

**NOTICE OF  
COUNCIL ASSESSMENT PANEL MEETING**

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

**Wednesday 03 May 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.



Alex Wright  
**ASSESSMENT MANAGER**

26 April 2023

Note: The plans contained in this Agenda are subject to copyright and should not be copied without authorisation.

**CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 MAY 2023  
COMMENCING AT 6.30PM**

---



**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. PDI ACT APPLICATIONS**

**3.1 DEVELOPMENT NO 22040748**

**13 Clacton Road Dover Gardens SA 5048**

Variation of cellar door and functions uses, including redefinition of licence area and increase licensed capacity from 150 to 300 persons.

Report Reference: CAP030523 - 3.1.....3

**4. DEVELOPMENT ACT 1993 APPLICATIONS**

**4.1 CONFIDENTIAL ITEM**

**DEVELOPMENT NO 100/2021/195**

**3 and 7-9 Franklin Street STURT SA 5047**

Demolition of 22 existing dwellings and construction of 24 dwellings (comprising 2 x two-storey residential flat buildings each with two dwellings, 9 x single storey residential flat buildings each with two dwellings and 2 x single storey dwellings) with associated access, fencing and landscaping and the removal of two (2) significant trees and eight (8) regulated trees.

Report Reference: CAP030523 - 4.1.....28

**5. APPEALS UPDATE**

Verbal update provided.

**6. POLICY OBSERVATIONS**

No items listed for discussion.

**7. OTHER BUSINESS**

No items listed for discussion.

8. **CONFIRMATION OF THE COUNCIL DEVELOPMENT ASSESSMENT PANEL MEETING  
HELD ON 03 MAY 2023**
9. **MEETING CLOSURE**

**2. GENERAL OPERATING PROCEDURES  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 MAY 2023**

---



No items listed for discussion.

**3. PDI ACT APPLICATIONS  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 MAY 2023**

---



**REPORT REFERENCE: CAP030523 – 3.1**  
**CITY OF MARION**  
**COUNCIL ASSESSMENT PANEL AGENDA**  
**FOR MEETING TO BE HELD ON**  
**WEDNESDAY 3 MAY 2023**




---

<b>Originating Officer:</b>	<b>Michael Hughes</b> <b>Development Officer – Planning</b>
<b>Applicant:</b>	<b>Mr Justin Tiller</b>
<b>Development Description:</b>	<b>Variation of cellar door and functions uses, including redefinition of licence area and increase licensed capacity from 150 to 300 persons.</b>
<b>Site Location:</b>	<b>13 Clacton Road, Dover Gardens</b>
<b>Zone &amp; Policy Area:</b>	<b>Employment Zone</b>
<b>Lodgement Date:</b>	<b>02/12/2022</b>
<b>Planning and Design Code:</b>	<b>24 November 2022 Version 2022.22</b>
<b>Referrals:</b>	<b>Internal – Transport Coordinator</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>The proposal is not expressly exempt from public notification within Table 5 – Procedural Matters – Notification and is not considered to be within the ‘Minor’ classification under Table 5, Item 1.</i>
<b>Application No:</b>	<b>22040748</b>
<b>Recommendation:</b>	<b>That Planning Consent be GRANTED subject to Conditions</b>

---

**Appendices**

*Appendix 1: Planning and Design Code guidelines*

**Attachments**

*Attachment I: Proposal Plan and supporting documentation*

*Attachment II: Statement of Representations*

*Attachment III: Applicant’s Response to Representations*

## BACKGROUND

The application seeks amendments to the operation of an existing and well-established winery that has occupied the site for over 70 years and pre-dates the majority of residential uses within the locality. Previously Patriitti Wines had a licence capacity of 500 persons and this has been confirmed by a letter from council to Patriitti Wines dated 29 October 2020. (See Attachment1)

## SUBJECT LAND

The subject land is described as 13 Clacton Road, Dover Garden, and comprises seven parcels of land within the Hundred of Noarlunga, identified in the following table:

Allotment number	Plan	Certificate of Title reference
Allotment 25	DP 37636	CT Vol 5161 Folio 1
Allotment 208	DP 3154	CT Vol 5161 Folio 72
Allotment 209	DP 3154	CT Vol 5161 Folio 544
Allotment 210	DP 3154	CT Vol 5161 Folio 544
Allotment 211	DP 3154	CT Vol 5161 Folio 544
Allotment 212	DP 3154	CT Vol 5161 Folio 212
Allotment 213	DP 3154	CT Vol 5161 Folio 213

The allotments form a regular shaped allotment of approximately 1.8ha. The subject land is bounded by Clacton Road to the north, Yarmouth Road to the west and Dover Court to the south. Neighbouring the eastern boundary of the subject land is the Scarborough Terrace Reserve. The reserve includes an oval, children's play equipment and barbeque facilities. The subject land does not share boundaries with any residential neighbours.



Fig 1 showing the subject land edged in red.

The subject land is an operational wine production facility (industrial type use) and the site includes a number of large industrial and office buildings that are used in the production, administration and storage of wine. In addition, poorly defined staff and visitor car park areas are and scattered throughout the site. The primary vehicular access point is via an existing crossover located along Clacton Road. The subject land has three crossovers onto Clacton Road. The site's driveway main entrance is located opposite Vinall Street. To the east there are two single lane width crossovers, the most western of which was previously used as a weigh station, that is now redundant. The site also has a crossover to Yarmouth Road, however this access point is an Emergency Exit only that has not been used for some time.

There is significant landscaping and fencing around the boundaries of the site that helps to screen the site and mitigate noise.



## LOCALITY

Although the subject land is sited in the Employment Zone, the winery is the only enterprise within the zone and it is entirely surrounded by the General Neighbourhood Zone. This is reflected by the residential character of the locality. With the exception of the subject land and the council reserve located immediately to the east, the area is predominantly characterised by detached single storey dwellings. The subject land is located approximately 400m from Sturt Road to the north and Morphet Road to the east, and 700m from the Westfield Marion shopping centre.

The site is bound by the council reserve to the east and an area of council owned landscaping to the south.

