sites are more than 5% below the minimum site area recommended by the relevant policy in the Code</i></li></ol></li></ol>
<b>Public Notification</b>	<b>Public Notification required</b> <i>General Neighbourhood Zone, Table 5, Clause 3(f) dwelling, except development that:</i> <ol style="list-style-type: none"><li><i>involves a building wall (or structure) that is proposed to be situated on (or abut) an allotment boundary (not being a boundary with a primary street or secondary street or an excluded boundary) and:</i><ol style="list-style-type: none"><li><i>the height of the proposed wall (or post height) exceeds 3m measured from the top of footings (other than where the proposed wall (or post) abuts an existing wall or structure of greater height on the adjoining allotment).</i></li></ol></li></ol>
<b>Application No:</b>	<b>22020483</b>
<b>Recommendation:</b>	<b>That Planning Consent be REFUSED</b>

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**Appendices**

*Appendix 1: Planning and Design Code guidelines*

**Attachments**

*Attachment 1: Plans and supporting documentation*



## SUBJECT LAND

The subject land comprises the property at 459 Marion Road, South Plympton. The subject land currently accommodates an existing single storey detached dwelling on a large allotment, with ancillary development in the form of outbuildings and attached verandahs.

The land obtains access from Marion Road via an existing single width crossover on the northern side of the frontage, which forms a continuous invert with the crossover of the northern adjoining property. The street frontage of the land comprises a brush privacy fence and sliding gate on the front boundary, with established landscaping within the front yard. Vegetation within the property is not identified as regulated or significant, however the rear adjoining property (4 Dawson Avenue) contains a Lilly Pilly (*Acmena smithii*) which is identified as a regulated tree, located near the rear boundary with the subject land.

An existing Council street tree is located within the road verge approximately centrally in front of the land. Other street infrastructure include a stobie pole adjacent to the northern boundary, and a bike lane sign between the street tree and the existing crossover.

The subject land is a standard rectangular shape, typical of older dwelling stock, with a width of 20.11 metres, and a depth of 39.33 metres, totalling a site area of 791 square metres. The land is generally flat with no discernible slope.



## LOCALITY

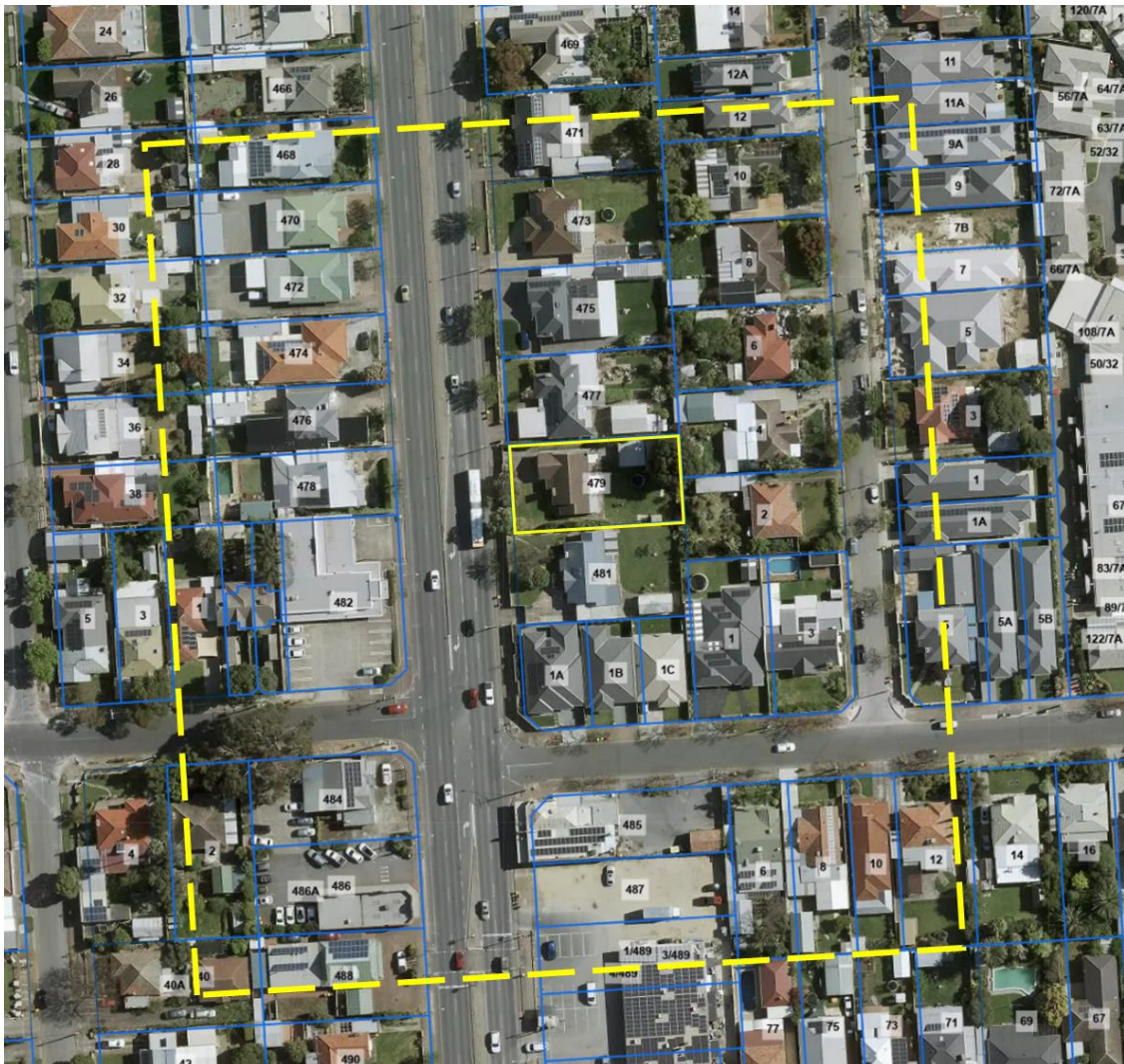
The subject land is in South Plympton, situated on the eastern side of Marion Road, which is a major north-south arterial road.

The locality comprises mostly residential development in the form of original single storey detached dwellings. Some original dwellings on Marion Road have been converted to low scale non-residential uses, while a nearby Employment Zone to the south contains various local-scale non-residential uses including a retail showroom, consulting rooms, restaurants and a block of shops. The surrounding streetscape character is dominated by the arterial road. In nearby side streets, some redevelopment has occurred, typically at higher densities. However, no residential redevelopment has yet occurred within this stretch of the Marion Road streetscape.

The Established Neighbourhood Zone is located just beyond the western edge of the locality, while at the locality's fringe to the east is a large retirement facility: both have limited influence on the pattern of development within the immediate locality and are well removed from the subject streetscape.

The land is within 200 metres of bus stops on Marion Road, and 500 metres south of the nearest tram stop. As mentioned above, several local shops and services are located within the locality, as well as larger centres situated further north and south along Marion Road.

The subject site and locality can be viewed via this [Google Maps link](#).



