

**NOTICE OF  
COUNCIL ASSESSMENT PANEL MEETING**

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

**Wednesday 03 August 2022**

**Commencing at 6.45 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**

27 July 2022

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**CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 AUGUST 2022  
COMMENCING AT 6:45PM**

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**1. MEETING PROCEDURES**

**1.1 OPEN MEETING (ON-SITE)**

**1.2 PRESENT**

**1.3 APOLOGIES**

**1.4 IN ATTENDANCE**

**1.5 RESUMPTION OF MEETING (ADMIN CENTRE)**

**1.6 PRESENT**

**1.7 APOLOGIES**

**1.8 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. 21039938**

**6 Angas Crescent, Marino**

**Two storey detached dwelling with associated earthworks, retaining walls and swimming pool**

Report Reference: CAP030822 - 4.1.....2

**4.2 DEVELOPMENT NO. 22009603**

**13 Sanctuary Avenue, Sheidow Park**

**Single storey split level dwelling with associated earthworks and retaining walls**

Report Reference: CAP030822 - 4.2.....19

**4.3 DEVELOPMENT NO. 22014228**

**284-286 Sturt Road, Marion, 288 Sturt Road, Marion, 292-296 Sturt Road, Marion, 876 Marion Road, Marion, 24 and 22 Tweed Avenue, Marion**

**The construction of eight (8) freestanding lighting poles, one of which is de-activated (located in the north-eastern corner of 22 Tweed Avenue), associated with the Sunrise Christian School and associated car parking areas**

Report Reference: CAP030822 - 4.3.....37

#### **4.4 DEVELOPMENT NO. 22014207**

**373 Diagonal Road and 45 Miller Street, Sturt**

**Application to Vary DA 21013079 proposing Introduction of drive-thru driveway, Alterations to existing control building including removal of mezzanine level, inclusion of drive-thru order and pick up canopies (including acoustic fencing), digital signage to the northern and western facades and internal layout changes, Relocation of freestanding northern-eastern pylon advertisement and associated hording to the south-west location of site, Relocation of western freestanding pylon advertisement and associated hording from the northern side of the crossover to the southern side of the crossover, Changes to previously approved site landscaping, Minor changes to internal carpark layout of site, Increase in bin enclosure size.**

**Report Reference: CAP030822 - 4.4.....46**

### **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**

No items listed for discussion

### **8. CONFIRMATION OF THE COUNCIL DEVELOPMENT ASSESSMENT PANEL MEETING HELD ON 03 AUGUST 2022**

### **9. MEETING CLOSURE**

**2. GENERAL OPERATING PROCEDURES  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 AUGUST 2022**

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No items listed for discussion.

**REPORT REFERENCE: CAP030822 – 4.1**  
**CITY OF MARION**  
**COUNCIL ASSESSMENT PANEL AGENDA**  
**FOR MEETING TO BE HELD ON**  
**WEDNESDAY 3 AUGUST 2022**




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<b>Originating Officer:</b>	<b>Joanne Reid</b> <b>Development Officer – Planning</b>
<b>Applicant:</b>	<b>Francesco Bonato</b>
<b>Development Description:</b>	<b>Two storey detached dwelling with associated earthworks, retaining walls and swimming pool</b>
<b>Elements:</b>	<b>Housing (detached dwelling)</b> <b>Fences and walls (retaining wall)</b> <b>Other residential (earthworks)</b>
<b>Site Location:</b>	<b>6 Angas Crescent Marino</b>
<b>Zone:</b>	<b>Hills Neighbourhood</b>
<b>Lodgement Date:</b>	<b>24/12/2021</b>
<b>Planning and Design Code:</b>	<b>16 December 2021 Version 2021.17</b>
<b>Referrals (Internal):</b>	<b>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:</i> <i>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>An application that involves a retaining wall that exceeds 1.5 metres in height, and earthworks requires public notification as the exceptions to the exclusion from notification is triggered per Column B in Table 5 of the Zone.</i>
<b>Application No:</b>	<b>21039938</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 I: Proposal Plan and supporting documentation*

*Attachment II: Statement of Representations*

*Attachment III: Applicant's Response to Representations*

## SUBJECT LAND

The subject land is located on the corner of Dudley and Angus Crescent in Marino. The address is 6 Angus Crescent and has a frontage of 16.59m along this road. The site maintains a depth of 28.98m on the southern side boundary with the corner cut-off reducing the northern side boundary to a length of 19.83m. The eastern boundary extends 25.74m. The total site area is 704m<sup>2</sup>.

The land is currently vacant, and the topography is such that there is a relatively level area along the western and southern boundaries, then falls significantly from approximately 3m-5m from the northern and western boundaries. As such, whilst the edge of the site would have a gradient of around 1-in-4, the average grade along the entire site would equate to approximately 1-in-14.

There is an existing access point off Dudley Crescent along the eastern boundary as well as on the corner of Dudley and Angus but would not meet today's driveway regulations.

The site does not contain any significant or regulated trees.

**Figure 1: Subject land** - - - - -





## LOCALITY

The locality is low scale residential comprising detached dwellings on large allotments.

The sites have varying levels of topography with the sites along Angas to the north and Dudley to the west falling away from the subject land whilst sites to the south are slightly elevated.

The sites in the area have predominantly medium to large street setbacks and large open front yards. Many dwellings have been designed to take advantage of ocean views towards the north-west as well as some city views towards the north-east.

**Figure 2: The Locality** — . . . —



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

The land is in the Hills Neighbourhood Zone (the Zone) of the Planning and Design Code (the Code). The large vacant site to the east is the Cement Hill site located within the Masterplan Neighbourhood Zone.

## **PROPOSED DEVELOPMENT**

The proposed development seeks to construct a new two storey dwelling with associated earthworks and retaining walls and a swimming pool.

### Ground Floor

- 5 Car Garage
- Storage
- Mud room, bathroom
- Cellar

### First Floor/ Entry

- Three bedrooms (one with ensuite)
- Separate living area and study
- Open plan kitchen/dining/living
- Laundry and bathroom

The proposed dwelling will have a single storey presentation towards Angas Crescent and for the most part, Dudley Crescent with the exception of the eastern view of the garage.

Excavation work will be undertaken from the eastern side of the site to provide access and a driveway to an undercroft garage with entry and exit from the existing crossover on Dudley Crescent. The garage will sit approximately 2m below natural ground level and will accommodate storage for 5 vehicles, manoeuvring areas and storage areas.

The second level will sit 3.2m above the ground level. Additional fill will assist in concealing sections of the garage visible to the street, with the portions of the second level extending beyond the garage footprint to sit atop the filled level.

The second level incorporates the entrance from Dudley Avenue and the main living features of the dwelling.

The vacant area around the site is then graded down to meet retaining walls ranging in height from 1.5m on the Angas Crescent boundary to 2.15m on the Dudley Crescent Boundary.

A swimming pool and deck area is proposed adjacent the western boundary in front of the dwelling. The roof form of the dwelling extends further north to cover a patio area.



## **PROCEDURAL MATTERS**

### **Classification**

The subject land is in the Hills Neighbourhood Zone of the Planning & Design Code (the Code) as of 21 December 2021.

The proposed development is not prescribed as “accepted”, “deemed to satisfy” or “restricted” development in the Zone.

The proposal is therefore “performance assessed development” pursuant to Section 107(1) the Planning, Development and Infrastructure Act, 2016 and will be assessed on its merits against the various provisions of the Code.

### **Public Notification**

Clause 3 (f) and (h) of Table 5 – Procedural Matters in the Hills Neighbourhood Zone excludes notification for development comprising a dwelling and fence. Part 7 excludes retaining walls from notification.

Exemptions to the above exclusions relate to:

- Dwellings that exceed 2 building levels or 9 metres.
- Dwellings and fences that have a length exceeding 8 meters or height that exceeds 3.2 metres from natural ground level.
- Retaining walls that are higher than 1.5 metres.

Notification is required in this instance because:

- The retaining is more than 1.5m
- Earthworks are not excluded from notification.

The application was publicly notified between 30 March 2022 and 21 April 2022. During this time one representation was received which opposed the development. The opposing representation indicated a desire to be heard by the Council Assessment Panel (the Panel) in determining this application. Pursuant to the Marion CAP Instrument of Delegations, the Panel is the Relevant Authority in regard to a determination.

The applicant’s response to the representation forms an attachment to this report.



**Properties Notified  
Representations**

38  
1 received  
1 opposes the development

**Representations  
received**

1. Tim Gard of 8 Angas Crescent Marino

Wish to be heard  
✓

**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.

## 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.***

Development that does not fall within a specified class in Table 3 will be considered “All Other Code Assessed Development”, to which all relevant policies apply for the purposes of assessment.

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

- Land Use
- Building Footprint and Siting
- Built Form Character and Design

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

## ZONE CONSIDERATIONS

***Hills Neighbourhood Zone: DO1, PO 1.1, PO 3.1, PO 4.1, PO 5.1, PO 7.1, PO 8.1, PO 9.1, PO 10.1, PO 10.2, PO 11.1, PO 11.2 & PO 11.3***

## RELEVANT OVERLAY CONSIDERATIONS

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

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

***Urban Tree Canopy: DO 1 & PO 1.1***

## GENERAL DEVELOPMENT POLICIES CONSIDERATIONS

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

***Design in Urban Areas: DO 1, PO1.1 – 1.5, PO 2.1 – 5.1, PO 7.1 – 10.2, PO 17.1 – 18.2 & PO 20.1 – 24.1***

***Interface between Lane Uses: DO 1, PO 1.1 - 1.2, PO 3.1 – 3.2 & PO 7.1***

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

***Transport, Access and Parking: DO 1 & PO 2.1 - PO 5.1***

Quantitative Snapshot Table		
Provisions	DPF Guideline <i>(note as the application is Performance Assessed, the suggested DTS/DPF is 'one way' of achieving the corresponding Performance Outcome)</i>	Proposed Development
Site coverage	50% (Gradient 1-in-8 or less)	44.6%
Building Height	9m 2 levels	7.325m 2 level
Primary Street Setback	At least the average setback to the building line of existing buildings on adjoining sites which face the same primary street (including those buildings that would adjoin the site if not separated by a public road or a vacant allotment) 4 Angas Crescent – 13m 8 Angas Crescent – 7.5m Average – 10.25m	5.19m
Boundary walls	3.2m in height from lower of natural or finished ground level, 8m in length	No boundary walls proposed

Provisions	DPF Guideline	Proposed Development
<i>Southern Side Setbacks</i>	<i>For walls facing a southern side boundary, at least 1.9m plus 1/3 of the wall height above 3m measured from the top of the footings</i>  Wall height at ground level of adjoining property – 4.125m = 2.275m	2m
<i>Secondary street side setbacks</i>	<i>900mm for site gradient less than 1-in-8</i>	6.73m
<i>Rear setback</i>	<i>4m for the first level 6m for any second building level</i>	Ground level – 4m First floor – 2m
<i>Private open space</i>	<i>60 sq metres</i>	85 sq metres
<i>Car parking spaces</i>		
<i>On-site</i>	<i>2 (1 undercover)</i>	9 (5 undercover)
<i>On-street</i>	<i>1</i>	3
<i>Pervious Surfaces / Soft Landscaping</i>	<i>25%</i>	25%
<i>Front yard soft landscaping</i>	<i>30%</i>	83%
<i>Rainwater tank</i>	<i>5000L – minimum 4000L retention, 1000L detention connected to 60% of roof area and plumbed to toilet or laundry</i>	5000L tank connected to toilet/laundry

## **Land Use**

Hills Neighbourhood Zone, Performance Outcome 1.1 seeks:

***Predominantly low density residential development with complementary non-residential uses compatible with natural landforms and a low density residential character.***

The subject land is an existing allotment that was formed for residential purposes as part of a previous authorisation for land division. The size of the land qualifies as low-density.