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

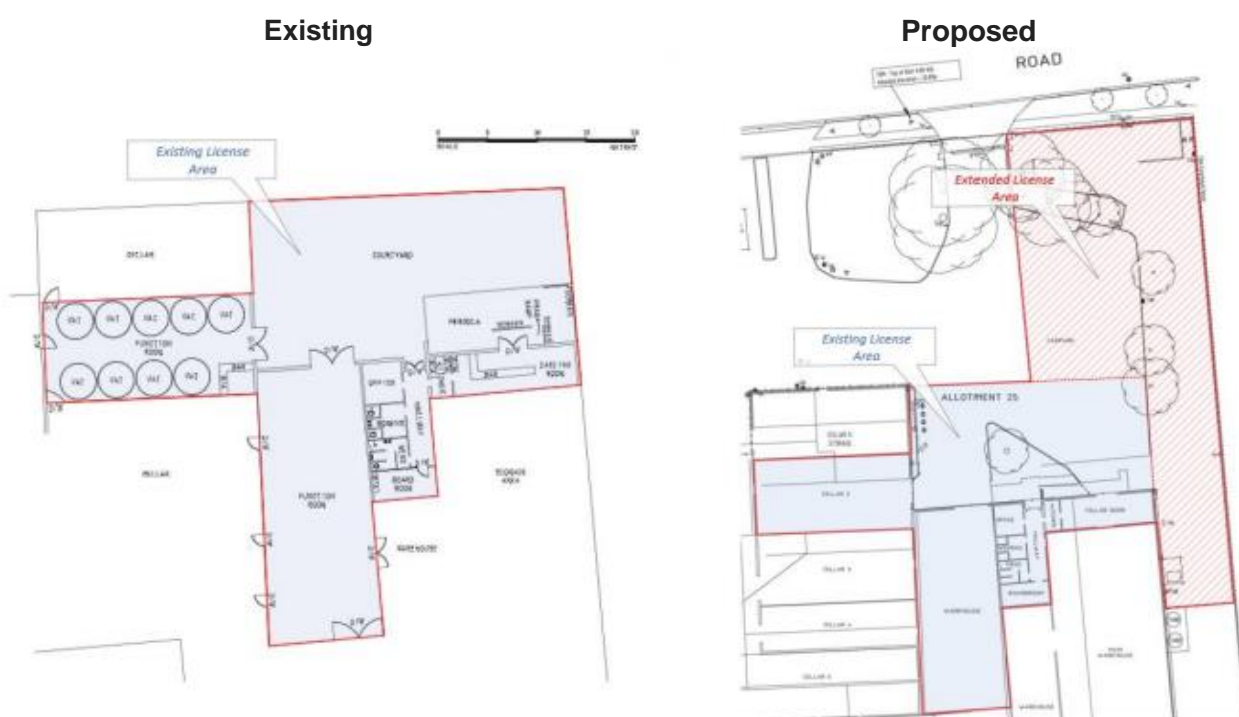


Fig 2 showing the subject land edged in red and the locality edged in yellow dashes.

## PROPOSED DEVELOPMENT

Patritti Wines currently operates as a wine production facility and provides ancillary cellar door functions. The cellar door offers wine tastings and wines by the glass. On Friday evenings, Saturday and Sunday afternoons, when the operational side of the winery is closed, the cellar door offers live acoustic style music, and a food truck is brought on site to serve patrons. The site does not have a commercial kitchen and food is limited to only that which is provided by the food truck. The proposal seeks to redefine the existing licence area, and to increase the licensed patron capacity from 150 to 300 patrons. In addition, the application seeks to formalise the long-standing cellar door and function use, which are currently in operation under the existing licence conditions.

The proposal will see the licensed area increased by an additional 227m<sup>2</sup> (from 1,225m<sup>2</sup> to 1,496m<sup>2</sup>). This increased area will include a portion of the existing car parking area adjacent Clacton Road, to the northeast corner of the property.



**Figure 3: - Proposed increase in the size of the licensed area**

The application does not propose any changes to the existing hours of operation. The following hours of operation will be maintained:

Monday to Thursday	-	7:00am to 12:00 midnight
Friday and Saturday	-	7:00am to 2:00am
Sunday	-	9:00am to 10:00pm

In addition, the proposal does not seek to amend the type of entertainment (i.e. acoustic live music) that is currently licensed and provided for at the premises.

In anticipation of the proposed increase in patron numbers, the applicant has previously submitted application 22038254 which proposed an increase in the toilet facilities to satisfy the Building Code requirements. This application has previously been approved.

## 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 is not a form of Development excluded from Public Notification in Table 5 of the applicable zone.

Having regard to the size of the site of the development and the location of the development within that site, 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

#### Statutory Referrals

The proposal does not trigger any statutory referrals.

### Coordinator Transport

Council's Coordinator Transport has reviewed the application plans and advised the following:

*Roads adjoining the development are operating as expected and within their service levels i.e., Clacton Road (Collector Road) / Dover Court (Local Road) and Yarmouth Street (Local Road). These streets do have a wide enough carriageway to allow parking to occur on both sides of the street concurrently and to still maintain vehicular access. Vehicles are required to drive to the conditions, giving way when/if required to oncoming traffic by pulling aside into vacant parking areas or driveways.*

*When cars are parked on both sides of the street, the effect is to reduce the street to one trafficable lane. This is not uncommon and acts as a natural traffic calming device. When cars do park on both sides of these streets a trafficable lane with a minimum of 3m is provided which complies with the requirements of the Australian Road Rules.*

*Council is committed to enforcing non-compliant parking i.e. parking over driveways or too close to junctions and can apply yellow line marking if required to assist with reiterating to the community where it is already not permitted to park.*





5. David Sterk of 22 Dover Court	✓
6. Natalie Harvey of 11 Dover Court	✓
7. Withdrawn by representor	X
8. Nick Smith of 60 Vinall Street	X
9. Robyn Burnett of 2 Hampton Court	X
10. Tom Burnett of 2 Hampton Court	X
11. Peter and Vicki Cooke of 3 Hampton Court	X
12. AJ and JV Cebulla of 96a Yarmouth Road	X
13. Linda McMahon of 51b Scarborough Terrace	X
14. Mitchell Burnett of 2 Hampton Court	X
15. Withdrawn by representor	X
16. Manon Timmermans of PO Box 469 Oakland Park	X

**Applicant Response** 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.

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

- Impact on adjoining properties
  - Parking and traffic
  - Noise

## ASSESSMENT

The proposed development relates to land use. The element of the proposal is assessed against the Employment Zone policies and provisions of the Planning and Design Code considered applicable for this form of development.