## PROPOSED DEVELOPMENT

The proposal seeks the construction of three two storey group dwellings upon the existing site. Specifically, the dwellings comprise the following internal inclusions:

- Entry hallway and stairwell
- 4 upstairs bedrooms
- Upstairs retreat
- 2.5 bathrooms
- Downstairs open plan family/dining/kitchen
- Laundry, storage closet or walk-in pantry
- Double garage
- Front porch and balcony

### Dwelling Type

The classification of the proposed development as 'group dwellings' is due to the definition of 'detached dwellings' requiring each dwelling to have 'its own site and [...] a frontage to a public road'. Each dwelling is proposed to share a single access point and shared driveway manoeuvring areas, where each dwelling is at least partly reliant upon area in front of another dwelling. These make the curtilage of each dwelling's site unclear and place reliance upon a shared area abutting the public road frontage which is not exclusive to each dwelling site.

The proposed site plan reinforces this, by showing indicative boundaries of each dwelling's 'site' with dashed lines that show a clear shared area at the front of the development. However, land division has not been included in this application, and so the question of the potential cadastral definition of such shared areas (such as right-of-way easements in a Torrens-titled division; or common property in a Community-titled division) is not applicable to this application.

The definitions of group dwellings and detached dwellings are quoted below for the Panel's reference:

Group dwelling: "...1 of a group of 2 or more detached buildings, each of which is used as a dwelling and 1 or more of which has a site without a frontage to a public road or to a road proposed in a plan of land division that is the subject of a current development authorisation".

Detached dwelling: "...a detached building comprising 1 dwelling on its own site and has a frontage to a public road, or to a road proposed in a plan of land division that is the subject of a current development authorisation."

A planning report prepared by URPS on behalf of the applicant contends that the proposal is for 'detached dwellings in a terrace arrangement' (attached within the plans and supporting documents). Legal advice has been obtained by Council (copies provided to the Panel separately), which concurs with the classification of the proposed development as 'group dwellings'.

In any case, it is my view that the matter of dwelling classification does not substantially affect the merits of the proposal, and does not affect the recommendation of this report. Furthermore, the CAP would remain the relevant authority irrespective of the dwelling classification: if the proposal were hypothetically for 'detached dwellings in a terrace arrangement', the central dwelling site would remain more than 5% undersized against the minimum DTS/DPF site area.



## **PROCEDURAL MATTERS**

### **Classification**

The subject application is Performance Assessed by virtue of the proposed development not being listed within an Accepted, Deemed to Satisfy or Restricted classification under the Planning and Design Code.

### **Categorisation**

The proposal incorporates a wall height which partly exceeds 3 metres from the footings upon both side boundaries. Dwellings are not excluded from Notification where the height of a boundary wall exceeds 3 metres in height from the footings of the dwelling.

Having regard to the built form, including the two-storey nature of the development, the surrounding dwellings and locality, and the manner in which the development relates to the locality, Council administration were of the view that the proposal was not of a minor nature.

As such, the development was processed in accordance with the Act.

### **Referrals**

#### **Commissioner of Highways (DIT)**

A referral to the Commissioner of Highways (DIT) was required due to the proposed access arrangements within the Major Urban Transport Routes Overlay.

DIT have raised no objection to the proposal subject to the imposition of standard conditions.

### **Internal**

#### **Development Engineer**

Council's Development Engineer has reviewed the supplied traffic engineer's documentation and is satisfied in respect to the demonstrated vehicle manoeuvring.

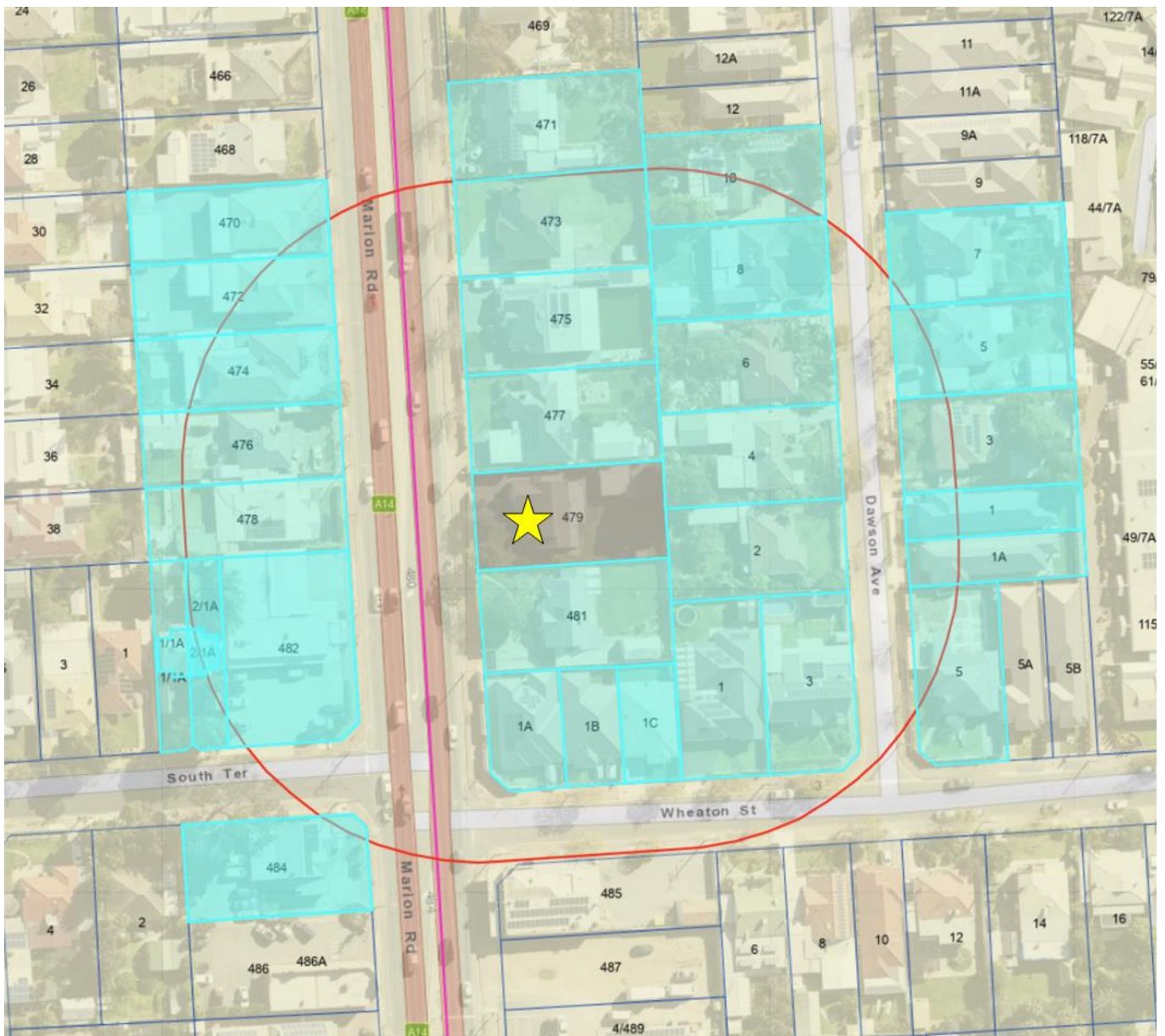
#### **Council Arborist**

Council's Arborist has reviewed the proposed conflict with the existing street tree, and has advised that street tree retention is preferred. The Arborist recommended the applicant consider alternative vehicle access methods, which have not been implemented.

#### **Coordinator Transport**

Council's Coordinator Transport has reviewed the proposed conflict with the existing bike lane sign, and advised the sign can be relocated as required, free of charge.