Given the proposed development seeks to construct a dwelling over two levels on the land, the proposal satisfies land use policies and is a class of development envisaged in the Zone.

## **Building Footprint and Siting**

### **Site Coverage**

Hills Neighbourhood Zone, Performance Outcome 3.1 seeks:

***Building footprints consistent with the character and pattern of a low-density suburban neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.***

The consistent character of the locality is, for the majority, represented by rectangular shaped allotments with a singular street frontage and a depth longer than its width.

The subject land is a corner site and maintains a frontage that is not significantly shorter than its depth. It is noted, in these instances, that there is some leeway in regards to setbacks from boundaries and the siting of the built form.



The building's general footprint, from a quantitative perspective reflects the desired DPF provision at 44.6%, where, even if the steeper gradient were to be taken in this instance, it would only be marginally above the criteria, that being 40%.

In my opinion, the building's setbacks, more specifically the rear setback, results in an impact to the neighbour that is visually intrusive, will impede the attractive outlook and reduce the provision of natural light.

As such, the siting of the proposal is not considered to reflect the intent of Performance Outcome 3.1.

Further discussion will be provided in the 'setback' section below, however, it is considered that the consistent pattern of development in the locality is such that separation from the rear of the building ought to be provided, this being the boundary that is directly parallel with the primary street boundary.

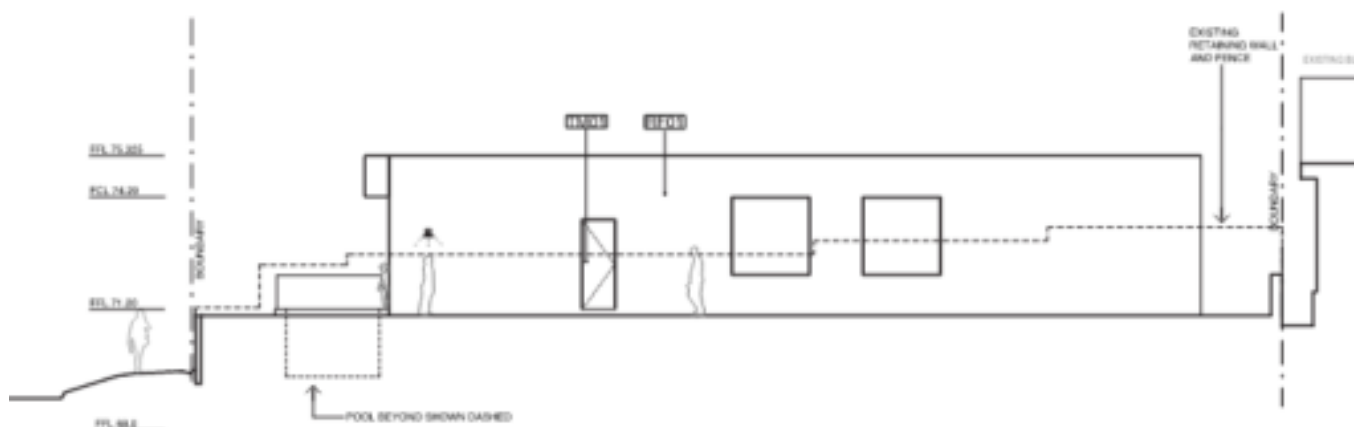
Whilst the dwelling is two storey, the ground level of the upper storey matches that of the neighbouring property and as such, consideration could be given to providing a setback from the eastern boundary that reflects the DPF for a single storey rear setback, that being 4m. The proposed setback distance of the first floor of the dwelling to the eastern boundary is 2m.

In the context of this site and locality, the outlook to the north of the site from the adjoining property's private open space area has an open feel and being on higher plains, does incur some views of the city and ocean and in the writer's opinion, considered "attractive".

Design in Urban Areas DO 1 (a) states that Development is *contextual – by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributing to the character of the locality*

As such, in this circumstance, there is some justification to suggest that the pattern of development should follow the neighbouring property to the south, providing greater separation to the eastern boundary. A greater setback from the eastern boundary will provide greater visual and amenity relief, and restore some outlook likely to be lost if the proposal was to be built as proposed.

**Figure 1: Proposed building footprint along the southern boundary**



**Figure 2: Northern outlook from neighbouring property**



### **Setbacks**

The relevant provisions relating to setbacks are as follows:

Hills Neighbourhood Zone, Performance Outcome 5.1 seeks:

***Buildings are set back from primary street boundaries consistent with the existing streetscape.***

Hills Neighbourhood Zone, Performance Outcome 6.1

***PO 6.1 Buildings are set back from secondary street boundaries to maintain a pattern of separation between buildings and public streets and reinforce streetscape character.***

Hills Neighbourhood Zone, Performance Outcome 8.1 seeks:

***Buildings are set back from side boundaries to provide:***

- (a) separation between dwellings in a way that complements the established character of the locality***
- (b) access to natural light and ventilation for neighbours.***

Hills Neighbourhood Zone, Performance Outcome 9.1 seeks:

***Buildings are set back from rear boundaries to provide:***

- (a) separation between dwellings in a way that complements the established character of the locality***
- (b) access to natural light and ventilation for neighbours***
- (c) private open space***
- (d) space for landscaping and vegetation.***

Front:

The Planning and Design Code defines the primary street as follows:

*In the case of a site that has a frontage to 2 roads:*

1. *if the frontages are identical in length - the road that forms part of the street address of the building, as determined by the council for the relevant area when it is allocating numbers to building and allotments under section 220 of the Local Government Act 1999; or*
2. *in any other case, the road in relation to which the site has a shorter frontage;*

Accordingly, for the purposes of this assessment, the setback to Angas Crescent is considered to be the primary street setback.

The relevant DTS/DPF suggests the building should be setback the average of the two adjoining properties (including those properties that would adjoin the site if not separated by a public road or vacant allotment). This notwithstanding, the relevant Performance Outcome suggests buildings should be set back from primary street boundaries to provide consistency with the existing streetscape.

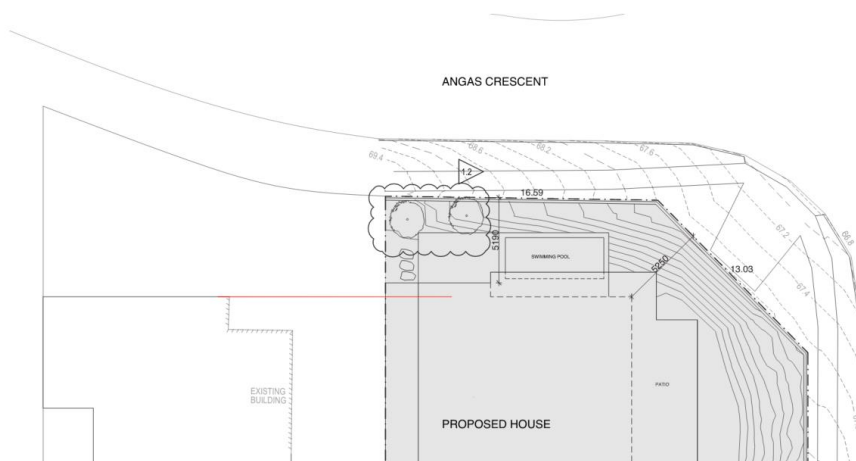
The dwelling at 4 Angas Crescent is setback approximately 13m whilst the dwelling at 8 Angas is setback around 7.5m from the main face. This would equate to a setback of around 10.25m. Given the site's lack of depth, this would significantly restrict the development viability of the site and in my opinion, a lesser setback would not be at odds with the overall character of the locality.

The dwelling's front setback reflects a similar alignment to that of the neighbouring property at 8 Angas Avenue. In acknowledging that the neighbouring property to the north maintains a generous setback, the front boundary fencing and the separation with the road lessens the apparent variation in the setback and it is considered more appropriate to coordinate the setback with the adjoining property to the south.

The figure below shows the general alignment of the existing property of 8 Angas and the proposed dwelling at number 6. Although slightly forward by approximately 860mm, this variance is unlikely to be apparent, particularly as the dwelling at number 8 has a further protruding element on the southern side of the dwelling.

To this end, I consider that the proposed front setback displays consistency with the dwelling on the adjoining land to the north and will present appropriately to the street.

**Figure 3: Front setback**



Side:

The proposed dwelling maintains a generous secondary street setback from the Dudley Crescent boundary. Whilst a lesser setback would be acceptable, the proposed setback does not offend the Performance Outcome.

The southern side boundary, based on a wall height which exceeds 3m by 1.125m (4.125), requires a setback of 2.275m. The building wall encroaches within this setback by 275mm.

The wall height has been measured from the base of where the proposed ground level matches that of the neighbouring property.

Whilst there is a numerical shortfall against the DPF of the Zone, it is not considered that it would result in an outcome significantly different to that if the additional 275mm were provided. It is unlikely to cause significantly greater overshadowing, nor would the visual impact of that wall be substantially different.

When assessed against the performance outcome, the side setbacks are such that they display a reasonable consistency with the existing character of the locality with no unreasonable loss of natural light or ventilation to the adjoining property, other than what is anticipated with this form of development.

Rear:

The proposed application raises some conjecture in relation to the rear setback and staff and the applicant have maintained differing views with regards to the interpretation and implementation.

As discussed above, it is staff's view that rear setback provisions should apply to the boundary which is situated on the opposite side of the primary street boundary. The proposed setback, which, at 2m, does not reflect the DPF standard for the rear setback of the first building level, and does not provide adequate separation in a manner consistent with the established building footprint for dwellings which have Angus Crescent as their primary street. This results in a poor outcome for the neighbouring property to the South.

The applicant considers that as the code specifically defines primary and secondary boundaries but does not define side and rear boundaries. As such, being a corner property and, as the land shares a side boundary with the dwelling on the allotment to the east, the applicant considers it appropriate to interpret the eastern boundary to also be a side boundary and due to the configuration of the allotment, the subject land does not have a traditional 'rear' boundary.

The established character of the locality is predominantly a traditional building footprint with a front landscaped yard and private open space to the rear. In the context of the immediate area, even those sites located on corner allotments provide some separation to its respective boundary behind the dwelling, despite having setbacks that are incongruent with the locality. As such, even in circumstances where the side setbacks are applied to both the primary and rear boundary, building footprints are generally situated towards the secondary street, thereby still allowing some separation towards the rear of the allotment.

The lack of an appropriate setback to the eastern boundary is considered to result in visual impacts that fails to complement the established character as sought by Hills Neighbourhood Zone PO 9.1 (a) and will diminish the outlook and enjoyment for the neighbouring property, particularly in the context of the locality.