The following Planning and Design Code criteria have been identified as relevant to the assessment of the subject application. These criteria are listed in full (together with their associated DPFs) in Appendix 1:

## ZONE CONSIDERATIONS

**Employment Zone** DO 1, DO 2, PO 1.1 PO 1.2, PO 2.1, PO 5.1, PO 5.2

## RELEVANT OVERLAY CONSIDERATIONS

### Overlays:

*There are no overlays relevant to this proposal.*

## GENERAL DEVELOPMENT POLICIES CONSIDERATIONS

*Advertisements* DO1, PO 1.1 PO 1.2, PO 2.1

*Clearance of Overhead Powerlines* DO 1 PO 1.1

*Design in Urban Areas* DO 1, PO 3.1, PO 7.2, PO 7.3, PO 7.4, PO 7.5, PO 7.6, PO 11.1

*Interface between the Land Uses* DO 1, PO 1.2, PO 2.1, PO 4.1, PO 4.5, PO 4.6

*Transport, Access and Parking* DO 1, PO 1.1, PO 3.3, PO 3.4, PO 3.8, PO 3.9, PO 4.1, PO 5.1, PO 6.1, PO 6.2, PO 6.4, PO 6.5, PO 6.7

## ZONE CONSIDERATIONS

As noted previously, the subject land is located in the Employment Zone and entirely surrounded by allotments located in the General Neighbourhood Zone. Desired Outcome (DO) 1 for the Zone envisages *a diverse range of low-impact light industrial, commercial and business activities*. The use of the commercial winery meets the requirements of the Desired Outcome. The cellar door and function uses are ancillary and subordinate to the commercial winery. The cellar door and function use sell products that are manufactured on site and will not have a negative impact on local Activity Centres, the closest of which being some 420 metres away on Sturt Road.

DO 2 seeks development achieve high visual and environmental amenity along zone boundaries and public open space. The subject land is considered to achieve this outcome through the provision of existing robust landscaping and screening to its boundaries. In particular, mature plantings have been cultivated along the southern and western boundaries where the subject land has an interface with residential dwellings. Along the northern boundary, where the main entrance and exit for the site are located, the site enjoys landscaping and mature trees that provide a high standard of visual and environmental amenity.

Performance Outcome (PO) 1.1 of the Employment Zone seeks development that includes compatible businesses servicing the local community that do not produce emissions considered to detrimentally affect the local community. The cellar door and function use are currently operating under their existing licence conditions. It is not envisaged that the redefinition of the licenced area nor increasing the patron numbers will increase emissions from the site that would detrimentally affect the local amenity.

The proposal does not seek to negatively impact on the existing landscaping that is currently provided. The current levels of landscaping will be maintained to retain existing levels of amenity for patrons and enhance the appearance of the subject site and its interface with neighbouring dwellings.

## OVERLAYS

The proposal is for the expansion of the licencing area and the increase in the number of patrons. The proposal does not relate to the construction of new buildings nor the alteration of the built form of existing buildings. As such the proposal is not considered relevant to the Overlays: Airport Building Heights (Regulated) Overlay, Hazards (Flooding – General) Overlay, Prescribed Wells Area Overlay, nor the Regulated and Significant Tree Overlay.

## EXPANSION OF EXISTING LAND USE, INTERFACE BETWEEN LAND USES AND TRAFFIC IMPACTS

### *General Development Policies – Interface between Land Uses*

#### **DO 1**

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

### *General Development Policies - Transport, Access and Parking*

#### **DO 1**

*A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.*

#### **PO 1.1**

*Development is integrated with the existing transport system and designed to minimise its potential impact on the functional performance of the transport system.*

#### **PO 3.3**

*Access points are sited and designed to accommodate the type and volume of traffic likely to be generated by the development or land use.*

#### **PO 3.4**

*Access points are sited and designed to minimise any adverse impacts on neighbouring properties.*

#### **PO 3.8**

*Driveways, access points, access tracks and parking areas are designed and constructed to allow adequate movement and manoeuvrability having regard to the types of vehicles that are reasonably anticipated.*

#### **PO 3.9**

*Development is designed to ensure vehicle circulation between activity areas occurs within the site without the need to use public roads.*

#### **PO 4.1**

*Development is sited and designed to provide safe, dignified and convenient access for people with a disability.*

#### **PO 5.1**

*Sufficient on-site vehicle parking and specifically marked accessible car parking places are provided to meet the needs of the development or land use having regard to factors that may support a reduced on-site rate such as:*

- a) availability of on-street car parking*
- b) shared use of other parking areas*
- c) in relation to a mixed-use development, where the hours of operation of commercial activities complement the residential use of the site, the provision of vehicle parking may be shared*
- d) the adaptive reuse of a State or Local Heritage Place.*

#### **PO 6.1**

*Vehicle parking areas are sited and designed to minimise impact on the operation of public roads by avoiding the use of public roads when moving from one part of a parking area to another.*

#### **PO 6.2**

*Vehicle parking areas are appropriately located, designed and constructed to minimise impacts on adjacent sensitive receivers through measures such as ensuring they are attractively developed and landscaped, screen fenced, and the like.*

#### **PO 6.4**

*Pedestrian linkages between parking areas and the development are provided and are safe and convenient.*

#### **PO 6.5**

*Vehicle parking areas that are likely to be used during non-daylight hours are provided with sufficient lighting to entry and exit points to ensure clear visibility to users.*

#### **PO 6.7**

*On-site visitor parking spaces are sited and designed to be accessible to all visitors at all times.*

The proposal seeks to increase the number of patrons from 150 to 300. The Applicant's Traffic Engineer's assessment states that as the land use is not reflected within Table 1 – General Off-Street Car Parking Requirements, that an adopted car parking rate of 1 car parking space per 3 patrons would be commonly adopted in similar circumstances. The traffic engineer provides a plan for events that demonstrates 103 car parking spaces on site. This includes up to 43 car parking spaces that



would be accommodated onsite through the use of existing unused areas, that can be utilised without negatively impacting the commercial operations of the use. The additional 60 car parking spaces will be located in an existing area of hardstanding that is not used outside of business hours. Visitors would be directed by staff and signage to park in this area. In addition, the area would be delineated by cones and bunting.