## PUBLIC NOTIFICATION



**Properties Notified**     30 properties notified

**Representations**     0 received

## Approach to Assessment

Part 1 – Rules of Interpretation of the Planning and Design Code (the Code) provides clarity on how to interpret the policies in the Code. Of particular note, 'Designated Performance Features' (DPF) assist Councils to interpret Performance Outcomes (PO).

The Rules of Interpretation clearly state that a DPF provides a guide but does not need to necessarily be satisfied in order for a certain development to meet the PO – i.e. the outcome can be met in another way:

***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.***

(underline my emphasis)

A DPF provision should not be interpreted as quantitative requirements, instead they simply present one way in achieving the corresponding PO. There can be variation from DPF policies, and not just in a minor way. Emphasis should be placed on satisfying the qualitative Performance Outcome in the circumstances where a specified DPF is not met.

It is with the above approach in mind that I have assessed this development.

## ASSESSMENT

Part 1 - Rules of Interpretation of the Code advises that for each Zone, Table 3 specifies the policies and rules that apply to classes of development within the zone. I note:

***The policies specified in Table 3 constitute the policies applicable to the particular class of development within the zone to the exclusion of all other policies within the Code, and no other policies are applicable.***

***For the avoidance of doubt, the relevant authority may determine that one or more of the listed policies are not relevant to a particular development.***

The Code policies applicable to this development can be reviewed in Appendix 1.

In my view the most pertinent planning considerations for this assessment relate to:

- Density and Compatibility
- Built Form and Layout
  - Site coverage and setbacks
    - Boundary-to-boundary
    - Dwelling 3 upper floor southern side setback
  - Building Height, Bulk and Scale
- Streetscape
  - Building Design and Appearance
  - Access
  - Driveway Areas and Soft Landscaping

Policies relating to the above planning considerations are found in the Zone, Overlays and General sections of the Code.



## ZONE CONSIDERATIONS

**General Neighbourhood Zone:** DO 1, PO 1.1, PO 2.1, PO 3.1, PO 4.1, PO 5.1, PO 7.1, PO 8.1, PO 9.1

## OVERLAY CONSIDERATIONS

**Affordable Housing Overlay:** PO 1.1

**Airport Building Heights (Regulated) Overlay:** DO 1, PO 1.1

**Building Near Airfields Overlay:** DO 1, PO 1.1

**Hazards (Flooding - Evidence Required) Overlay:** DO 1, PO 1.1

**Major Urban Transport Routes Overlay:** DO 1, DO 2, PO 1.1, PO 2.1, PO 4.1, PO 5.1, PO 6.1, PO 7.1, PO 10.1

**Stormwater Management Overlay:** DO 1, PO 1.1

**Traffic Generating Development Overlay:** DO 1, DO 2, PO 1.1, PO 1.2, PO 1.3

**Urban Tree Canopy Overlay:** DO 1, PO 1.1

## GENERAL DEVELOPMENT POLICIES CONSIDERATIONS

**Clearance from Overhead Powerlines:** DO 1, PO 1.1

**Design in Urban Areas:** DO 1, PO 8.1, PO 8.5, PO 10.1, PO 10.2, PO 17.1, PO 17.2, PO 18.1, PO 18.2, PO 20.1, PO 20.2, PO 20.3, PO 21.1, PO 21.2, PO 22.1, PO 23.1, PO 23.2, PO 23.3, PO 23.4, PO 23.5, PO 23.6, PO 24.1, PO 31.1, PO 31.2, PO 31.3, PO 31.4, PO 32.1, PO 32.2, PO 32.3, PO 32.4, PO 32.5, PO 33.1, PO 33.2, PO 33.3, PO 33.4, PO 33.5, PO 34.1, PO 34.2, PO 35.1, PO 35.2, PO 35.3, PO 35.4, PO 35.5, PO 35.6, PO 36.1, PO 36.2

**Infrastructure and Renewable Energy Facilities:** DO 1, PO 11.2, PO 12.1, PO 12.2

**Interface between Land Uses:** DO 1, PO 3.1, PO 3.2, PO 3.3

**Site Contamination:** DO 1, PO 1.1

**Transport, Access and Parking:** DO 1, PO 3.1, PO 3.5, PO 3.6, PO 5.1, PO 10.1

Quantitative Snapshot							
Existing dimensions: 791sqm (20.11 x 39.33m)							
Average site area 300sqm (group dwellings)	X	Average site area 263.3sqm D1: 245sqm D2: 180sqm D3: 245sqm Apparent common or R.O.W. area: 120sqm	Boundary walls 3m height (from footings), 11.5m length 1 side only	X	2.73m height (3.33m parapet); 6.04m length; both side boundaries	Soft landscaping 20% overall 30% forward of bdg	X Overall: 20.2% (160sqm) Forward: 9.5% (17.8sqm) 13.8% if 500mm strips included
Frontage width 15m (group dwellings)	✓	20.11m	Ground side setbacks 900mm	✓	1.55m; 3.6m	Off-street parking 2 - 1 covered	✓ 2 per dwelling (each covered)
Site coverage 60%	X	52.2% (128sqm) 70% (126sqm) 52.2% (128sqm) Overall: 48.3% (382sqm)	Upper side setbacks 900mm (north) / 1900mm (south) plus 1/3 above 3m	X	North: 2.4m (min 1.86m required) South: 2.4m (min 2.84m required)	Garage setback 5.5m; behind main face	✓ 10.9m+; behind main face
Building height 2 levels; 9m Wall height max 7m	✓	2 levels; 7.17m (6.85+0.32) Wall height max 6.85m	Rear setback 3m ground 5m upper	✓	7.74m both floors 8.74m both floors 7.74m both floors	Rainwater tank	✓ D1 and D3: 3000L retention / 1000L detention D2: 2000L retention / 1000L detention
Front setback Average adjoining minus 1m (7.25m)	✓	9.76m; 10.4m; 10.9m (porch 8.9m) 7.42m; 9.5m (porch 7.42m) 9.76m; 10.4m; 10.9m (porch 8.9m)	Private open space 24sqm	✓	74sqm (53+21) 47sqm (42+5) 74sqm (53+21)	Urban tree canopy 1 small tree per dwelling	✓ 1 small tree per dwelling in rear yard

**Note:** As the application is 'Performance Assessed', satisfaction of the suggested DPF is 'one way' of achieving the corresponding 'Performance Outcomes'.

## **Density and Compatibility**

### **Density**

General Neighbourhood Zone, Desired Outcome 1 seeks the following:

**Low-rise, low and medium-density housing that supports a range of needs and lifestyles located within easy reach of services and facilities. Employment and community service uses contribute to making the neighbourhood a convenient place to live without compromising residential amenity.**

The proposal comprises low-rise housing at a medium density (38 dw/ha). In terms of 'supporting a range of needs and lifestyles', each proposed dwelling comprises 4 bedrooms on the upper floor. Dwellings of this size can support a range of larger household structures, although the position of all bedrooms on the upper floor is unlikely to be convenient for mobility-impaired persons, and the size of the dwellings may be unsuitable for smaller household sizes. Nevertheless, the proposal contributes to the range of dwelling types available within the area, and the land is within convenient reach of services and facilities.