Accordingly, it is considered practical and reasonable to mimic the predominant building footprint applied to those dwellings which have Angus Crescent as its primary street frontage and therefore

provide separation to the eastern boundary to improve the outlook afforded to the neighbouring property to the South.

### Building Height

Hills Neighbourhood Zone, Performance Outcome 4.1 seeks:

***Buildings contribute to a low-rise suburban character and complement the height of nearby buildings.***

The proposed dwelling, although two storey, will have the general appearance from the street as a single storey due to the excavation of the lower level some 1.9m below the natural ground level, then backfilled around the front and side to where the upper level commences.

In any event, the total proposed building height of 7.325m which is visible from the eastern side, satisfies the TNV and therefore satisfied the relevant height policy.

### Retaining Walls and Fencing:

Performance Outcomes 11.1 of the Zone seeks:

***Buildings sited and designed to integrate with the natural topography of the land using measures such as split level building construction and other approaches that minimise the extent of cut and fill.***

Performance Outcome 11.3 of the Zone seeks:

***Retaining walls are stepped series of low walls constructed of dark, natural coloured materials and screened by landscaping.***

Design in Urban Areas Performance Outcome 9.1 seeks

***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.***

Designated Performance Feature 11.3 provides the following guideline to achieve the PO:

#### ***Retaining walls:***

- a) do not retain more than 1.5m in height***
- or***
- a) where more than 1.5m is to be retained in total, are stepped in a series of low walls each not exceeding 1m in height and separated by at least 700mm.***

New retaining walls located along the primary and secondary street boundaries seek to retain graded fill and will have a maximum height of 2.15m. The location of the walls are such that they serve a dual purpose of retaining the fill as well as providing an attractive boundary wall with a rendered appearance which form part of the streetscape appearance.

Although it is noted that the walls are not low in height, the slope of the land is such that the walls are situated below the main level of the dwelling and will not obscure the appearance of the appearance of the dwelling and the appearance of the walls form part of the overall integrated design with the dwelling.

The locality is such that retaining walls and masonry boundary fencing are a common theme in the locality and will not be out of character nor are they located in a manner which will unreasonably impact on any adjoining property.



### **Built Form Character**

Performance Outcomes 9.1, 10.1 and 10.2 of the Zone, and several policies of the Design in Urban Areas - General Development Policies provide relevant policies for consideration of the built form character and the external appearance of buildings.

The built form and character is such that the general design responds appropriately to its setting with earthworks being used in a way that reduces the bulk, mass and profile of the dwelling to the street by lowering the ground level and using fill to conceal parts of the lower storey.

The design utilises the northerly aspect by exposing its open space to the street as well as the swimming pool. Although unconventional, the lay of the land is such that the area sits quite high above street level which provides some natural protection against privacy.

The colours and materials are considered to be natural tones which blend in its surroundings including white render and limestone on the façade, colour coated roof in surfmist and timber doors. The design incorporates articulating features through its large framed windows and varied roof form.

The monument garage is somewhat bold within a natural setting however, it will have limited visibility from the street.

The above notwithstanding, the footprint of the building results in a larger building mass when viewed from the adjoining property to the south. The duplication of both front yard and open space results in a pattern of development that does not provide adequate separation from the eastern boundary and a large expanse of building is seen from the neighbouring land contrary to Design in Urban Areas PO 20.3.

## **CONCLUSION**

The general concept of the proposed dwelling is a suitable design for the site and utilises the lay of the land which reduces the bulk when viewed from the streetscape.

However, it is the building footprint that is considered to have a presentation, when viewed from the adjoining land, that results in unreasonable visual impacts from that property.

The proposed dwelling does not provide a reasonable setback from the rear eastern boundary and in doing so, does not take into consideration the contextual nature of the locality and the outlook that it will detrimentally impact, nor does it result in a consistent pattern of development which generally offers a generous setback to accommodate private open space.

It is noted that the applicants have interpreted the Planning and Design Code differently to that of the staff and considers that the nature of the corner allotment is such that some flexibility can be adopted.

It is conceivable that the merits of the proposal are considered to be finely balanced, however, it is the writer's opinion that regard should be had for the high visual amenity that is afforded to occupants of the locality and that of the relevant Performance Outcomes which seek a built form and setbacks that complement the established character, limit visual impacts and to provide attractive outlooks.

To this end, the proposal does not satisfy the relevant Performance Outcomes in this regard and for this reason, refusal is recommended.

## **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: 21039938 for Two storey detached dwelling with associated earthworks, retaining walls and swimming pool at 6 Angas Crescent Marine be REFUSED for the following reasons:**

## **REASONS FOR REFUSAL**

- 1. The building footprint does not provide sufficient space from the eastern boundary to limit visual impacts and results in the loss of an attractive visual outlook and is contrary to Hills Neighbourhood Zone PO 3.1.**
- 2. The setback from the eastern boundary does not take into consideration the established character of the locality and is not complementary to established dwellings and the amenity of the occupants contrary to PO 9.1 (a).**
- 3. The proposed development does not demonstrate satisfaction of Design in Urban DO 1 (a) in that it has not sought to positively respond to the existing built environment's surroundings and consequently does not positively contribute to the character of the locality.**
- 4. The extended length of the built form along the southern boundary forms a visual mass when viewed from adjoining allotments and does not satisfy Design in Urban Areas PO 20.3.**

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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.

**REPORT REFERENCE: CAP030822 – 4.2**  
**CITY OF MARION**  
**COUNCIL ASSESSMENT PANEL AGENDA**  
**FOR MEETING TO BE HELD ON**  
**WEDNESDAY 3 AUGUST 2022**



<b>Originating Officer:</b>	<b>Joanne Reid</b> <b>Development Officer – Planning</b>
<b>Applicant:</b>	<b>Oakford Homes</b>
<b>Development Description:</b>	<b>Single storey split level dwelling with associated earthworks and retaining walls</b>
<b>Elements:</b>	<b>Housing (detached dwelling)</b> <b>Fences and walls (fence and retaining wall)</b> <b>Other residential (earthworks)</b>
<b>Site Location:</b>	<b>13 Sanctuary Avenue, Sheidow Park</b>
<b>Zone:</b>	<b>Hills Neighbourhood</b>
<b>Lodgement Date:</b>	<b>12/04/2022</b>
<b>Planning and Design Code:</b>	<b>31 March 2022 Version 2022.6</b>
<b>Referrals (Internal):</b>	<b>Nil</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> <i>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>An application that involves a building wall (or structure) proposed on the boundary (not primary or secondary street) that exceeds 3.2 metres in height, measured from the natural or finished ground level, and earthworks requires public notification as the exceptions to the exclusion from notification is triggered per Column B in Table 5 of the Zone.</i>
<b>Application No:</b>	<b>22009603</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*

## SUBJECT LAND

The subject land is a rectangular shaped allotment located on the eastern side of Sanctuary Avenue, a recently formed public road which was created in relation to a past development approval. That land division approval resulted in the creation of 25 allotments from 2 existing allotments.

The land is currently vacant and has a fall of approximately 4.8 metres from the front boundary towards the rear. This results in a slope of approximately 1:8, that is, for every 8 metres the land falls 1 metre.

**Figure 1: Subject land** - - - - -





## LOCALITY

The locality includes the entire portion of Sanctuary Avenue and Liberty Street, as well as portions of Woodend Road where it becomes Charles Tank Drive to the east and 100 metres west of its junction with Sanctuary Avenue.

Sanctuary Avenue and Liberty Street contain allotments forming part of a recently developed subdivision. Most allotments are currently vacant. Some single storey detached dwellings have been built on recently deposited allotments, with a prominent two-storey detached dwelling occupying one of the sites with direct frontage to Woodend Road.

Allotments located on the eastern side of Sanctuary Avenue fall away from road level and have established bench levels, albeit difficult to see due to ground cover. Those allotments on the western side have ground levels that are generally at road level, or higher than road level. Concrete footpaths and gravel garden beds with small shrubs separate private allotments with the newly formed road.

Established dwellings facing Woodend Road are detached and of both single storey and two storey building height. Due to the uneven topography of this locality, retaining walls form part of its character.

Front yards are generally open, which contributes to the open landscaped foothills character.

**Figure 2: The Locality** — . . . —



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

The land is in the Hills Neighbourhood Zone (the Zone) of the Planning and Design Code (the Code), and the Suburban Neighbourhood Zone is located on the northern side of Woodend Road.

## **PROPOSED DEVELOPMENT**

The proposed development seeks to construct a new one storey, split level, detached dwelling on a vacant site. Specifically, it includes the following features:

### Ground/entry level:

- Entry porch
- Three bedrooms including master bedroom with robe and ensuite.
- Two-car garage.
- Laundry
- Powder room.
- Open kitchen/dining/living.
- Alfresco

The proposed dwelling has a single-storey presentation to the street. Street level includes a master bedroom, and garage, with the floor plan then stepping down 1.03m to the two remaining bedrooms, bathrooms and laundry and a further step down of 850mm to the kitchen, living area and alfresco.

The proposed development also includes earthworks, retaining walls and fencing. The overall height of fencing and retaining ranges from 1.9 metres to 3.2 metres along the side boundaries of the land.

To satisfy the land division approval conditions, this application also includes rainwater tanks with a combined capacity of 10,000 litres. This substantially exceeds the requirements of the Planning and Design Code, however is a requirement of the land division approval.

## **PROCEDURAL MATTERS**

### **Classification**

The subject land is in the Hills Neighbourhood Zone of the Planning & Design Code (the Code) as of 31 March 2022.

The proposed development is not prescribed as “accepted”, “deemed to satisfy” or “restricted” development in the Zone.

The proposal is therefore “performance assessed development” pursuant to Section 107(1) the Planning, Development and Infrastructure Act, 2016 and will be assessed on its merits against the various provisions of the Code.

### **Public Notification**

Clause 3 (f) and (h) of Table 5 – Procedural Matters in the Hills Neighbourhood Zone excludes notification for development comprising a dwelling and fence. Part 7 excludes retaining walls from notification.