On weekdays, during normal business operation, these spaces would not be required due to low customer numbers patronising the cellar door. The site would have adequate car parking without the need for the additional car parking spaces provided by this area.

The proposal seeks to minimise the potential impact on the performance of the local transport network by the events held at the subject land. This is achieved through the provisions of sufficient on-site car parking spaces and by encouraging patrons to park their vehicles on the subject land, rather than on the street. This will be achieved through specific measures (listed below) such as, requiring staff guiding patrons into the site and directing them to the designated parking areas.

The proposal will utilise the measures discussed below to discourage patrons from parking in the street. By encouraging patrons to park on site, it is envisaged that the proposal will minimise potential impacts to the local roads and reduce any adverse impacts on local residents.

The most common concern to representors is the impact that the cellar door and functions use has on the road network and how this will be exacerbated by increasing the number of patrons. These concerns stem from patrons who are attending the site and parking on nearby streets, rather than using the site's off-street car park. The concerns of representors include:

- Cars parking on both sides of the street reducing the width of the road carriage, causing vehicles to wait for oncoming vehicles to pass
- Residents having people parked across their driveways
- Cars parked on the street opening their doors without checking for oncoming vehicles
- People having to cross the road from between parked cars
- On street car parking reducing visibility for other road users, especially at junctions and reversing out of driveways
- Reduced availability of on-street car parking spaces for residents and people wanting to attend the council reserve.

Clacton Road and the adjoining streets (Yarmouth Road and Scarborough Terrace, Vinall Street and Winchester Street) are local roads under Council control. There are no parking restrictions on these streets with car parking permitted on both sides.

The applicant has submitted a traffic and parking assessment as part of their submission documents that assessed the impact of increasing the number of patrons to 300 by observing an Italian Festival event being held at the subject site in November 2022 which had a license capacity of 300.

In their observations, the Applicant's Traffic Engineer notes that:

- no traffic congestion was observed along Clacton Road, at the entrances to the site or in the adjacent streets
- traffic flows along the adjacent street were quite low
- where there was opposing traffic, one vehicle would have to give way while the other vehicle passed, these observed delays were minimal.

The applicant has provided a car parking plan that indicates the site can accommodate 103 on-site car parking spaces. As these events occur when the operational component of the winery is not operating, the additional car parking spaces are located between the western boundary and the main building. During typical business operation, there is no requirement for this car parking plan to be activated as patronage demand for the cellar door is very low and accommodated by the existing car

park by the main entrance off Clacton Road.

In reviewing the application and the representation, Council's Traffic Engineer noted that:

- Roads adjoining the development are operating as expected and within their service levels i.e. Clacton Road (Collector Road) / Dover Court (Local Road) and Yarmouth Street (Local Road).
- All of these streets have a carriageway wide enough to allow parking to occur on both sides of the street whilst maintaining vehicular access. This provides a trafficable lane with a minimum 3m width that complies with the Australian Road Rules.
- Vehicles are required to drive to the conditions. Where cars are parked on both sides, vehicles give way when/if it is required to oncoming traffic, with vehicles pulling aside into vacant parking areas or driveways etc
- Cars parking on both sides of the street, and reducing the street to one trafficable lane is not uncommon. This acts as a natural traffic calming device. This only becomes an issue when streets have a width narrower than 7.2m.
- From experience, when car parking is removed, it in fact makes the road width perceived to be wider (with less obstructions) which commonly increases vehicles speed, making it less safe.

The car parking concerns of the representors are due to the patrons of the winery parking on the street. The applicant's traffic engineer has provided several measures that could be introduced to encourage the use of on-site car parking.

These include:

- The advertising of the event would include information that parking is available on-site.
- During the event, bunting and cones would be placed to guide parking within the desired row arrangement and pedestrian areas.
- Temporary 'PARKING AVAILABLE ON-SITE' would be installed at the main entrance to direct patrons to the on-site car park.
- Staff manning the entrance would help direct patrons to the on-site parking area.

It is considered that the above measures will make a significant impact in discouraging patrons from parking on the street and instead to redirect them to the on-site facilities. It is envisaged that this will help reduce the number of vehicles that park on the street and thereby improving the parking conditions on Clacton Road and the surrounding area.

Whilst the concerns of local residents are considered, with regards to patrons parking on the street, it is noted that the cars are parking legally and that sufficient off-street car parking spaces are provided. Where cars are double parked, sufficient distance between the parked cars is maintained which complies with the Australian Road Rules. Despite cars parking on the street, the traffic impact of the proposal are considered acceptable.