General Neighbourhood Zone, Performance Outcome 2.1 seeks the following:

**Allotments/sites created for residential purposes are of suitable size and dimension to accommodate the anticipated dwelling form and remain compatible with the pattern of development in a low-rise and predominantly low-density neighbourhood, with higher densities closer to public open space, public transport stations and activity centres.**

The proposed average site area (including common areas) of 263.3sqm per dwelling falls 12.6% short of the DPF minimum 300sqm average sought for group dwellings. It should be acknowledged that the Zone permits a minimum 250sqm site area for row dwellings (or detached dwellings in a terrace arrangement), and that the proposal has a similar form to what is typically expected of those dwelling types. Nevertheless, due to the shared areas across the development's frontage, the proposal is technically for 'group dwellings'.

Considered against PO 2.1, the proposal is somewhat finely balanced. It is acknowledged that the proposal demonstrates increased density in close proximity to public transport opportunities and activity centres, however, the shortfall in site dimensions impacts upon the proposal's ability to maintain an appropriate development layout and pattern.

The proposed sites may not be 'of suitable size and dimension' due to several shortfalls, including:

- Boundary-to-boundary development (contrary to Zone POs 7.1 and 8.1);
- Dwelling 3 southern upper floor side setback (contrary to Zone PO 8.1); and,
- Limited soft landscaping area forward of the building line (contrary to Design in Urban Areas DO 1 and PO 22.1).

### **Compatibility**

In respect to PO 2.1, it can further be argued that the proposed sites do not remain compatible with the 'pattern of development in a low-rise and predominantly low-density neighbourhood'. It is unclear whether this PO refers to a hypothetical 'low-rise and predominantly low-density neighbourhood', or alternatively whether it calls for consideration of the subject neighbourhood's pattern of development and density.

I favour the view that assessment of this PO should at least have partial regard to surrounding context and development patterns to inform its desire for compatibility. This is because compatibility cannot meaningfully be assessed without reference to the tangible surrounding context. This approach is

reinforced by Design in Urban Areas DO 1(a) which seeks for development to be 'contextual – by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributing to the character of the locality'. While in some instances it may be desirable for development to be substantially different to its existing context (such as in a strategically rezoned area), this Zone PO emphasises 'compatibility', and in this instance, the existing Zone character aligns with the desired 'low-rise and predominantly low-density neighbourhood'.

The subject locality's pattern of development can be summarised as a mixture of three distinct characters: original dwelling stock; redeveloped dwelling stock; and commercial development.

The primary character is an intact pattern of original single storey detached dwellings on reasonably large allotments. Typically, site coverage is low, dwellings are modest, site frontages are wide, and soft landscaping areas are generous to the front and rear. Essentially all residential sites which face Marion Road within the immediate streetscape demonstrate this character, as do most other residential sites within a 100-metre radius of the subject land.

A smaller proportion of dwellings within the wider locality are redeveloped dwelling stock. These are typically single storey, with high site coverage, reduced setbacks, smaller sites, and less generous soft landscaping areas. Redeveloped dwelling stock is not evident within the immediate Marion Road streetscape, and within the locality can only be found in surrounding local streets. Despite redeveloped dwelling stock having generally smaller sites, there are no examples of row dwellings, detached dwellings in a terrace arrangement or group dwellings in the locality which have dwelling sites as narrow as the 6.7 metre average site widths sought for the proposed dwellings.

Other development within the locality is commercial in nature, primarily limited to the Employment Zone at the southern end of the locality, however some original dwellings in the General Neighbourhood Zone have also been converted into commercial uses. The commercial sites typically have a non-residential built form character with more substantial areas of exposed car parking and limited soft landscaping areas, which is reasonably expected of commercial development.

Although there is some commercial development within the locality, the primary character is residential. The proposed development is not considered to 'remain compatible with the pattern of development in a low-rise and predominantly low-density neighbourhood' due to its density, dwelling frontage widths, layout and scale of built form, and limited soft landscaping area to the front.

## **Built Form and Layout**

### **Site Coverage and Setbacks**

General Neighbourhood Zone, Performance Outcome 3.1 seeks the following:

**Building footprints allow sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.**

The proposed site coverage and setbacks provide sufficient space around the development to reasonably limit visual impact and maintain attractive outlooks from adjoining private open spaces. Measured overall, site coverage is an acceptable 48.3% of the subject land and the proposal generally achieves compliant front, rear and side setbacks.

This notwithstanding, the size and continuous extent of the proposed upper floors – particularly as they present to side adjoining properties – are of some concern. This is not necessarily due to the fault of excessive site coverage, but rather due to the design of the proposed upper floors and the layout of the development. As such, this matter is assessed further in the Building Height, Bulk and Scale section of this report, with particular regard to Design in Urban Areas PO 20.3.

General Neighbourhood Zone, Performance Outcome 5.1 seeks the following:

**Buildings are setback from primary street boundaries to contribute to the existing/emerging pattern of street setbacks in the streetscape.**

The proposed front setbacks are reasonably generous and are considered satisfactory. Adjoining buildings demonstrate front setbacks to the building line of 4m (northern adjoining carport) and 12.5m (southern adjoining dwelling) respectively. The proposed front setbacks of between 7.42m and 10.9m achieve an appropriate balance between the two different adjoining front setbacks, while being generally compatible with the pattern of dwelling front setbacks along Marion Road.

General Neighbourhood Zone, Performance Outcome 6.1 seeks the following:

**Building walls are set back from rear boundaries to provide:**

- (a) separation between dwellings 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**

The proposed rear setbacks of between 7.74 and 8.74 metres to both floors provide separation consistent with a suburban character. Overshadowing impacts caused to rear adjoining properties will only commence in the mid-late afternoon. Each proposed dwelling is provided with a suitable rear area of private open space and soft landscaping capable of accommodating vegetation.

General Neighbourhood Zone, Performance Outcome 8.1 seeks the following:

**Building walls are set back from side boundaries to provide:**

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

The ground floor and upper floor side setbacks of the dwellings are generally compliant with the minimum setbacks sought by Zone DTS/DPF 8.1, provide sufficient separation to contribute to a suburban character, and maintain reasonable access to natural light and ventilation for neighbours, except for the following aspects:

- Boundary-to-boundary development;
- Dwelling 3 southern upper floor side setback.

#### Boundary-to-Boundary

Both Dwelling 1 and 3's garages are located on side boundaries, resulting in a boundary-to-boundary development – inherently, this does not provide 'separation between dwellings in a way that contributes to a suburban character' as sought by Zone PO 8.1.

Typically, a suburban character would preserve separation down at least one side of an allotment, as demonstrated by the existing suburban character of the locality. While the upper floor side setbacks of 2.4 metres provide some relief and visual separation, the ground floor extent of boundary-to-boundary garaging contributes to built form dominance and is contrary to the patterns of space typically provided by a suburban character.

It should also be acknowledged that the garages' failure to provide separation along side boundaries is influenced by the proposed density and the narrow dwelling widths which are proposed.

Regarding the impact of the boundary walls on adjoining properties, General Neighbourhood Zone, Performance Outcome 7.1 seeks the following:

**Dwelling boundary walls are limited in height and length to manage visual and overshadowing impacts on adjoining properties.**

Each proposed boundary wall demonstrates an appropriate low-scale height of 2.7 metres from footings, and a modest length of 6.04 metres. This is well within DPF criteria of 3 metres from footings and 11.5 metres in length, except for the proposed parapet height of 3.33m from footings. Each boundary parapet has a return depth of only 240mm, and so the visual or overshadowing impacts of the parapet's additional height is very limited.