Exemptions to the above exclusions relate to:

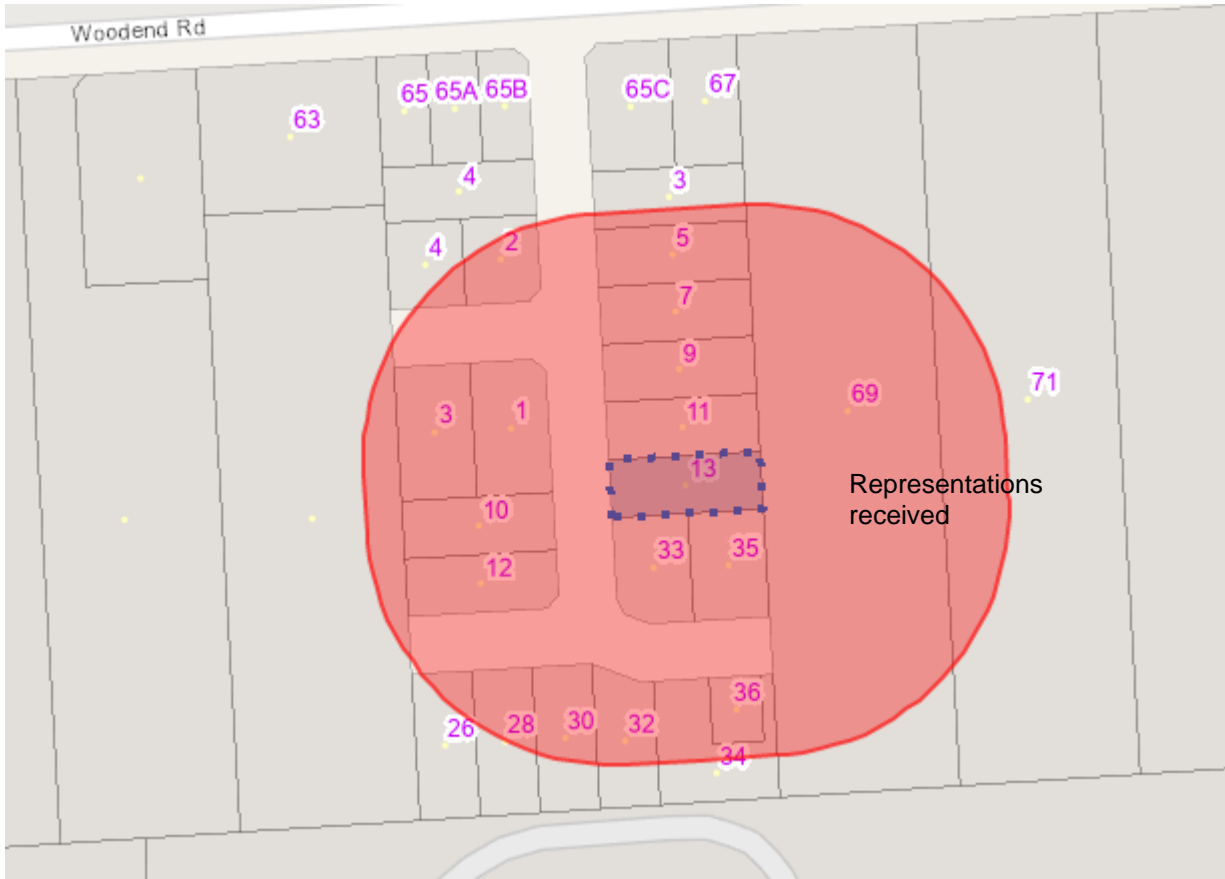
- Dwellings that exceed 2 building levels or 9 metres.
- Dwellings and fences that have a length exceeding 8 metres or height that exceeds 3.2 metres from natural ground level.
- Retaining walls that are higher than 1.5 metres.

Notification is required in this instance because:

- The dwelling wall (garage) exceeds 3.2 meters in height from natural ground level.
- The combined fence and retaining is more than 8 metres in length on the boundary
- Earthworks are not excluded from notification.

The application was publicly notified between 5 May 2022 and 25 May 2022. During this time two representations were received, both of which opposed the development. The opposing representations indicated a desire to be heard by the Council Assessment Panel (the Panel) in determining this application. Pursuant to the Marion CAP Instrument of Delegations, the Panel is the Relevant Authority in regards to a determination.

The Applicant responded to the representation and is included as an attachment in the report.



**Properties Notified** 36  
**Representations** 2 received  
 2 oppose the development

**Representations received**

1. Timothy Hall of 71 Woodend Road, Sheidow Park	Wish to be heard
2. Umesh Kumar of 69 Woodend Road, Sheidow Park	✓
	✓

**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.

## 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.***

Development that does not fall within a specified class in Table 3 will be considered “All Other Code Assessed Development”, to which all relevant policies apply for the purposes of assessment.

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

- Land Use
- Building Footprint and Siting
- Built Form Character and Design
- Privacy

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

## ZONE CONSIDERATIONS

***Hills Neighbourhood Zone: DO1, PO 1.1, PO 3.1, PO 4.1, PO 5.1, PO 7.1, PO 8.1, PO 9.1, PO 10.1, PO 10.2, PO 11.1, PO 11.2 & PO 11.3***

## RELEVANT OVERLAY CONSIDERATIONS

**Hazards (Flooding – Evidence Required): DO 1 & PO 1.1**

**Building Near Airfields: DO 1 & PO 1.1**

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

**Urban Tree Canopy: DO 1 & PO 1.1**

## GENERAL DEVELOPMENT POLICIES CONSIDERATIONS

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

**Design in Urban Areas: DO 1, PO1.1 – 1.5, PO 2.1 – 5.1, PO 7.1 – 10.2, PO 17.1 – 18.2 & PO 20.1 – 24.1**

**Interface between Lane Uses: DO 1, PO 1.1 - 1.2, PO 3.1 – 3.2 & PO 7.1**

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

**Transport, Access and Parking: DO 1 & PO 2.1 - PO 5.1**

Quantitative Snapshot Table		
Provisions	DPF Guideline <i>(note as the application is Performance Assessed, the suggested DTS/DPF PROVISION/DPF is 'one way' of achieving the corresponding Performance Outcome)</i>	Proposed Development
Site coverage	50% (Gradient 1-in-8 or less)	50.6%
Building Height	9m 2 levels	6.603m 1 level
Primary Street Setback	Not less than 8m where no building exists on an adjoining site with the same primary street frontage	5.94m
Boundary walls	3.2m in height from lower of natural or finished ground level, 8m in length	3.68m from natural ground level, 6.35m in length
Setbacks		Garage to boundary and
Southern Side	900mm up to 3m in height	1.56m
Northern Side		1.17m
Rear	4m for the first building level	7.66m
Private open space	60 sq metres	124.54 sq metres
Car parking spaces		
On-site	2 (1 undercover)	4 (2 undercover)
On-street	1	1
Pervious Surfaces / Soft Landscaping	25%	26.5%
Front	30%	42%

## Land Use

Hills Neighbourhood Zone, Performance Outcome 1.1 seeks:

***Predominantly low density residential development with complementary non-residential uses compatible with natural landforms and a low density residential character.***

The subject land is an existing allotment that was formed for residential purposes as part of a previous authorisation for land division. The size of the land qualifies as low-density.

Given the proposed development seeks to construct a single dwelling on the land, the proposal satisfies land use policies and is a class of development envisaged in the Zone.



## **Building Footprint and Siting**

### **Site Coverage**

Hills Neighbourhood Zone, Performance Outcome 3.1 seeks:

***Building footprints consistent with the character and pattern of a low-density suburban neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.***

The general character and pattern of building footprints in this neighbourhood are formed by dwellings in both the Hills and Suburban neighbourhood zones, to the south and north of Woodend Road respectively.

Allotment sizes on the southern side of Woodend Road vary considerably. There are six, large, original residential allotments, with a single dwelling occupying respective sites areas of between 5,000 – 8,000 square metres (approximately). Given the exceptionally large area attributed by these allotments, site coverage is relatively low.

However, most allotments within this locality are in the order of 500 – 650 square metres, with some as low as 375 square metres. Smaller allotments are located some 180 metres west of the Sanctuary Avenue subdivision area, within the Hills Neighbourhood Zone, as well as within the immediate locality. Given the smaller site areas attributed by these allotments, site coverage on these allotments is higher, at around 60 percent.

The associated Designated Performance Feature for the above Performance Outcome recommends a site coverage calculation of 50 percent to achieve a suburban neighbourhood character which provides sufficient space around buildings. The proposed dwelling has a site coverage calculation of approximately 50.6 percent, marginally exceeding the DTS/DPF provision. The setbacks provided and pattern of space around the building is consistent with the surrounding low density character and Performance Outcome and is therefore not considered to result in visual impacts that impede an attractive outlook or access to light and ventilation for neighbouring properties.

As such, the proposed site coverage is considered to satisfy relevant policies.

### **Walls on boundary**

Hill Neighbourhood, Performance Outcome 7.1 states

***Boundary walls are limited in height and length to manage impacts on adjoining properties.***

Due to the sloping nature of the land, a portion of the garage wall exceed the relevant DPF of 3.2m high to accommodate a deepened rebate for approximately 940mm towards the rear of the garage.

The location of the garage has been predetermined by the location of the crossover which is located on the southern side of the allotment, most likely due to the slope and the ability to achieve a more suitable grade to the garage from the lower side of the roadway. It is noted however, that this does result in a garage that adjoins the southern side of the rear open space of the neighbouring property.

The length of the garage is 6.35m along the boundary which is 1.65m below the DPF of 8m. As such, the length of the wall has been limited in this regard. The height of the wall, for the majority also maintains the DPF of 3.2m or less. It is pertinent to note that the floor level, for the majority, is not sited much higher than the benched levels and the section in which the wall height is exceeded is a result of a change in the land fall towards the rear of the garage.

Accordingly, it is considered that the garage wall has, where practicably possible, sought to manage the height and length of the garage to minimise impacts on the adjoining land. The garage wall will run along 34% of the adjoining boundary, leaving some 65% of the adjoining free from boundary development aside from fencing no higher than 2.1m. The small section of garage wall which exceeds this height will not sit adjacent a habitable room wall nor will this section in wall result in shadow that would be significantly different to a structure that maintains a 3.2m wall height, noting that boundary wall standards are the same regardless of the orientation of the wall.

### **Setbacks**

Given the immediate locality comprises the newly formed Sanctuary Avenue residential subdivision, more vacant allotments exist than developed allotments. As such, there is no existing or cohesive building setback character in this locality. In any event, relevant provisions and discussion is provided below:

Hills Neighbourhood Zone, Performance Outcome 5.1 seeks:

***Buildings are set back from primary street boundaries consistent with the existing streetscape.***

Hills Neighbourhood Zone, Performance Outcome 7.1 seeks:

***Boundary walls are limited in height and length to manage impacts on adjoining properties.***

Hills Neighbourhood Zone, Performance Outcome 8.1 seeks:

***Buildings are set back from side boundaries to provide:***

- (a) separation between dwellings in a way that complements the established character of the locality***
- (b) access to natural light and ventilation for neighbours.***

Hills Neighbourhood Zone, Performance Outcome 9.1 seeks:

***Buildings are set back from rear boundaries to provide:***

- (a) separation between dwellings in a way that complements the established character of the locality***
- (b) access to natural light and ventilation for neighbours***
- (c) private open space***
- (d) space for landscaping and vegetation.***

### **Front:**

The subject land is oriented such that it faces west, together with vacant allotments either side. The rear boundary of these allotments share a side boundary with the adjoining land to east. That allotment is an exceptionally large allotment, with an approximate area of 7,900 square metres. The dwelling on that land is positioned closer to Woodend Road, with large areas of open space and an outbuilding located adjacent the subject land.

The main building line of the proposed dwelling, that is, the wall that faces Sanctuary Avenue, is setback 5.94 metres from the front boundary, with the associated garage setback 7.7 metres. It is acknowledged that the DPF associated with PO 5.1 above suggests an 8 metres front setback where no building exists on adjoining sites.

However, the DPF does not aid in achieving the PO because there is no consistent building setback in this streetscape. As such the DPF offers little guidance in determining an appropriate primary street setback.

Given no dwelling occupies any site that faces Sanctuary Avenue, the proposed setback has been considered in the context of the overall building design, visitor parking requirements and locality beyond Sanctuary Avenue, i.e. immediately north of the land on Woodend Road. In this regard, the proposed setback to Sanctuary Avenue is acceptable when considering:

- There is no consistent building setback in the street.