## **EXPANSION OF EXISTING LAND USE, INTERFACE BETWEEN LAND USES AND NOISE**

### ***General Development Policies – Interface between Land Uses***

#### ***DO 1***

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

***PO 1.1 Sensitive receivers are designed and sited to protect residents and occupants from adverse impacts generated by lawfully existing land uses (or lawfully approved land uses) and land uses desired in the zone.***

#### ***PO 1.2***

***Development adjacent to a site containing a sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers is designed to minimise adverse impacts.***

#### ***PO 2.1***

***Non-residential development does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers) or an adjacent zone primarily for sensitive receivers through its hours of operation having regard to:***

- a) ***the nature of the development***

- b) *measures to mitigate off-site impacts*
- c) *the extent to which the development is desired in the zone*
- d) *measures that might be taken in an adjacent zone primarily for sensitive receivers that mitigate adverse impacts without unreasonably compromising the intended use of that land.*

**PO 4.1**

*Development that emits noise (other than music) does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers).*

*PO 4.5 Outdoor areas associated with licensed premises (such as beer gardens or dining areas) are designed and/or sited to not cause unreasonable noise impact on existing adjacent sensitive receivers (or lawfully approved sensitive receivers).*

**PO 4.6**

*Development incorporating music achieves suitable acoustic amenity when measured at the boundary of an adjacent sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers.*

The proposal seeks to double the number of patrons from 150 to 300 patrons, expanding the licenced area by 227m<sup>2</sup> along the eastern boundary and up to the front boundary and provide new car parking spaces on the western part of the site. Whilst the proposal will not alter or extend the existing hours of operation nor the delivery of live music on site, representations raised concerns that the increase in patrons and the expansion of the licenced area will increase the impact that the noise generated on site will have on local residents.

The nearest residential dwellings to the application site are located on the northern side of Clacton Road, on the western side of Yarmouth Road and Dover Court to the south. These dwellings are approximately 15 to 20 m away from the application site. Whilst the licensing area to be expanded is located entirely outside, much of the current licensed area is already located outside, with many functions taking place entirely outside, weather dependent.

Events usually consist of DJ's or live music (typically solo or duo acoustic artistes) using their own small PA systems. Neither the nature nor volume of music that is currently played on site will be altered by the proposal.

The applicant has provided an Environmental Noise Assessment which considers the noise associated with patrons and vehicle movements in the new parking area. The report considered the impact of the increased licensed area and patron numbers and concluded that noise levels from the proposed increased patronage will be consistent with the Environment Protection (Noise Policy 2007) and was consistent with the relevant interface between land uses provisions of the Planning and Design Code.

The applicant has agreed to a condition which limits the number of patrons outside after 10pm to 150, which is consistent with the existing licence arrangements. Should the Panel consider approval appropriate a condition to this effect will be included as part of the recommended conditions.

## **ADDITIONAL CONSIDERATIONS**

In addition to the expansion of the existing land use, traffic car parking and noise, this assessment has also considered the following matters:

### **Design in Urban Areas DO 1**

The requirements of DO 1 desires that development is contextual, durable, inclusive and contextual. Development should positively contribute to the character of the locality, be fit for purpose and improve local amenity.

The following provisions consider whether the proposal is considered to reasonable satisfy the outcome sought by these provisions.

### **Landscaping PO 3.1**

The subject land is characterised by attractive landscaping at the interface with the local residential dwellings. The landscaping contributes greatly to the visual appeal of the site to patrons and reduces the visual impact of the more industrial elements of the subject site. The landscaping is existing and will be retained by the proposal.

### **Car parking appearance DO1, PO 7.2, PO 7.3, PO 7.4, PO 7.5, PO 7.6**

The applicant currently provides patron car parking spaces, including a disabled car parking space in the northeast area of the site, adjacent to the entrance off Clacton Road. The proposal will result in the car parking area being reconfigured to improve accessibility. The reconfigured car parking spaces adjacent to Clacton Road will not negatively impact on the visual amenity of the streetscape nor the existing landscaping. Dedicated staff car parking spaces are located around the site.

The proposal will see an increase in the licensed capacity from 150 to 300 patrons. 60 additional car parking spaces will be sited on an existing area of hardstanding sited between the main building and the western boundary. These additional car parking spaces will be screened by existing solid fencing and landscaping that presently screens the site from the dwellings beyond the western boundary.

### **Site Facilities/Waste Storage PO11.1**

The site currently houses its waste storage facilities in the south-east corner of the site where it is concealed from view and public access. The site's waste facilities have the capacity to cope with the increase in patron numbers.

### **Clearance from Overhead Powerlines**

#### **DO 1, PO 1.1**

The applicant has provided a declaration to the declaration that the proposal would not be contrary to the regulations prescribed for the purposes of section 86 of the Electricity Act 1996. There are overhead powerlines that enter the site from the northern Clacton Road frontage however these lines terminate and distributed underground. The proposal does not include any additional structures or amendments to existing ones and will not impact on powerlines.

## CONCLUSION

The proposal seeks a variation in the existing cellar door and function use that will redefine the licence area and increase the patron capacity from 150 to 300.

The main considerations attributed to the variation and the expansion of the licenced area and patron numbers are noise and traffic impacts. The application site is a historic anomaly, isolated as the only enterprise sited within the Employment Zone, entirely surrounded by allotments within the General Neighbourhood Zone that encircles the subject site.

The concerns regarding traffic relate to patrons not using the on site car parking facilities and instead choosing to park on the surrounding streets. Although there are no parking restrictions in the locality there was consternation from local residents that on-street parking should be retained for the use of local residents and their guests and not be used by a commercial enterprise. The concern amongst local residents that this is an existing problem that will be exacerbated by the increase in patron numbers. However it is envisaged that the impact of the proposal will improve the existing situation and will minimise adverse impacts on the functioning of the local road network in compliance with the requirements of the Planning and Design Code regarding transport, access and parking. In addition, the applicant has provided a Traffic Engineer's report that supports the proposal and includes measures that will ameliorate the current and proposed situation and the increase in patron numbers.

These measures include:

- Advertising of the event would include information that parking is available on-site.
- During the event, bunting and cones would be placed to guide parking within the desired row arrangement and pedestrian areas.
- Temporary 'PARKING AVAILABLE ON-SITE' signage would be installed at the main entrance to direct patrons to the on-site car park.
- Staff manning the entrance would help direct patrons to the on-site parking area.

The roads in the vicinity of the application site are Council controlled roads and the proposal has been referred to Councils Traffic Engineer for comment.

Council's Traffic Engineer inspected the site and concluded that the roads adjoining the development are operating as expected and within their service levels. The streets in the immediate vicinity of the application site do have a carriageway that is of sufficient width to allow parking to occur on both sides of the street concurrently and to still maintain vehicular access. Vehicles are required to drive to the conditions, and when cars are parked on both sides of the street, the effect is to reduce the street to one trafficable lane. This is not uncommon and acts as a natural traffic calming device.