The northern boundary wall's location will be in-line with the front wall of the northern adjoining dwelling, and located adjacent to its side path. The dwelling presents a bedroom window towards the location of the proposed wall, however this bedroom also provides a front window towards Marion Road. As such, despite the wall affecting the outlook of the side window, the bedroom will maintain opportunity for an open outlook towards the front. Another bedroom presents a window towards the subject side boundary however is expected to be behind the rear end of the proposed boundary wall. Being located on the northern boundary, no overshadowing will be caused. Ventilation will remain available to the neighbour.

The southern boundary wall will project approximately 2 metres forward of the southern neighbouring dwelling line and so is located adjacent part of the southern neighbour's front yard. It will extend rearward to approximately the location of its dining room window, which is set further back than the remainder of its building line. The wall will impose moderate visual impacts due to its location forward of the building line and within view of the neighbour's living room windows. However, due to the wall's generous front setback of 10.9 metres, the southern neighbour will retain a reasonably open outlook to the front. The extent of overshadowing will affect north-facing living room windows for part of the day. Ventilation will remain available to the neighbour.

The failure of the development to provide separation from the side boundaries is contrary to part of Zone DTS/DPF 7.1, which seeks that, 'except where the dwelling is located on a central site within a row dwelling or terrace arrangement, side boundary walls occur only on one side boundary'. However, this is not clearly reflected in the wording of the associated PO 7.1. Nevertheless, the desired avoidance of boundary-to-boundary development can be read from Zone PO 8.1, which specifically seeks for the positioning of building walls to 'provide separation between dwellings in a way that contributes to a suburban character'. The proposed positioning of walls on both side boundaries of the development is not considered reminiscent of a suburban character, and so fails Zone PO 8.1.

*Dwelling 3 Southern Upper Floor Side Setback*

Dwelling 3's proposed 2.4 metre southern upper floor side setback is of mild concern. The proposed setback falls 440mm short of the 2.84m DPF minimum, and extends for a continuous length of 21.83 metres facing the southern adjoining property.

As seen in the adjacent diagram, the southern adjoining property presents two north-facing living room windows towards the subject land, which are expected to be overshadowed by Dwelling 3 for a considerable portion of the day. Despite this, overshadowing impacts caused to the southern adjoining property are unlikely to be unreasonable in context of Interface between Land Uses criteria. The west-facing window of its lounge room should retain good access to the natural light in afternoon hours. Furthermore, a



significant portion of its large private open space is unlikely to be affected by overshadowing from the proposed dwelling.

While the overshadowing impacts of Dwelling 3's southern upper floor side setback are not considered fatal to the merits of the proposal, it derives from the overall bulk and scale of the proposal, which is of concern.

*Building Height, Bulk and Scale*

General Neighbourhood Zone, Performance Outcome 4.1 seeks the following:

**Buildings contribute to a low-rise suburban character.**

'Low-rise' is defined by the Planning and Design Code as 'up to and including 2 building levels'. The proposed building's two storey form therefore contributes to a 'low-rise' suburban character. The maximum proposed building height is 7.13 metres, to the front parapets which are the tallest part of the buildings. Proposed maximum wall heights to the side and rear are below the maximum guideline of 7 metres sought by Zone DTS/DPF 4.1.

Design in Urban Areas, Desired Outcome 1 seeks the following:

**Development is:**

**(a) contextual – by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributing to the character of the locality**

As detailed within the 'Compatibility' section of this report, there are concerns regarding the proposed development's contextuality. The proposed development's layout, bulk and scale does not carefully respond to the primary residential character of the surrounding built environment, which is a relatively intact pattern of original single storey detached dwellings on reasonably large, well landscaped allotments.

The quality of the proposal's contribution to the character of the locality is also questionable, due to this incompatibility and the limited front soft landscaping, which is expected to do little to mitigate the visual impacts of the high extent of paved driveway areas and the bulky front façade design.

Design in Urban Areas, Performance Outcome 20.3 seeks the following:

**The visual mass of larger buildings is reduced when viewed from adjoining allotments or public streets.**

This provision does not elaborate or provide a definition on what is considered to be a 'larger building'. As such, I am of the view that a 'larger building' in context of this criteria should be deduced from a proposal's relative bulk and scale compared to its locality. While the proposal is compatible with the Zone's maximum building height, as the only two storey development of this scale within the locality, I am of the view that it is eligible as a 'larger building', and therefore this provision is applicable.

The visual mass of the proposal is not well reduced when viewed from side adjoining allotments or public streets.

When viewed from adjoining allotments, the development's side elevations provide limited articulation or visual relief. The development's design is rather 'top heavy', with each upper floor cantilevered over the front of the ground floor and extending continuously for the entire length of each dwelling without any meaningful stepping. Some visual interest on side elevations is provided by a change in materials

and the ground floor roof form, however these do little to mitigate the visual mass of the upright, continuous upper floor wall elevation.

When viewed from the primary road frontage, the visual mass of the development is emphasised by the box-like front parapet and balcony design. While it is acknowledged that a reasonably generous front setback will assist in reducing immediate visual mass impacts upon the street, the proposal is not well softened due to limited front soft landscaping and a high extent of paved driveway areas. The proposal's visual mass is also drawn horizontally by the proposed garages which extend to both side boundaries of the subject land.

### **Streetscape**

Further to the assessment of building height, bulk and scale above, there are some additional concerns with respect to the proposal's streetscape design and appearance. These relate to aspects of its front façade design, driveway areas and soft landscaping. Functionally, the proposed vehicular access also conflicts with an existing street tree, which Council's Arborist has expressed a preference to retain, and has not provided permission to be removed.

### **Building Design and Appearance**

Design in Urban Areas, Performance Outcome 20.1 seeks the following:

**Garaging is designed to not detract from the streetscape or appearance of a dwelling.**

Design in Urban Areas, Performance Outcome 20.2 seeks the following:

**Dwelling elevations facing public streets and common driveways make a positive contribution to the streetscape and the appearance of common driveway areas.**

Aspects of the proposed front façade design and appearance are positive. These include the provision of a projecting balcony and porch to front elevations, legible front doors, a mixture of external colours and materials, and articulation between dwellings. The upper floor front elevation of each dwelling also presents windows towards the primary road frontage, however some front windows are unnecessarily obscure glazed.

Overall, the proposed dwelling front elevation designs could make a somewhat positive contribution to the streetscape, however are hampered by their incompatibility with the locality, the limited front soft landscaping, the high extent of paved front driveway areas and ground floor garaging, and the boundary-to-boundary form.

The extent of garaging across the ground floor façade, together with the limited landscaping, is considered dominant. The garaging (and associated driveway/manoeuvring area) detracts from the streetscape and appearance of the proposed development by imposing significant garage widths with limited relief at ground level, while marginalising areas for soft landscaping and dedicated pedestrian access.

The extent of garaging width also causes the development to be boundary-to-boundary, which is not compatible with a suburban character, and further emphasises the extent of garaging which is proposed across the ground floor frontage. Overall, garage door openings comprise 52% of the land's frontage width, or garaging in total (including walls) comprises 74% of the land's frontage width. Other portions of the ground floor front façade are limited to front doors, with only one narrow ground floor front window presenting from the base of Dwelling 2's stairway.