- The dwelling is single storey dwelling and does not dominate the site or the street.
- The façade is articulated with varying setbacks, varied materials and large window openings, reducing visual mass.
- The garage is subservient, setback an additional 1.2 metre behind the front façade of the dwelling.
- More than 5.5 metres is provided in front of the garage, enabling 2 visitor parks.
- Dwellings on Woodend Road, which form part of the immediate locality, are positioned closer than 8 metres to their respective primary streets.

It is also worthy to note that whilst the Hills Neighbourhood Zone generally seeks lower density development on larger allotments, the overarching land division was approved under the previous Development Plan's Worthing Mine Policy area, which sought smaller allotments and permitted higher density development (in terms of building size, footprint and setbacks).

Given other recently approved dwellings within the immediate locality incorporate setbacks in the vicinity of 5 metres, and a new uniform streetscape character will be created, the proposed front setback is acceptable.

#### Side:

As discussed in the previous section, there are no existing dwellings on the western side of Sanctuary Avenue that form an established character.

The proposed dwelling has been designed with deep setbacks to side boundaries and includes one garage wall on the southern side boundary (discussed above). The dwelling is setback 1.5m and 1.17m from the southern and northern boundaries respectively.

These setbacks satisfy the associated DPF and are generally larger than building setbacks displayed by existing dwellings in the locality. I note the recently constructed two-storey dwelling, which formed part of this subdivision at 67 Woodend Road which has shorter side boundary setbacks, particularly at the upper level:

**Figure 3: Two-storey dwelling at 67 Woodend Road**



Rear:

The proposed building wall is setback 7.66 metres from the rear boundary of the land, which is greater than the associated DPF and in any event provides adequate private open space, sunlight and ventilation and landscaping opportunities.

Building Height

Hills Neighbourhood Zone, Performance Outcome 4.1 seeks:

***Buildings contribute to a low-rise suburban character and complement the height of nearby buildings.***

The proposed dwelling is single storey, with split floor levels to accommodate the sloping nature of the land. Whilst the height from the lowest finished ground level to the higher point of the dwelling is 6.6m, each section, when viewed from the side will have a single storey profile and maintain a built form consistent with the low-rise suburban character and the surrounding locality.

In any event, the proposed building height satisfies the TNV and therefore satisfied the relevant height policy.

Retaining Walls and Fencing:

Performance Outcomes 11.1 of the Zone seeks:

***Buildings sited and designed to integrate with the natural topography of the land using measures such as split level building construction and other approaches that minimise the extent of cut and fill.***

Performance Outcome 11.3 of the Zone seeks:

***Retaining walls are stepped series of low walls constructed of dark, natural coloured materials and screened by landscaping.***

Design in Urban Areas Performance Outcome 9.1 seeks

***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.***

Designated Performance Feature 11.3 provides the following guideline to achieve the PO:

***Retaining walls:***

- a) do not retain more than 1.5m in height***  
***or***
- a) where more than 1.5m is to be retained in total, are stepped in a series of low walls each not exceeding 1m in height and separated by at least 700mm.***

Given the uneven nature of the land, earthworks are unavoidable. To best integrate the building with the undulating topography, the proposal has been designed with a stepped floor plan and stepped benched levels to the perimeter of the dwelling. This results in retaining walls to the side boundaries of the land.

Proposed retaining walls range in height from as low as 0.2 metres to 1.4 metres above natural ground level and do not exceed the DPF associated with the Performance Outcome.

Given the sloping nature of the land, the necessity for retaining wall is unavoidable and not unreasonable in the locality. The earthworks proposed have sought to minimise the height of the

retaining overall and will assist in maintaining the privacy of adjoining properties without impacting visual amenity or access to sunlight.

For the reasons outlined above, the extent and height of retaining walls is considered acceptable.

### **Built Form Character**

Performance Outcomes 9.1, 10.1 and 10.2 of the Zone, and 20.1, 20.2 and 20.3 of the Design in Urban Areas - General Development Policies provide relevant policies for performance assessment of built form character and the external appearance of buildings.

The general theme of these policies is that development:

- Reduces garaging dominance.
- Positively contributes to streetscape character.
- Achieves a profile that blends with the land.
- Avoids use of bright and highly reflective materials.
- Incorporates additional landscaping to reduce apparent bulk and scale.

The proposed dwelling and fencing appropriately responds to applicable built form and design provisions of the Code, noting the following features:

- The dwelling includes a stepped floor plan, to minimise the extent of earthworks and resultant retaining walls.
- This translates to stepped retaining walls and fencing along side boundaries.
- The dwelling maintains a single storey profile from the street and adjacent land.
- Colour coated steel roofing, rendered walls, and stone feature piers ensures that materials will not be highly reflective.
- Garaging is a subservient feature, noting it is setback 1 meter from the main dwelling façade and the door comprises only 35% of the frontage of the allotment.
- High quality finishes, such as texture coated render, stone piers, dark modern garage door and glazing assists in contributing to improved streetscape character.

It is considered that the proposed floor levels relate appropriately to the lay of the land with each section of the dwelling maintaining a floor level no higher than around 500mm above the benched ground level.

The level of earthworks is considered to have been minimised to an extent which is reasonable and expected in the locality and will not result in adverse impacts to adjoining and adjacent land.

### **Privacy**

Performance Outcome 10.2 of Design in Urban Areas - General Development Policies seeks:

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

The subject land has a 4.8 metre fall from the front of the land to the rear. This fall carries through to land further eastbound to where a gully is formed at the location of Field River. This means that land on Sanctuary Avenue is naturally elevated above land to its east. There is some degree of overlooking on many sites within this locality, due to its topography. It is somewhat part and parcel of a hills locality.

The proposed dwelling is not two storey and the policy seeks for screening to be applied to upper level windows and balconies. Whilst it appears that the alfresco area is somewhat elevated, this is mostly due to the fall of the remaining land to the rear and the alfresco area is in fact, approximately 500mm above the benched ground level directly below.

The subject land is located within the southern section of allotments located further away from the dwellings which front Woodend Road and the floor levels of the proposed building are such that the finished level maintains a similar height to the benched level of that particular allotment. Accordingly, the view from that property when the dwelling is constructed will be similar to the view when standing at the ground level of the vacant property.

Additionally, any view from that property is not considered to be obtrusive. The view is distant, incidental, and directed towards the hillside beyond the two adjacent properties. When standing on the site, the tops of sheds can be seen, however the line of site is such that the significant fall in the land to the east provides some natural mitigation of overlooking in that direction. Furthermore, when looking northeast, the addition of boundary fencing between each of the newly developed properties will provide further screening to significantly reduce the view into adjoining land in that direction.

See below pictures taken at the site at the approximate location of the alfresco area.

**Figure 4: Pictures taken from the subject site**



*View towards the east*





*View towards the north*

Another option to mitigate ground level overlooking, which is commonplace throughout this locality, is to build a large retaining wall with fence atop and have it span along the entire rear boundary. Whilst this might provide the perceived privacy sought by adjoining neighbours, it would be to the detriment of their amenity, as such a structure is generally dominant and visually displeasing. See example of this between 67-69 Woodend Road, pictured below:

**Figure 4: Retaining wall and fencing on boundary - 67-69 Woodend Road**



## **CONCLUSION**

The proposed development seeks to construct a modest single storey detached dwelling on recently created land in the Hills Neighbourhood Zone. The land is currently vacant and includes a slope in the order of 1-in-8, which is considered a modest fall from the front to the rear of the land.

The dwelling has been designed in a manner which relates to the slope and provides splits to each level, stepping down to follow the lay of the land to minimise earthworks and retaining walls along the boundaries.

Building footprint is appropriately positioned to ensure suitable space around the dwelling achieves light, ventilation and patterns of space that is expected in a suburban environment. Whilst it is noted that the boundary wall will adjoin the POS of the neighbouring site to the south, this was somewhat anticipated, and the wall length and height has been built in a manner which minimises length on the boundary and matches the benched ground levels in that section.

The location of the site towards the southern section of the subdivision, results in any views towards the north and east to be typical of what is characteristic within a Hills locality and is not direct or obtrusive to any significant degree.

On balance the proposed development exhibits sufficient merit when assessed against the relevant Desired Outcomes and Performance Outcomes of the Code. As such I recommend 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: 22009603 for a single storey split level dwelling with associated earthworks and retaining walls at 13 Sanctuary Avenue, Sheidow Park 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. 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.
- 3. 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.
- 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 PROVISION/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.

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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.

## NOTES

1. 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.
2. Dust emissions from the site during construction shall be controlled by a dust suppressant or by watering regularly.

All runoff and stormwater from the subject site during the construction phase must be either contained on site or directed through a temporary sediment trap or silt fence, prior to discharge to the stormwater system (acceptable ways of controlling silt and runoff during construction can be found in the Stormwater Pollution Prevention Code of Practice issued by the Environment Protection Authority).

Measures to prevent silt and mud from vehicle tyres and machinery being transported onto the road shall be installed and maintained at all times during the construction phase of the development (a suggested measure is to install a gravelled construction exit with wash down facilities).

3. If you are a developer or owner-builder, there are important Commonwealth telecommunications rules you need to comply with. For more information visit [www.infrastructure.gov.au/tind](http://www.infrastructure.gov.au/tind)
4. The owner/applicant is advised that infrastructure located within Council road reserve (i.e. area between the kerb and allotment boundary) should be designed and constructed (including modified) in accordance with relevant / current Council standards. This includes, but is not limited to, driveway crossovers, alterations to kerbing and footpaths, stormwater easement connections and domestic stormwater connection to the street watertable.

Further information on the standards can be obtained via Council's website.  
[marion.sa.gov.au](http://marion.sa.gov.au) > Search Civil engineering > Click 'Civil engineering infrastructure - standard drawing index'

5. 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).
6. 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>.

**REPORT REFERENCE: CAP030822 – 4.3  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 3 AUGUST 2022**



<b>Originating Officer:</b>	<b>Nicholas Timotheou Senior Development Officer – Planning</b>
<b>Applicant:</b>	<b>Mr Mark Nokes</b>
<b>Development Description:</b>	<b>The construction of eight (8) freestanding lighting poles, one of which is de-activated (located in the north-eastern corner of 22 Tweed Avenue), associated with the Sunrise Christian School and associated car parking areas</b>
<b>Site Location:</b>	<b>284-286 Sturt Road, Marion 288 Sturt Road, Marion 292-296 Sturt Road, Marion 876 Marion Road, Marion 24 Tweed Avenue, Marion 22 Tweed Avenue, Marion</b>
<b>Zone &amp; Policy Area:</b>	<b>Employment Zone, General Neighbourhood Zone &amp; Urban Renewal Neighbourhood Zone</b>
<b>Lodgement Date:</b>	<b>3/5/2022</b>
<b>Planning and Design Code:</b>	<b>28 April 2022 – 2022.7</b>
<b>Referrals:</b>	<b>Nil</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>An application which involves a change in land use is not listed in Table 5 of the General Neighbourhood Zone to exclude it from Public Notification.</i>
<b>Application No:</b>	<b>22014228</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

### *Historical Applications*

An application was presented to the Panel on 4 August 2021 comprising the re-configuration of an internal driveway and car parking arrangements, together with a change in land use of 22 Tweed Avenue from a detached dwelling to car park associated with the Sunrise Christian School with associated storage outbuilding and masonry fencing. The application was granted Planning Consent and has since completed construction.