In order to address concerns raised with regards to noise and the interface with the neighbouring residential dwellings, the applicant has provided an environmental noise assessment report prepared by Resonate. The assessment noted that the hours of operation will not be changing. The type of music being played and the volume of music provided currently on site will not be being changed by the proposal.

Following consultation with Resonate, the applicant has agreed to amend the proposal so that after 10pm, the proposal will have no more than 150 people outdoors, and those patrons outdoors must be within the area currently approved by the existing licenced area. With this change, the noise engineer is confident that assessment demonstrates that the noise emissions from the proposed increased patronage will be consistent with the Environment Protection (Noise) Policy 2007, and therefore the proposal is consistent with the relevant interface related provisions of the Planning and Design Code.

It is considered that the development exhibits sufficient merit when assessed on balance against the relevant Desired Outcomes and Performance Outcomes to warrant Planning Consent subject to the conditions and notes listed below.

## 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: 22040748 to vary the existing cellar door and functions uses, including redefinition of licence area and increase licensed capacity from 150 to 300 persons, at 13 Clacton Road, Dover Gardens, 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. Between the hours of 10:00pm to 7:00am (of each day), the number of persons located outdoors shall not exceed 150, and shall be confined to the existing licence area.
3. The following hours of operation will be maintained:  
Monday to Thursday: 7:00am to 12:00 midnight  
Friday and Saturday: 7:00am to 2:00am (of the next day)  
Sunday: 9:00am to 10:00pm
4. The applicant will adhere to the recommendations outlined in the Resonate Environmental Noise Assessment dated 24 March 2023, *Section 5.4 Patron noise predicted noise levels*, to the satisfaction of Council.
5. Landscaping shall be planted and maintained in accordance with the plans and details forming part of the development authorisation.
6. 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.

---

<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.

7. All car parking spaces shall be linemarked or delineated in a distinctive fashion prior to occupation of the premises, with the marking always maintained in a clear and visible condition.
8. Appropriate parking measures as detailed in the Frank Siow Associates Traffic and Parking Assessment (dated 27 February 2023) *1.0 Insufficient car parking* shall be implemented prior to the commencement of the expanded use, to the satisfaction of Council.

## NOTES

1. The applicant has a right of appeal against the conditions which have been imposed on this Planning Consent. Such an appeal must be lodged at the Environment, Resources and Development Court within two months from the day of receiving this notice or such longer time as the Court may allow. The applicant is asked to contact the Court if wishing to appeal. The Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide, (telephone number 8204 0289).
2. The owner/applicant is advised that consent from any relevant easement or encumbrance owner may be required prior to any construction.

Easements may include, but are not limited to: drainage, Council easements (i.e. stormwater, encroachments, access etc), power transmission (SA Power Networks), telecommunications, or other forms of access (such as vehicle) rights of way.

Easements and encumbrances would be registered on the relevant Certificate of Title. The location of easements on the land would be shown on the Deposited Plan. A copy of the Certificate of Title and Deposited Plan can be obtained from the South Australian Integrated Land Information System (SAILIS) at:  
<https://sailis.lssa.com.au/home/auth/login>

3. The Local Nuisance and Litter Control Act 2016 has restrictions relating to the control of noise, dust, smoke, odours and unsightly conditions in the urban environment. Please note that conditions of this nature which unreasonably affect the amenity of neighbours may contravene the Act.
4. 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>.



## Appendix 1 – Planning and Design Code guidelines

Employment Zone			
DO1:	A diverse range of low-impact light industrial, commercial and business activities that complement the role of other zones accommodating significant industrial, shopping and business activities.		
DO 2	Distinctive building, landscape and streetscape design to achieve high visual and environmental amenity particularly along arterial roads, zone boundaries and public open spaces.		
PO 1.1	A range of employment-generating light industrial, service trade, motor repair and other compatible businesses servicing the local community that do not produce emissions that would detrimentally affect local amenity.	DPF 1.1	<p>Development comprises one or more of the following:</p> <ul style="list-style-type: none"> <li>a) Advertisement</li> <li>b) Consulting room</li> <li>c) Indoor recreation facility</li> <li>d) Light industry</li> <li>e) Motor repair station</li> <li>f) Office</li> <li>g) Place of worship</li> <li>h) Research facility</li> <li>i) Retail fuel outlet</li> <li>j) Service trade premises</li> <li>k) Shop</li> <li>l) Store</li> <li>m) Telecommunications facility</li> <li>n) Training facility</li> <li>o) Warehouse.</li> </ul>
PO 1.2	Shops provide convenient day-to-day services and amenities to local businesses and workers, support the sale of products manufactured on-site and otherwise complement the role of Activity Centres.	DPF 1.2	<p>DTS/DPF 1.2</p> <p>Shop where one of the following applies:</p> <ul style="list-style-type: none"> <li>a) with a gross leasable floor area up to 100m<sup>2</sup></li> <li>b) is a bulky goods outlet</li> <li>c) is a restaurant</li> <li>d) is ancillary to and located on the same allotment as an industry and primarily involves the sale by retail of goods manufactured by the industry.</li> </ul>
	<b>Built Form and Character</b>		
PO 2.1	Development achieves distinctive building, landscape and streetscape design to achieve high visual and environmental amenity particularly along arterial roads, zone boundaries and public open spaces.	DPF 2.1	None is applicable
	<b>Landscaping</b>		
PO 5.1	Landscaping is provided to enhance the visual appearance of development when viewed from public roads and thoroughfares.	DPF 5.1	<p>Other than to accommodate a lawfully existing or authorised driveway or access point, or an access point for which consent has been granted as part of an application for the division of land, a landscaped area is provided within the development site:</p> <ul style="list-style-type: none"> <li>a) where a building is set back less than 3m from the street boundary - 1m wide or the area remaining between the relevant building and the street boundary where the</li> </ul>