It should be noted that each dwelling's upper level provides some visual relief from the ground level's garage dominance by presenting a balcony and front windows towards the street, cantilevered above

the garage. It is also noted that Dwelling 2's particularly generous garage setback helps to reduce garage dominance around the centre of the development by recessing the garage deep into the building, providing depth and articulation.

Driveway Areas and Soft Landscaping

Design in Urban Areas, Performance Outcome 23.3 seeks the following:

**Driveways and access points are located and designed to facilitate safe access and egress while maximising land available for street tree planting, domestic waste collection, landscaped street frontages and on-street parking.**

Design in Urban Areas, Performance Outcome 22.1 seeks the following:

**Soft landscaping is incorporated into development to:**

- (a) minimise heat absorption and reflection**
- (b) contribute shade and shelter**
- (c) provide for stormwater infiltration and biodiversity**
- (d) enhance the appearance of land and streetscapes**

The extent of soft landscaping areas forward of the building line is poor, and are marginalised into strips of limited dimension and area by proposed paved areas which are dedicated to the development's functional requirements for vehicle access, parking and manoeuvring. The extent of proposed driveways required by the proposed development layout does not maximise land available for landscaped street frontages as sought by PO 23.3. DTS/DPF 22.1 seeks a minimum front landscaping proportion of 30% forward of the building line, and the proposal achieves only 9.5% (or 13.8% if 500mm landscaping strips are included). As a result, the limited soft landscaping will cause localised environmental and aesthetic impacts.

Considered against the criteria of PO 22.1, the proposed front soft landscaping will provide limited benefit to heat absorption and reflection or stormwater infiltration forward of the building. The constrained 1.3 metre depth of the front landscaping strip will provide limited opportunity for meaningful plantings to be established. Its location and extent is not believed to be suitable to practically retain the existing mature tree in the south-western corner as noted on the plan. While an Arborist's opinion has not been sought, the limited remaining soil area and potential conflict with vehicle movements may provide inadequate conditions for the mature tree to be preserved in the long-term, even if it is retained in the short-term. As such, the proposed landscaping areas are unlikely to contribute meaningful shade and shelter, or provide meaningful biodiversity.

In particular, and most importantly, the limited depth of landscaping and extent of paved area forward of the building line will not enhance the appearance of the land or streetscape. The front landscaping strip's limited depth is not expected to effectively obscure or soften the extent of hard paved surfaces in front of the building, nor provide effective softening of the bulky built form.

Despite the shortfall in front landscaping, the proposal will provide reasonable soft landscaping areas at the rear of each dwelling. A narrow strip of landscaping is also provided along the external side boundaries of Dwellings 1 and 3. While the proposed extent of soft landscaping across the entire development site meets the minimum 20% sought by DTS/DPF 20.1, this does not excuse the poor front soft landscaping outcome.

Design in Urban Areas, Desired Outcome 1 seeks the following:

**Development is:**

- (c) inclusive – by integrating landscape design to optimise pedestrian and cyclist usability, privacy and equitable access and promoting the provision of quality spaces**



**integrated with the public realm that can be used for access and recreation and help optimise security and safety both internally and within the public realm, for occupants and visitors**

- (d) sustainable – by integrating sustainable techniques into the design and siting of development and landscaping to improve community health, urban heat, water management, environmental performance, biodiversity and local amenity and to minimize energy consumption.**

The streetscape appearance of the development is dominated by paved driveway and manoeuvring areas, and is oriented around vehicle access and manoeuvring needs. As a result, areas dedicated for soft landscaping are marginalised, whilst pedestrian access into the site is required to be shared with vehicle access and manoeuvring areas. This does not optimise pedestrian usability, nor demonstrate sustainable techniques to the design and siting of the development.

Design in Urban Areas, Performance Outcome 34.1 seeks the following:

**Soft landscaping is provided between dwellings and common driveways to improve the outlook for occupants and appearance of common areas.**

Design in Urban Areas, Performance Outcome 34.2 seeks the following:

**Battle-axe or common driveways incorporate landscaping and permeability to improve appearance and assist in stormwater management.**

Limited soft landscaping is provided between each dwelling and the shared driveway apron, and the extent of hard-paved surface in front of each dwelling does not provide an attractive outlook for occupants. Although permeable paving is proposed to more than 50% of the shared driveway area to assist with stormwater infiltration, there remains a fundamental shortfall in front landscaping areas, which affects appearance from the street and outlook for occupants.

### Access

Design in Urban Areas, Performance Outcome 23.4 seeks the following:

**Vehicle access is safe, convenient, minimises interruption to the operation of public roads and does not interfere with street infrastructure or street trees.**

Transport, Access and Parking, Performance Outcome 3.5 seeks the following:

**Access points are located so as not to interfere with street trees, existing street furniture (including directional signs, lighting, seating and weather shelters) or infrastructure services to maintain the appearance of the streetscape, preserve local amenity and minimise disruption to utility infrastructure assets.**

The proposed vehicular access conflicts with an existing street tree, which Council's Arborist has expressed a preference to retain, and has not provided permission to be removed. The applicant was made aware of this position in an initial Request for Documentation letter during the verification stage of the application, and was invited to consider alternate vehicle access configurations. However, no changes were made.

Objectively, the street tree is a small-to-medium specimen of approximately 15 years age. It is not regulated or significant, nor individually prominent within the streetscape. Its benefit to the streetscape derives from its position within a consistent avenue of identical trees along the arterial road. Irrespective of its aesthetic or environmental merits, the tree is a Council asset, and so cannot be

removed without the permission of Council's Arborist. As that permission has not been granted, the tree poses an obstruction which prevents the proposed vehicular access from being feasible.

The proposed access also conflicts with an existing bike lane sign, however this can be relocated by Council free of charge (if the application were to be supported).

Notwithstanding the matter of the street tree, the Department for Infrastructure and Transport (DIT) have reviewed the proposal by referral, and raised no objections to the functionality of the access, driveway and vehicle manoeuvring areas, subject to standard conditions.

## CONCLUSION

In summary, the proposal seeks to construct three two storey group dwellings on an allotment which is ill-suited for the proposed development layout and density.

Aspects of the proposed development comply with Code criteria – including mostly compliant site coverage and setbacks, sufficient private open space and overall soft landscaping percentage. The proposal also includes some positive design elements to its front façade, in the form of projecting balconies, porches, legible front doors, a mixture of external colours and materials, and articulation between dwellings.

Despite this, the proposed development fundamentally cannot be supported in its current form, as the proposed access is obstructed by a street tree which Council's Arborist has not provided permission to remove. Notwithstanding the matter of the street tree, the proposal has other merit-based problems which are considered to outweigh any positive merits. In my view these merit-based issues would warrant the application's refusal, even if the street tree matter were to be resolved.

While the development's form may be comparable to that of row dwellings or detached dwellings in a terrace arrangement, it requires a shared driveway area and access point due to its position on an arterial road, which requires vehicles to enter and exit the land in a forward direction. This shared area causes the dwelling classification to technically be for 'group dwellings', and functionally requires substantial paved vehicle manoeuvring areas.