## SUBJECT LAND

The subject land comprises the following properties:

**284-286 Sturt Road, Marion**  
**288 Sturt Road, Marion**  
**292-296 Sturt Road, Marion**  
**876 Marion Road, Marion**  
**24 Tweed Avenue, Marion**  
**22 Tweed Avenue, Marion**

The land forms the Sunrise Christian School and contains a number of school buildings with associated play areas and car parking.





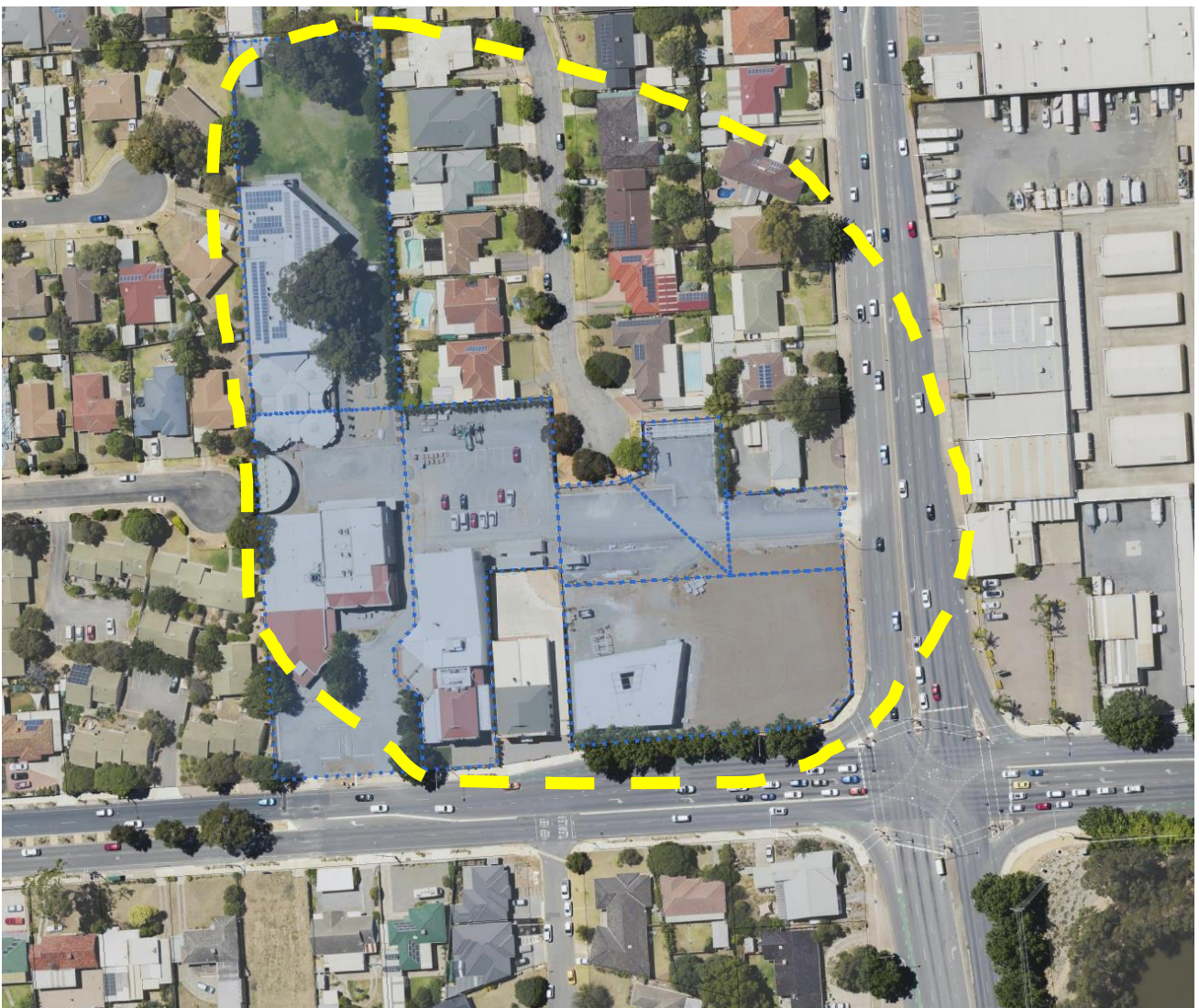
## LOCALITY

The locality features a mixture of commercial and residential properties, including the Old Council Chambers (listed as a Local Heritage Place).

The site is bound by residential properties from the north to south (in a counter-clockwise direction) and comprise single-storey detached dwellings at low densities which are representative of the original dwelling stock. Limited infill development has occurred with only a minor presence of recently built detached dwellings. A group of SA Housing Trust units are situated directly to the east of the subject land presenting to both Sturt Road and Pitcairn Avenue

The western side of Marion Road includes a variety of commercial uses and the Warriparinga Wetlands / Sturt River (south-east of the subject land).

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



## **PROPOSED DEVELOPMENT**

The proposed development seeks Planning Consent for the construction of eight (8) freestanding lighting poles, one of which is de-activated (located in the north-eastern corner of 22 Tweed Avenue).

The light poles are interspersed throughout the approved car parking areas associated with the Suberise Christian School.

The light poles are being applied for retrospectively and accommodate a height of 6 metres with lighting fixtures oriented downwards to illuminate the associated car parking and manoeuvring areas.

All but the most northerly lighting pole are programmed to operate from 6:00pm until 6:00am.

### **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**

A 'light pole' 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**

**Nil**

## PUBLIC NOTIFICATION



**Properties Notified** 101

**Representations** 1 representation opposing the development

**Representations received** Mr John William Rutherford of 20 Tweed Avenue

Wish to be heard  
✓

**Applicant Response** A response by the applicant is included within the Report attachments.

## ASSESSMENT

### ZONE CONSIDERATIONS

The development involves the construction of eight (8) freestanding lighting poles, one of which is de-activated (located in the north-eastern corner of 22 Tweed Avenue), associated with the Sunrise Christian School and associated car parking areas.

The land in which the development is proposed is located within a General Neighbourhood Zone and Employment Zone. The development takes place on land which is lawfully being used as a car parking and manoeuvring area. I am of the opinion the construction of light poles is anticipated for the subject land and is commonplace to see such development for an educational establishment.

Minimal amenity impacts upon the immediate locality are anticipated and are discussed in greater detail throughout this report. The extent of separation afforded between nearby residential properties sited in the cul-de-sac of Tweed Avenue is considered adequate to minimise negative amenity impacts experienced by occupants of those properties.

The light poles are partially visible from neighbouring sites. The relevant Performance Outcome (PO) with respect to building height states:

**PO 4.1**      ***Buildings contribute to a low-rise suburban character and complement the height of nearby buildings.***

The associated Designated Performance Feature (DPF) states:

**DPF 4.1**      ***Building height (excluding garages, carports and outbuildings) is no greater than:***  
                  ***(a) 9 metres***  
                  ***(b) 2 levels***

The DPF provides one way in which the PO can be achieved. The DPF anticipates buildings of up to 9 metres. The proposed buildings do not exceed this height and therefore considered to satisfy the PO and reflect the building heights anticipated for the Zone.

Further to the above, the height of all structures is well below the Airport Building Height Overlay, and as such the development does not pose hazard to the operation and safety requirements of commercial and military airfields.

The development is considered to represent a reasonable addition to an existing non-residential use. The subject school will continue to serve the needs of the local community as a well-established land use in the locality.

### Interface Between Land Uses and Traffic and Parking

#### Visual Amenity

The light poles are equal to 6.0 metres in height and will therefore protrude above existing fence lines. Due to their overall height, some of the light poles are visible from adjoining land containing sensitive receivers.

Notwithstanding the visibility of these structures above existing fence lines, they will not be large or dominant in scale due to the:

- Slender nature of the light poles



- Setback from adjoining boundaries rather than located on boundaries.

The lighting poles maintain a “slimline” appearance with the required lighting fixtures located in practical locations to illuminate the car parking areas. Although visible against the skyline, the lighting towers are black in colour which will assist in somewhat blending into the local environment. These structures can be compared to other like structures in the locality such as light poles along the arterial road network and maintain an appropriate level of separation from all boundaries.

For the reasons outlined above, Council expects minimal visual impact due to the slender appearance of the light poles.

### **Interface/Amenity**

Provisions relating to light spill are qualitative, there is no numerical value that identifies whether the light spill/glare is acceptable. To aid in determining this value, the Australian Standard for Outdoor Lighting Obtrusive Effects (AS/NZS 4282:19) provides standards that are recognised by the Australian Government.

The Standard underwent review and was re-released in 2019. It differs from the previous version of the Australian Standard in that it is clearer about what light spill maximums apply in different circumstances. It is also clearer about the location of investigation planes in relation to site boundaries. In short, the revised Australian Standard provides for a maximum of 10 lux, among other technical lighting parameters, to spill up to 10 metres into adjoining yards. This is unless there are neighbouring buildings closer to the site boundary than 10 metres. Light spill should not exceed 10 lux at the façade of such buildings limited vertically by the extent of any windows.

The proposed development has been designed in accordance with the AS/NZS 4282:19. The maximum illuminance value (Lux) within ten metres on adjoining land is less than 10 Lux and the intensity at vertical planes (Cd) is less than 12500 Cd.

The illuminance and luminous intensity at vertical planes pass the values in the relevant standard, as nominated by the compliance report. As such, it is fair to say that the proposed lighting has been designed to mitigate adverse effects to adjoining residents.

Light poles are appropriately positioned on the subject land and designed in such a manner to mitigate effects on adjoining residential land in terms of light spill. The carpark lighting is compliant with the spill lighting (lux) levels and the Luminous Intensity of compliant with AS4282:2019 non-curfew times of obtrusive effects for outdoor lighting in residential areas.

### **Traffic, Crime Prevention and Pedestrian Safety**

The light poles are considered to provide additional security and safety for staff and students onsite after hours. The light poles shall illuminate the respective car parking and manoeuvring areas which shall contribute to crime prevention and pedestrian safety when traversing this area.

## **CONCLUSION**

The proposal involves the construction of eight (8) freestanding lighting poles, one of which is de-activated (located in the north-eastern corner of 22 Tweed Avenue), associated with the Sunrise Christian School and associated car parking areas.

The main considerations attributed to the development relate to the potential amenity impacts upon nearby sensitive receivers.

The proposed light poles are of a common scale and size for a non-residential land use, which are nonetheless separated from nearby residential properties and the street. The location of the light poles are partially screened by buildings and landscaping internal to the site. A public laneway and non-residential property border the development to the north and east and are relevant characteristics of the locality in considering the overall merits of this element of the proposal. For these reasons, minimal visual amenity impacts are contemplated.

Light spill from the proposed light structures satisfies the parameters established by the relevant Australian Standard. As such Council staff are satisfied that the lights have appropriate impact on adjoining sensitive receivers.

As a result of the above considerations, it is my view that the proposed development is not seriously at variance to the Planning and Design Code, in accordance with Section 126(1) of the Planning, Development and Infrastructure Act 2016.