			building is less than 1m from the street boundary or b) in any other case - at least 1.5m wide.
<b>PO 5.2</b>	Development incorporates areas for landscaping to enhance the overall amenity of the site and locality.	<b>DPF 5.2</b>	Landscape areas comprise: a) not less than 10 percent of the site b) a dimension of at least 1.5m.
	<b>Overlays</b>		
	There are no relevant overlay provisions		
	<b>General Development Provisions</b>		
	<b>Advertisements</b>		
<b>DO 1</b>	Advertisements and advertising hoardings are appropriate to context, efficient and effective in communicating with the public, limited in number to avoid clutter, and do not create hazard.		
<b>PO 1.1</b>	Advertisements are compatible and integrated with the design of the building and/or land they are located on.	<b>DPF 1.1</b>	Advertisements attached to a building satisfy all of the following: a) are not located in a Neighbourhood-type zone b) where they are flush with a wall: i) if located at canopy level, are in the form of a fascia sign ii) if located above canopy level: A. do not have any part rising above parapet height B. are not attached to the roof of the building
<b>PO 1.2</b>	Advertising hoardings do not disfigure the appearance of the land upon which they are situated or the character of the locality.	<b>DPF 1.2</b>	Where development comprises an advertising hoarding, the support structure is: a) concealed by the associated advertisement and decorative detailing or b) not visible from an adjacent public street or thoroughfare, other than a support structure in the form of a single or dual post design.
<b>PO 2.1</b>	Proliferation of advertisements is minimised to avoid visual clutter and untidiness.	<b>DPF 2.1</b>	No more than one freestanding advertisement is displayed per occupancy.
	<b>Clearance from Overhead Powerlines</b>		
<b>DO 1</b>	Protection of human health and safety when undertaking development in the vicinity of overhead transmission powerlines.	<b>DPF 1.1</b>	One of the following is satisfied: a) declaration is provided by or on behalf of the applicant to the effect that the proposal would not be contrary to the regulations prescribed for the purposes of section 86 of the Electricity Act 1996 b) there are no aboveground powerlines adjoining the site that are the subject of the

			proposed development.
<b>PO 1.1</b>	Buildings are adequately separated from aboveground powerlines to minimise potential hazard to people and property.		
<b>Design in Urban Areas</b>			
<b>DO1:</b>	<p>Development is:</p> <ul style="list-style-type: none"> <li>a) contextual - by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributing to the character of the locality</li> <li>b) durable - fit for purpose, adaptable and long lasting</li> <li>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</li> <li>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 minimise energy consumption.</li> </ul>		
<b>PO 3.1</b>	<p>Soft landscaping and tree planting are incorporated to:</p> <ul style="list-style-type: none"> <li>a) minimise heat absorption and reflection</li> <li>b) maximise shade and shelter</li> <li>c) maximise stormwater infiltration</li> <li>d) enhance the appearance of land and streetscapes.</li> </ul>	<b>DPF 3.1</b>	None are applicable.
<b>PO 7.2</b>	Vehicle parking areas appropriately located, designed and constructed to minimise impacts on adjacent sensitive receivers through measures such as ensuring they are attractively developed and landscaped, screen fenced and the like.	<b>DPF 7.2</b>	None are applicable.
<b>PO 7.3</b>	Safe, legible, direct and accessible pedestrian connections are provided between parking areas and the development.	<b>DPF 7.3</b>	None are applicable.
<b>PO 7.4</b>	Street-level vehicle parking areas incorporate tree planting to provide shade, reduce solar heat absorption and reflection.	<b>DPF 7.4</b>	Vehicle parking areas that are open to the sky and comprise 10 or more car parking spaces include a shade tree with a mature canopy of 4m diameter spaced for each 10 car parking spaces provided and a landscaped strip on any road frontage of a minimum dimension of 1m.
<b>PO 7.5</b>	Street level parking areas incorporate soft landscaping to improve visual appearance when viewed from within the site and from public places.	<b>DPF 7.5</b>	<p>Vehicle parking areas comprising 10 or more car parking spaces include soft landscaping with a minimum dimension of:</p> <ul style="list-style-type: none"> <li>a) 1m along all public road frontages and allotment boundaries</li> <li>b) 1m between double rows of car parking spaces.</li> </ul>
<b>PO 7.6</b>	Vehicle parking areas and associated driveways are landscaped to provide shade and positively contribute to amenity.	<b>DPF 7.6</b>	None are applicable.
<b>PO 9.1</b>	Fences, walls and retaining walls of sufficient height maintain privacy and security without unreasonably impacting visual amenity and adjoining land's access to sunlight or the amenity of public places.	<b>DPF 9.1</b>	None are applicable.
<b>Interface between Land Uses</b>			
<b>DO1:</b>	Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.		