The proposed average site areas fall notably short against the DPF minimum sought for group dwellings, which is an indicator of the proposal's incompatibility with the existing locality and the reasonably expected pattern of development within the Zone. Even if the proposal was hypothetically for detached dwellings in a terrace arrangement, it would fall short against the DPF minimum average frontage width. This is an indicator of the proposed development's attempt to maximise development potential on a site which is ill-suited for it, particularly given the additional constraints posed by its frontage to an arterial road.

The consequences of this attempt include a built form, layout and design which is out of character with the locality and does not achieve the Zone's desire for compatibility with a low-density development pattern. The bulk and scale of the proposed built form imposes visual mass and overshadowing concerns – which in isolation may not be fatal, but must be considered cumulatively with other shortfalls. The proposed boundary-to-boundary built form and poor front soft landscaping outcomes will both contribute to garage and driveway dominance, causing localised environmental and aesthetic impacts to the development's street frontage.

On balance, when assessed against the relevant Desired Outcomes and Performance Outcomes of the Code, the proposed development is not considered to hold sufficient merit for support. As such, it is recommended the application be refused.

## RECOMMENDATION

Having considered all relevant planning matters in relation to the subject development application:

- (a) The Panel notes this report and concur with the findings and reasons for the recommendation;
- (b) The Panel concurs that the proposed development is not seriously at variance<sup>1</sup> to the Planning and Design Code, in accordance with Section 126(1) of the Planning, Development and Infrastructure Act 2016; and
- (c) That Planning Consent for Development Application ID: 22020483 Three two storey group dwellings at 479 Marion Road, South Plympton be REFUSED for the following reasons:

## REASONS FOR REFUSAL

1. The proposed vehicle access point conflicts with an existing Council street tree which has not been granted permission for removal. As such, the proposed access cannot be achieved, and is contrary to Design in Urban Areas PO 23.4 and Transport, Access and Parking PO 3.5.
2. The proposed development achieves limited soft landscaping areas forward of the building line, which contributes to a poor environmental and aesthetic streetscape outcome, contrary to Design in Urban Areas PO 22.1. The constrained landscaping does not contribute to a 'landscaped street frontage' as sought by Design in Urban Areas PO 23.3. The high proportion of hard-paved area also contributes to garage dominance and provides limited softening to the appearance of the common driveway area, contrary to Design in Urban Areas POs 20.1, 34.1 and 34.2.
3. The proposed density, including average site areas and dwelling widths, is not compatible with the pattern of development in a predominantly low-density neighbourhood, contrary to General Neighbourhood Zone PO 2.1.
4. The boundary-to-boundary aspect of the development emphasises garage dominance, and does not provide separation between dwellings in a way that contributes to a suburban character, contrary to General Neighbourhood Zone PO 8.1.
5. The proposed development is not considered to be 'contextual', and is notably out of character with the surrounding built environment. It integrates poor landscaping design by prioritising vehicle access and manoeuvring areas forward of the dwelling, causing areas for soft landscaping and pedestrian access to be marginalised; and demonstrates poor environmental sustainability outcomes. These matters are contrary to Design in Urban Areas DO 1.

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<sup>1</sup> Pursuant to Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016* (or Section 35(2) of the *Development Act 1993* for applications under that Act), a "development must not be granted planning consent if it is, in the opinion of the relevant authority, seriously at variance with the Planning and Design Code" (or the Development Plan if under the Development Act).

What is 'seriously at variance' is not a defined legislative term and is not synonymous with a proposal that is merely 'at variance' with certain provisions of the Code (or Plan), which many applications will be. Instead, it has been interpreted to be an important or grave departure in either quantity or degree from the Code (or Plan) and accordingly not worthy of consent under any circumstances and having the potential to undermine the objectives of the Code (or Plan) for the land or the Zone.

## **Appendix 1 – Planning and Design Code guidelines**

**5. APPEALS UPDATE  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 01 FEBRUARY 2023**



**5.1 APPEALS AGAINST PANEL DECISIONS**

*New Appeals*

<b>DA No.</b>	<b>Address</b>	<b>Appeal Lodged</b>	<b>Recommendation</b>	<b>Decision</b>	<b>Current Status</b>
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*On-going Appeals*

<b>DA No.</b>	<b>Address</b>	<b>Appeal Lodged</b>	<b>Recommendation</b>	<b>Decision</b>	<b>Current Status</b>
100/2020/0659	1 Wattle Terrace, Plympton Park	04/11/2022	REFUSE	REFUSE	Conference set for 18/01/2023 at 9:15am
100/2021/195	3, 7 and 9 Franklin Street Sturt	13/01/2023	GRANTED	REFUSE	Conciliation conference to be held 14 February 2023

**5.2 APPEALS AGAINST DELEGATED APPLICATIONS**

<b>DA No.</b>	<b>Address</b>	<b>Appeal Lodged</b>	<b>Recommendation</b>	<b>Decision</b>	<b>Current Status</b>
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**6. POLICY OBSERVATIONS  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 01 FEBRUARY 2023**

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No items listed for discussion.

**7.1: OTHER BUSINESS – Delegations  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 01 FEBRUARY 2023**



**Originating Officer:** Alex Wright  
Team Leader – Planning / Assessment Manager

**Report:** Delegated powers of Assessment Panel as a Relevant Authority under the Planning, Development and Infrastructure Act 2016 to Assessment Manager.

**Report Type:** Delegations Update

**Recommendation:**

**That the Panel RESOLVES the following;**

- 1. In exercise of the power contained in Section 100 of the Planning, Development and Infrastructure Act 2016 the powers and functions under the Planning, Development and Infrastructure Act 2016 and statutory instruments made thereunder contained in the proposed Instrument of Delegation (annexed to the Report dated 21/12/2022 and entitled '*Marion Council Assessment Panel - Instrument of Delegation – Instrument C*' and marked Attachment II) are hereby delegated on 21<sup>st</sup> of December 2022 to the City of Marion Assessment Manager subject to the conditions and/or limitations, if any, specified herein or in the Schedule of Conditions in the proposed Instrument of Delegation.**
- 2. Such powers and functions may be further delegated by the City of Marion Assessment Manager in accordance with Section 100(2)(c) of the Planning, Development and Infrastructure Act 2016 as the Assessment Manager sees fit, unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation.**

*Attachment I:* CAP Instrument of Delegations – marked up  
*Attachment II:* Marion CAP - Instrument of Delegation – Instrument C

## **Introduction**

Pursuant to Section 93 (1)(a) of the Act (*Determination of relevant authority, Relevant authority—Panels*) the Panel is a 'relevant authority' in its own right.

The purpose of this report is to make amendments made to the current Marion Council Assessment Panel Instrument of Delegation and sub-delegations to provide clarity on the types of applications considered by the Panel and provide consistency with types of development considered by the Marion Assessment Manager Instrument of Delegation.

## **Background Overview**

As the Panel is considered to be a 'Relevant Authority' in its own right it will be responsible for the provision of Planning Consent for Performance Assessed applications which have undergone Public Notification.



Section 100 of the Planning, Development and Infrastructure Act outlines that a relevant authority may delegate any functions or powers held under the Act. A delegation may be made to a particular person, body or a person occupying a particular office or position.

Whilst the Panel is the Relevant Authority for applications which have undergone Public Notification, the Panel has already resolved to delegate to the Assessment Manager (and sub-delegate to Planning staff) the ability to determine certain applications.