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: 22014228 for the construction of eight (8) freestanding lighting poles, one of which is de-activated (located in the north-eastern corner of 22 Tweed Avenue), associated with the Sunrise Christian School and associated car parking areas at 284-286 Sturt Road, Marion, 288 Sturt Road, Marion, 292-296 Sturt Road, Marion, 876 Marion Road, Marion, 24 and 22 Tweed Avenue, Marion 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. All external lighting must be designed and constructed in accordance with Australian Standard (AS 4282-1997).

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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.

**REPORT REFERENCE: CAP030822 – 4.4**  
**CITY OF MARION**  
**COUNCIL ASSESSMENT PANEL AGENDA**  
**FOR MEETING TO BE HELD ON**  
**WEDNESDAY 3 AUGUST 2022**



<b>Originating Officer:</b>	<b>David Bills – Consultant Planner</b>
<b>Applicant:</b>	<b>Andrash Management Pty Ltd</b>
<b>Development Description:</b>	<b>Application to Vary DA 21013079 proposing Introduction of drive-thru driveway, Alterations to existing control building including removal of mezzanine level, inclusion of drive-thru order and pick up canopies (including acoustic fencing), digital signage to the northern and western facades and internal layout changes, Relocation of freestanding northern-eastern pylon advertisement and associated hording to the south-west location of site, Relocation of western freestanding pylon advertisement and associated hording from the northern side of the crossover to the southern side of the crossover, Changes to previously approved site landscaping, Minor changes to internal carpark layout of site, Increase in bin enclosure size.</b>
<b>Elements</b>	<b>Retail Fuel Outlet, Advertisement, Advertising Hoarding, Fence</b>
<b>Site Location:</b>	<b>373 Diagonal Road and 45 Miller Street, Sturt</b>
<b>Zone</b>	<b>Suburban Activity Centre Zone</b>
<b>Lodgement Date:</b>	<b>25 April 2022</b>
<b>Planning and Design Code:</b>	<b>31 March 2022: Version 2022.6</b>
<b>Referrals:</b>	<b>Commissioner of Highways</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>
<b>Application No:</b>	<b>22014207</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: Certificate of Title*

*Attachment II: Proposal Plan and supporting documentation*

*Attachment III: Statement of Representations*

*Attachment IV: Applicant's Response to Representations*

*Attachment V: External Referrals*

## BACKGROUND

The Marion Council Assessment Panel considered a similar proposal on this site at its meeting on 20 September 2020. That proposal was for an application assessed under the former planning system.

Subsequently a second application (DA 21013079) was considered by the Panel at its meeting on 17 November 2021. This application was assessed against the Planning and Design Code and was granted planning consent.

This is a new application to vary the proposal granted planning consent by Panel on 17 November 2021 (21013079).

## SUBJECT LAND

The subject land is comprised of two allotments identified as 45 Miller Street and 373 Diagonal Road, Sturt and formally known as Allotments 8 and 12 within Deposited Plan 5555 comprising Certificates of Title Volume 5560, Folio 842 and Volume 5552, Folio 843 respectively.

The site is wholly located within the Suburban Activity Centre Zone of the Planning and Design Code (PDC).

The site has a 96 metre frontage to Miller Street, a 93 metre frontage to Diagonal Road and a total site area of 4,850 m<sup>2</sup>.

The site is irregularly shaped in a triangular configuration, with the intersection of Miller Street and Diagonal Road forming the apex at the northern end of the site. An easement runs through the centre of the northern allotment at 45 Miller Street to the favour of Council and a second easement is located in the southwestern corner of the Diagonal Road site accommodating underground electricity infrastructure.

The site currently contains a single storey building at the southern end of the site and associated open car park to the north. The building was formerly used as a restaurant. The car park has a number of low scale landscaping beds. There are no significant or regulated trees on the subject land. Site access is currently provided via two crossovers to Miller Street and one crossover to Diagonal Road.

## LOCALITY



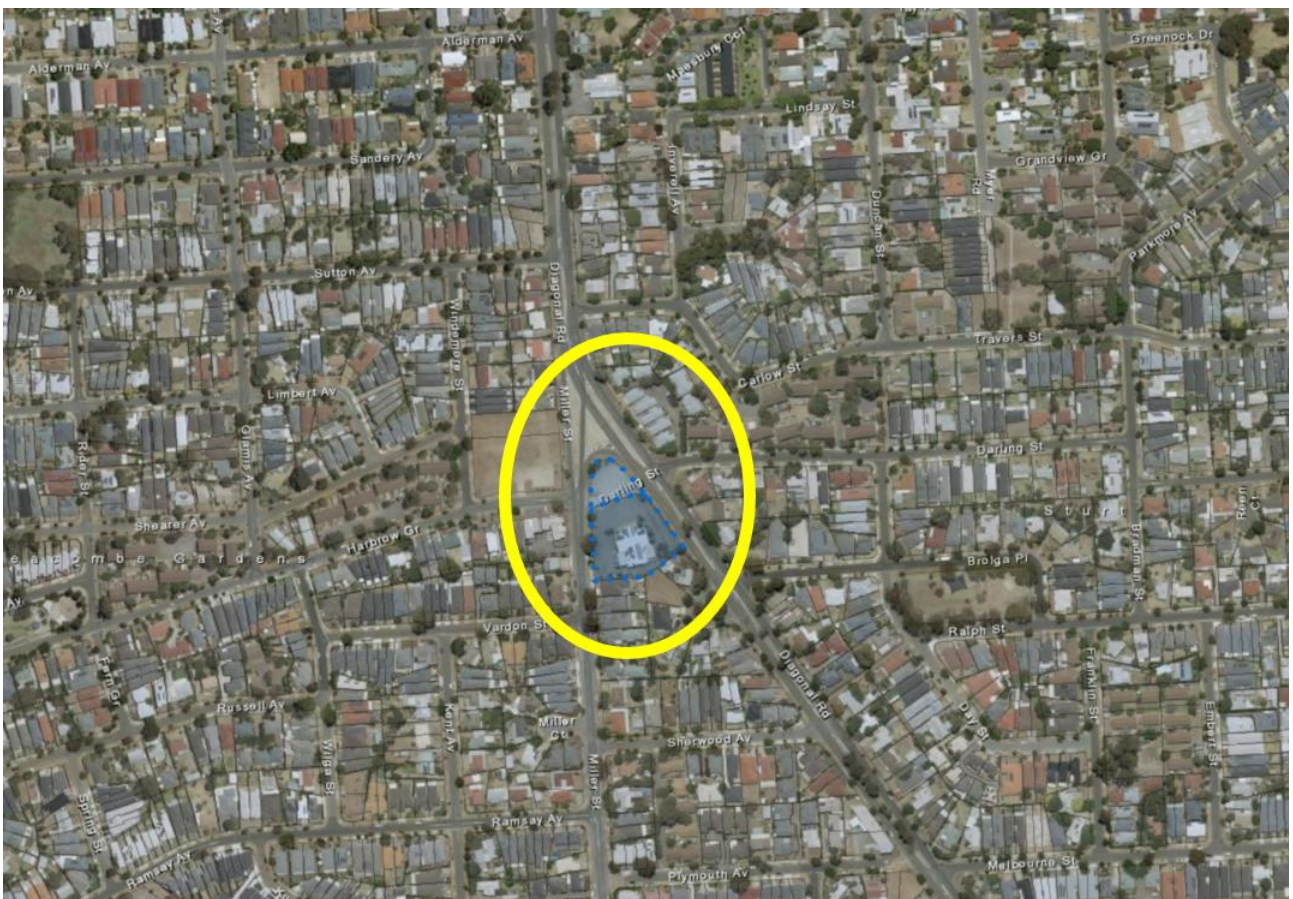
The locality is reflective of the current (and historical) zoning. To the west of Miller Street is a small centre developed as a single storey building comprising a medical centre and pharmacy also located within the Suburban Activity Centre Zone.

The remainder of the locality is residential and is predominantly single storey. Allotment sizes vary from larger lots ( $>700\text{m}^2$ ) reflective of the initial suburban development from the 1950's to smaller recently created allotments (approx.  $350\text{m}^2$ ) created in response to urban infill opportunities

There is a notable large vacant parcel to the north west of the subject land with frontages to Miller Street and Harbrow Grove which was formerly a SAHT development that comprised two storey residential flat buildings.

The locality is characterised to a large degree by Diagonal Road which is a secondary arterial road under the care and control of the Department of Infrastructure and Transport. The most recently available traffic counts from 2020 identified an estimated average number of vehicles per day (two-way) of 9200 movements in the section between Seacombe Road and Miller Street and 15,900 movements from Miller Street to Sturt Road.

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



## PROPOSED DEVELOPMENT

The proposal is described as:

“Application to Vary DA 21013079 proposing Introduction of drive-thru driveway, Alterations to existing control building including removal of mezzanine level, inclusion of drive-thru order and pick up canopies (including acoustic fencing), digital signage to the northern and western facades and internal layout changes, Relocation of freestanding northern-eastern pylon advertisement and associated hording to the south-west location of site, Relocation of western freestanding pylon advertisement and associated hoarding from the northern side of the crossover to the southern side of the crossover, Changes to previously approved site landscaping, Minor changes to internal carpark layout of site, Increase in bin enclosure size.”

The proposal consists of the following:

- Introduction of drive-thru driveway,
- Alterations to existing control building including removal of mezzanine level,
- inclusion of drive-thru order and pick up canopies (including acoustic fencing),
- digital signage to the northern and western facades and
- internal layout changes,
- Relocation of freestanding northern-eastern pylon advertisement and associated hoarding to the south-west location of site,
- Relocation of western freestanding pylon advertisement and associated hording from the northern side of the crossover to the southern side of the crossover,
- Changes to previously approved site landscaping,
- Minor changes to internal carpark layout of site,
- Increase in bin enclosure size.

The applicant has provided a number of supporting documents that form part of the attachment to this report including:

- Proposal plans prepared by Hodge Collard Preston
- Planning Assessment Report prepared by Adelaide Planning and Development Solutions
- Additional clarification prepared by Adelaide Planning and Development Solutions
- Environmental Noise Assessment prepared by Sonus
- Traffic and Parking Report prepared by MFY

## **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.

### **Referrals**

#### **External Referrals**

##### **Commissioner of Highways**

A copy of the Commissioner of Highways referral can be found in Attachments of this report.

#### **Internal Referrals**

##### **Engineering - Traffic**

The traffic engineer has reviewed the traffic impact assessment and is satisfied that vehicle manoeuvring, traffic movement and function and parking as proposed is appropriate.

##### **Coordinator – Stormwater**

The stormwater engineer has reviewed the proposed stormwater management plan and is satisfied that stormwater management proposed is appropriate.



## PUBLIC NOTIFICATION



**Properties Notified** 98

**Representations** A total of 5 representations were received during the public notification period. A copy of the representations forms Attachment III.

**Representations received** 2 representors wish to be heard personally and have noted they do not support the proposal.

**Applicant Response** A response by the applicant is included within the report attachments

### Representors to be Heard

Name	Address
1. Mark Linn	375 Diagonal Road, Sturt
2. George Watling	358 Diagonal Road, Sturt

## **ASSESSMENT**

### **Planning and Design Code**

The subject land is in the Suburban Activity Centre Zone under the Planning and Design Code (as of Version 2022.6). It is not located within a Subzone.