<b>PO 1.2</b>	Development adjacent to a site containing a sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers is designed to minimise adverse impacts.	<b>DPF 1.2</b>	None are applicable.
<b>PO 2.1</b>	Non-residential development does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers) or an adjacent zone primarily for sensitive receivers through its hours of operation having regard to: <ul style="list-style-type: none"> <li>a) the nature of the development</li> <li>b) measures to mitigate off-site impacts</li> <li>c) the extent to which the development is desired in the zone</li> <li>d) measures that might be taken in an adjacent zone primarily for sensitive receivers that mitigate adverse impacts without unreasonably compromising the intended use of that land.</li> </ul>	<b>DPF 2.1</b>	Shop, other than any one or combination of the following: <ul style="list-style-type: none"> <li>a) restaurant</li> <li>b) cellar door in the Productive Rural Landscape Zone, Rural Zone or Rural Horticulture Zone</li> </ul> 7am to 9pm, Monday to Friday 8am to 5pm, Saturday and Sunday
<b>PO 4.1</b>	Development that emits noise (other than music) does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers).	<b>DPF 4.1</b>	None are applicable.
<b>PO 4.5</b>	Outdoor areas associated with licensed premises (such as beer gardens or dining areas) are designed and/or sited to not cause unreasonable noise impact on existing adjacent sensitive receivers (or lawfully approved sensitive receivers).	<b>DPF 4.5</b>	None are applicable.
<b>PO 4.6</b>	Development incorporating music achieves suitable acoustic amenity when measured at the boundary of an adjacent sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers.	<b>DPF 4.6</b>	Development incorporating music includes noise attenuation measures that will achieve the following noise levels: Assessment Location – Externally at the nearest existing or envisaged noise sensitive location Music Noise Level – Less than 8 decibels above the level of background noise (L90, 15 min) in any octave band of the sound spectrum (LOCT10, 15 <LOCT90,15 +8dB)
<b>Transport, Access, and Parking</b>			
<b>DO1:</b>	A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.		
<b>PO 1.1</b>	Development is integrated with the existing transport system and designed to minimise its potential impact on the functional performance of the transport system.	<b>DPF 1.1</b>	None are applicable.
<b>PO 3.3</b>	Access points are sited and designed to accommodate the type and volume of traffic likely to be generated by the development or land use.	<b>DPF 3.3</b>	None are applicable.
<b>PO 3.4</b>	Access points are sited and designed to minimise any adverse impacts on neighbouring properties.	<b>DPF 3.4</b>	a) None are applicable.
<b>PO 3.8</b>	Driveways, access points, access tracks and parking areas are designed and constructed to allow adequate movement and	<b>DPF 3.8</b>	None are applicable.

	manoeuvrability having regard to the types of vehicles that are reasonably anticipated.		
<b>PO 3.9</b>	Development is designed to ensure vehicle circulation between activity areas occurs within the site without the need to use public roads.	<b>DPF 3.9</b>	None are applicable.
<b>PO 4.1</b>	Development is sited and designed to provide safe, dignified and convenient access for people with a disability.	<b>DPF 4.1</b>	None are applicable.
<b>PO 5.1</b>	<p>Sufficient on-site vehicle parking and specifically marked accessible car parking places are provided to meet the needs of the development or land use having regard to factors that may support a reduced on-site rate such as:</p> <ul style="list-style-type: none"> <li>a) availability of on-street car parking</li> <li>b) shared use of other parking areas</li> <li>c) in relation to a mixed-use development, where the hours of operation of commercial activities complement the residential use of the site, the provision of vehicle parking may be shared</li> <li>d) the adaptive reuse of a State or Local Heritage Place.</li> </ul>	<b>DPF 5.1</b>	<p>Development provides a number of car parking spaces on-site at a rate no less than the amount calculated using one of the following, whichever is relevant:</p> <ul style="list-style-type: none"> <li>a) Transport, Access and Parking Table 1 - General Off-Street Car Parking Requirements</li> <li>b) Transport, Access and Parking Table 2 - Off-Street Vehicle Parking Requirements in Designated Areas</li> <li>c) if located in an area where a lawfully established carparking fund operates, the number of spaces calculated under (a) or (b) less the number of spaces offset by contribution to the fund.</li> </ul>
<b>PO 6.1</b>	Vehicle parking areas are sited and designed to minimise impact on the operation of public roads by avoiding the use of public roads when moving from one part of a parking area to another.	<b>DPF 6.1</b>	Movement between vehicle parking areas within the site can occur without the need to use a public road.
<b>PO 6.2</b>	Vehicle parking areas are appropriately located, designed and constructed to minimise impacts on adjacent sensitive receivers through measures such as ensuring they are attractively developed and landscaped, screen fenced, and the like.	<b>DPF 6.2</b>	None are applicable.
<b>PO 6.4</b>	Pedestrian linkages between parking areas and the development are provided and are safe and convenient.	<b>DPF 6.4</b>	None are applicable.
<b>PO 6.5</b>	Vehicle parking areas that are likely to be used during non-daylight hours are provided with sufficient lighting to entry and exit points to ensure clear visibility to users.	<b>DPF 6.5</b>	None are applicable.
<b>PO 6.7</b>	On-site visitor parking spaces are sited and designed to be accessible to all visitors at all times.	<b>DPF 6.7</b>	None are applicable.

**4. DEVELOPMENT ACT APPLICATIONS  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 MAY 2023**

---



**REPORT REFERENCE: CAP030523 – 4.1  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 MAY 2023**

---



**CONFIDENTIAL REPORTS OF MANAGER DEVELOPMENT SERVICES**

**Reason for confidentiality**

It is recommended that this Report be considered in CONFIDENCE in accordance with Clause 13(2)(a) of the Planning, Development and Infrastructure Regulations, which permits the meeting to be closed to the public for business relating to the following:

- (viii) provision of legal advice;
- (ix) information relating to actual litigation, or litigation that the assessment panel believes on reasonable grounds will take place

**Recommendation**

1. The Council Assessment Panel orders pursuant to Clause 13(2)(a) of the Planning, Development and Infrastructure Regulations, that the public, with the exception of the Manager of Development and Regulatory Services, Team Leader - Planning, Development Officer – Planning, and other staff so determined, be excluded from attendance at so much of the meeting as is necessary to receive, discuss and consider in confidence, information contained within the confidential reports submitted by the Assessment Manager of the Council Assessment Panel.
2. Under Clause 14 of the Planning, Development and Infrastructure Regulations, an order be made that Item 4.1 including the report, attachments and discussions having been dealt with in confidence under Clause 13(2)(a) of the Planning, Development and Infrastructure Regulations, shall be kept in confidence until a decision of the Environment, Resources and Development Court relevant to the item is made.
3. Further, that at completion of the confidential session, the meeting be re-opened to the public.

**5. APPEALS UPDATE  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 MAY 2023**



**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>
22003132	216-220 Seacombe Road, Seaview Downs	20/02/2023	GRANTED	REFUSE	Conference scheduled.

***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 adjourned pending site inspection and next conference, both currently scheduled for 29th March 2023.
100/2021/0195	3, 7 and 9 Franklin Street Sturt	13/01/2023	GRANTED	REFUSE	Conciliation conference adjourned for 11 April 2023.



**6. POLICY OBSERVATIONS  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 MAY 2023**

---



No items listed for discussion.