Currently the Assessment Manager, following public notification, is delegated to consider the following forms of applications;

1. *Where no valid representations are received against the proposed development;*
2. *Where all valid representations against the proposed development are withdrawn;*
3. *Where no representor who has lodged a valid representation against the proposed development wishes to be heard;*
4. *Where the application relates to a local heritage place or a State Heritage Place but does not seek total demolition of the place, and heritage advice commissioned by the Assessment Panel (or delegate) or State Government Department responsible for State Heritage have recommended that approval should be granted.*

## **General Discussion**

It is proposed the Panel further delegate to the Assessment Manager the ability to assess and grant or refuse Planning Consent to the forms of development currently identified in Clause 5.1.1.1 of the Marion Council Assessment Panel Instrument of Delegation, these being;

- a) any development in relation to a Local Heritage Place or a State Heritage Place where the heritage advice commissioned on behalf of the CAP or the State Government Department responsible for State Heritage have recommended that planning consent should not be granted;
- b) the total demolition of a Local Heritage Place or a State Heritage Place;
- c) land division that proposes the creation of three or more additional allotments (excluding an allotment identified as common property or as a free an unrestricted right of way) where one or more of the proposed allotments is more than 5% below the minimum site area recommended by the relevant policy in the Code; or
- d) three or more dwellings (including detached, semidetached, row and residential flat) where one or more dwelling sites are more than 5% below the minimum site area recommended by the relevant policy in the Code

Since the introduction of the PDI Act in March 2021 to the end of 2022, the Panel has considered 25 PDI applications. At the time of writing this report, none of the applications considered by the Panel were forms of development listed within Clause 5.1.1.1 of the Panel's Instrument of Delegation.

As anticipated, the majority of PDI applications considered by the Panel relate to;

- residential development located within the Hills Neighbourhood Zone involving earthworks and/or retaining,
- forms of development not captured by the Code (such as freestanding screens); and
- non-residential type developments (such as commercial uses, educational facilities – or additions to).

In the majority of Zones where development comprising 3 or more dwellings/allotments is likely to occur, applications involving a 'dwelling(s)' and 'land division' are typically listed as forms of development excluded from Public Notification. Exceptions to this are generally where the built form proposes;

- a structure on the boundary exceeding particular height or length dimensions
- a height exceeding the relevant Zone's maximum building height/level
- earthworks and/or retaining exceeding the Zone's maximum requirements
- a building wall exceeds the building height/setback interface requirements.

In addition, since 2011, the Panel and staff have considered approximately 3 applications involving the total demolition of a State and/or Local Heritage Place.

Applications which have undergone Public Notification and receive representations against the proposal and where the representor seeks wishes to be heard will continue to be considered by the Panel.

The Assessment Manager and sub-delegates have a comprehensive internal delegations procedure to ensure consistency in planning interpretation, assessment and outcomes. At present applications proposing allotments more than 5% under the minimum site area (as outlined by the respective zone) are reviewed by the Senior Urban Planner or Planning Team Leader.

## **Conclusion**

The purpose of this report is to make amendments made to the current Marion Council Assessment Panel Instrument of Delegation and sub-delegations to provide clarity on the types of applications considered by the Panel and provide consistency with types of development considered by the Marion Assessment Manager Instrument of Delegation.

It is recommended that the Panel support the proposed amendments and, pursuant to Section 100, delegate powers as a Relevant Authority under the Planning, Development and Infrastructure Act 2016 to the Assessment Manager as outlined in Attachment II *Marion CAP - Instrument of Delegation – Instrument C*

## **Recommendation**

**That the Panel RESOLVES the following;**

- 1. In exercise of the power contained in Section 100 of the Planning, Development and Infrastructure Act 2016 the powers and functions under the Planning, Development and Infrastructure Act 2016 and statutory instruments made thereunder contained in the proposed Instrument of Delegation (annexed to the Report dated 01/02/2023 and entitled '*Marion Council Assessment Panel - Instrument of Delegation – Instrument C*' and marked Attachment II) are hereby delegated on 1<sup>st</sup> of February 2023 to the City of Marion Assessment Manager subject to the conditions and/or limitations, if any, specified herein or in the Schedule of Conditions in the proposed Instrument of Delegation.**
- 2. Such powers and functions may be further delegated by the City of Marion Assessment Manager in accordance with Section 100(2)(c) of the Planning, Development and Infrastructure Act 2016 as the Assessment Manager sees fit, unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation.**

**Other Business - Amended General Operating Procedures  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 01 FEBRUARY 2023**



<b>Originating Officer:</b>	<b>Alex Wright Team Leader – Planning / Assessment Manager</b>
<b>Report:</b>	<b>Amended General Operating Procedures</b>
<b>Report Type:</b>	<b>Administrative Updates to Operating Procedures</b>
<b>Recommendations:</b>	<b>The Council Assessment Panel:</b>  <b>1. NOTES the report</b> <b>2. ENDORSES the amended General Operating Procedures.</b>

*Attachment I: Tracked Changes Proposed Operating Procedures*

*Attachment II: Proposed Operating Procedures (for endorsement)*

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The current General Operating Procedures (GOPs) were formally endorsed by the CAP on 16 December 2020.

In July 2022 the Local Government Association of South Australia, in conjunction with Norman Waterhouse Lawyers, provided Councils with updated General Operating Procedures.

The Panel last reviewed and updated its Operating Procedures in December 2020. To ensure the procedures are consistent with the LGA's generalized template procedures, minor amendments are proposed.

Attachment I outlines the suggested amendments via 'tracked changes'. Attachment II provides a 'clean' document for endorsement.

The following amendments have been made to the Panel's Operating Procedures to;

- provide clarity on when and how Notice of a meeting is provided,
- better recognise the role of deputy members (i.e. those required to attend in place of a full-time member)
- require the Presiding Member to formally accept any new or additional material submitted to the CAP in person
- remove the temporary addenda relating to electronic meetings and replace with formal requirements to enable electronic meetings (in full or in part)

The biggest proposed change relates to the provision of electronic meetings. The proposed amendments reflects the repeal of section 17 of the *COVID-19 Emergency Response Act 2020 (COVID Act)* and the subsequent adoption of Section 39 of the *Legislation Interpretation Act 2021 (Interpretation Act)* (previously section 53 of the *Acts Interpretation Act 1915*).

Section 39(1) of the Interpretation Act allows for meetings to be conducted via audio visual or audio means, except where excluded in the circumstances set out under subsections 39(2) and (3) (i.e. the execution of certain documents, and prescribed meetings under the *Legislation Interpretation Regulations 2021*, being meetings under the *Local Government Act 1999*).

This means that the Panel can continue to be conducted via electronic means (if required), despite the repeal of section 17 of the COVID Act.

### **Conclusion**

Ultimately, within the limits of the legislation, the General Operating Procedures are at the discretion of the Panel.

The ability to hold electronic meetings is critical to ensure the Panel can continue to function in the event members or applicants are not physically able to attend a result of health advice or other legitimate reasons. In addition, electronic meetings can be used in the event a special meeting is required and/or limited items are present on the agenda and therefore an online meeting is considered appropriate.

The remaining changes are considered to be administrative amendments and their implementation will assist in the on-going operations of the Panel.

### **RECOMMENDATIONS:**

#### **The Council Assessment Panel**

- 1. NOTES the report**
- 2. ENDORSES the amended Operating Procedures.**