The following Overlays apply to the subject land:

- Airport Building Heights (Regulated) - All structures over 110 metres
- Hazards (Flooding - General)
- Major Urban Transport Routes
- Prescribed Wells Area
- Regulated and Significant Tree
- Traffic Generating Development

The following Variations apply to the subject land:

- Minimum building height is 2 levels
- Maximum building height is 4 levels
- Development should be constructed within a building envelope provided by a 30 or 45 degree plane, depending on orientation, measured 3m above natural ground at the boundary of an allotment

The assessment of this variation application is limited to the new and/or amended elements of the proposal.

Where there are approved elements that are unchanged by this variation application, no further assessment or re-assessment is necessary or required.

### **Land Use and Intensity**

The Suburban Activity Zone contemplates an active commercial precinct supporting neighbourhood-scale shopping, business, entertainment and recreation facilities.

DPF 1.1 lists a range of contemplated land uses, including advertisements and retail fuel outlets. Notably, retail fuel outlet is defined in the Planning and Design Code as follows:

Means land used for:

- a) the fuelling of motor vehicles involving the sale by retail of petrol, oil, liquid petroleum gas, automotive distillate and any other fuels; and
- b) the sale by retail of food, drinks and other convenience goods for consumption on or off the land; and

both are operated as and constitute one integrated facility where on-site facilities, systems and processes, car parking and access and egress are all shared.

The use may also include one or more of the following secondary activities:

- c) the washing and cleaning of motor vehicles
- d) the washing of other equipment or things including dogs and other pets
- e) the provision (on a paid or free basis) of facilities for charging electric vehicles
- f) the hiring of trailers
- g) selling of motor vehicle accessories and/or parts
- h) the installation of motor vehicle accessories and/or parts.

The proposed development is consistent with this definition and is an envisaged land use within the Zone.

Given that the proposed development is envisaged within this Zone, the assessment of the proposed variations is focussed on the following areas:

- Built Form and Character
- Building Height and Setbacks
- Advertisements
- Traffic, Access and Parking
- Interface Between Land Uses
- Landscaping

### **Built Form and Character**

Zone PO 2.1 states

*Development complements adjacent development within the zone, and mitigates interface impacts on adjoining residential uses in neighbourhood-type zones through appropriate building siting, scale and design.*

There is no corresponding DPF for this Performance Outcome.

Adjacent development within the Zone is limited to the medical centre and shop to the west of Miller Street. That development has a primary frontage to Harbrow Grove and presents an inactive frontage to Miller Street.

Notwithstanding this, the proposed development complements this adjacent development in terms of being an envisaged and complementary land use and though the siting of the main building further north than the existing building to reinforce the non-residential cluster of buildings around the Harbor Grove and Miller Street intersection.

The proposed development mitigates interface impacts on residential development by:

- siting of the main building at the northernmost part of the site
- aligning the car wash openings in a north south orientation supported by new acoustic fencing on the southern boundary to minimise noise impacts
- providing landscaping around the perimeter of the site

The variation to the main building to remove the mezzanine level is largely inconsequential in terms of the appearance of the building.

The issues relating to the introduction of the drive through component are:

- Appearance of the building
- Potential for off-site noise impacts
- Amenity impacts (e.g odour/litter/etc)

The drive through is a land use that is anticipated within the Suburban Activity Centre Zone and as a component of a retail fuel outlet.

The introduction of the drive through element to the main building largely preserves the approved appearance of the building and includes a canopy that extends the overall architecture of the building.

Whilst vehicles utilising the drive through will be visible, the overall appearance of the building is nevertheless considered to be appropriate within the locality. The design of the southern elevation has been undertaken to incorporate the drive through and maintain a well presented building. Features including the cladding treatment and integrated canopies assist in the overall presentation of the building, particularly when viewed from the south.

The appearance of the building is consistent with Design in Urban Areas PO 1.3 which seeks that building elevations facing the primary street (other than ancillary buildings) are designed and detailed to convey purpose, identify main access points and complement the streetscape.

The nature of kitchen activities is such that it is not expected to generate excessive smoke, dust or particles. The Building Code requirements will result in flues and mechanical plan to limit emissions and they are well separated from residential properties by roads.

The Environmental Noise Assessment concludes that the development can achieve the relevant requirements of the Environment Protection (Noise) Policy 2007 subject to the treatments outlined in the report. On this basis, the facility has been designed to minimise adverse impacts and not unreasonably affect the amenity of sensitive receivers, thereby achieving the relevant provisions of the Planning and Design Code related to environmental noise. This demonstrates that the interface impacts have been mitigated by the layout and design of the facility.

Some landscaping remains proposed along the edge of the drive through. The level of landscaping is less than previously approved, however it will still provide a landscaped edge to the site and will not impact sightlines for vehicles.

Given that the proposed development is an envisaged use within the Zone, it is considered that, on balance, the design, scale and siting of the building and the general site arrangement is consistent with PO 2.1 to complement adjacent development and mitigate interface impacts.

PO 2.2 states:

*Buildings are sited and designed to create pedestrian, vehicular, open space and visual linkages between the various built-form elements within the zone and adjoining main roads and thoroughfares.*

The site characteristics are such that the subject land is physically separated from other parts of the Zone by roads with irregular allotment boundaries. The nature of the proposed use as a retail fuel outlet, combined with the allotment configuration, results in a proposed development where pedestrian, open space and visual linkages between built form elements are not able to be established.

The proposed variation continues to provide visual linkages through the site and achieves a satisfactory built form outcome through the location of the main building at the northern end of the site to reinforce the corner of Miller Street and Diagonal Road. The siting of the buildings away from the residential development to the south and the reinforcement of the primary corner is considered to result in a positive relationship that generally satisfies PO 2.2.

PO 2.3 states:

*Vehicular access points and car parks are coordinated and consolidated to enable the shared use of parking spaces.*

The integrated nature of the uses within the development results in a shared parking space arrangement. This is further reinforced by the 'island' nature of the site which is physically separated from the remainder of the Zone by Miller Street. PO 2.3 has been satisfied.

PO 2.4 states:

*Development promotes the use of pedestrian and cyclist connections to centre facilities and services.*

The nature of the primary use of the site is for the fuelling and maintenance of vehicles. Accordingly, the promotion of pedestrian and cyclist connections must be balanced with vehicle access and parking. Separated pedestrian access is provided across the southern face of the main building with connections to both Miller Street and Diagonal Road. PO 2.4 is considered to have been satisfied.

### **Building Height and Setbacks**

The minimum building height for this Zone is two storeys.

The proposed development deletes the approved mezzanine dining level and maintains the approved overall height of 7.7m at its tallest point.

This provision has been satisfied.

PO 3.2 states:

*Buildings mitigate visual impacts of building massing on residential development within a neighbourhood-type zone.*

The visual impact from the building massing remains largely unchanged and has been mitigated by the siting of the main building at the northernmost part of the site, separated from adjoining residential areas by roads to the west, north and east, and by significant setbacks to the south.

The car wash building is located greater than 10 metres from the closest part of the southern boundary, and separated by landscaping and a new 2.4m acoustic barrier fence. The main building is located more than 70 metres from the residential areas to the south.

It is considered that PO 3.2 has been satisfied.

PO 3.3 states:

*Buildings on an allotment fronting a road that is not a State maintained road, and where land on the opposite side of the road is within a neighbourhood-type zone, provides an orderly transition to the built form scale envisaged in the adjacent zone to complement the streetscape character.*

An orderly transition is provided through the siting approach, overall height akin to a two storey dwelling and large physical separation by roads. It is considered that PO 3.3 has been satisfied.

### **Advertisements**

PO 4.1 states:

*Advertisements are sited and designed to achieve an overall consistency of appearance along individual street frontages.*

PO 4.2 states:

*Freestanding advertisements:*

- a) identify the associated business(es)*
- b) are of a size that is commensurate with the scale of the centre and the street frontage*
- c) avoid visual clutter*
- d) positively respond to the context without dominating the locality.*

Fascia signage on the northern side of the building is flush with the wall with no hoardings visible. The fascia signage is consistent with General Development DPF 2.3 'Advertisements' in that less than 15% of the walls of the building that the signage is attached to will be covered in signage.

The proposal includes the introduction of two digital signboards into the southern and eastern building façades. These are oriented internally to the site and not visible from the northern approach to the

site. Digital signage is increasingly commonplace in commercial environments and in particular at retail fuel outlets.

The signage positions are considered appropriate and achieve an overall consistency of building appearance. The signage area is considered reasonable and the digital nature of the signage is readily changeable and can reduce the overall proliferation of signage.

The variation includes the relocation of one of the approved freestanding signs is proposed. This change is considered to be minor and is appropriate from a traffic and engineering perspective.

The new location on the eastern side of the site has been located further from the control building and is located closer to residential properties compared with the previous plan. The sign retains the same size and appearance of the approved signage.

Signage is anticipated in the Zone and the proposed sign continues to identify the proposed use, is of a size and scale that is acceptable and avoids clutter.

The Zone does not include a provision requiring separation of signage from residential properties.

The signage locations were considered in the DIT referral advice and were considered acceptable in terms of safety to road users and illumination.

On this basis the relocated sign is considered acceptable.

The approach to signage and advertisements is considered to satisfy the relevant signage criteria in the Planning and Design Code.

### **Traffic, Access and Parking**

The General Development Policies of the Planning and Design Code under the Transport, Access and Parking set out a range of provisions relating to access, parking, traffic and site management. The provision of car parking spaces is set out in Table 1 – General Off-Street Car Parking Requirements.

The applicant submitted a Traffic and Parking Report by MFY addressing the changes to the internal car park layout.

In summary this report found the following:

- the proposed addition of a drive-through component to the approved petrol filling station will result in minimal change to the safe and convenient operation of the site. The proposed access arrangement will continue to cater for the movements of a fuel tanker and provide for safe access to and from the site without compromising existing traffic movements.
- the proposed site layout will adequately cater for the movements of vehicles through the site. It will provide sufficient queuing space at the fuel dispensers, in the drive through facility and on approach to the car wash bays. All vehicle movements will be able to enter and exit the site in a forward direction and will comply with the requirements of relevant Australian Standards and design Guidelines.
- the proposed parking spaces will cater for the peak parking demand of the proposal. These spaces will be designed in accordance with the relevant Standards.
- the traffic assessment has confirmed that the additional traffic generated by the proposal on the road network will be minimal and, therefore, will have minimal impact on the surrounding roads.



DIT has reviewed the proposal as part of a statutory referral and supports the proposed development subject to conditions. A copy of this referral advice is provided within the Attachments.

On this basis the traffic, access and parking provisions of the Planning and Design Code are considered to have been satisfactorily addressed.

## **Interface Between Land Uses**

### Noise and Hours of Operation

General Development Policies Interface between Land Uses PO 2.1 states:

*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.*

There is no corresponding DPF that applies for the proposed use.

The proposed variations include an increase in the manual car wash bay openings from 2.7m to 3.2m. Additional acoustic assessment was undertaken and confirms that the height of the openings as proposed will still satisfy the EPA Environmental Noise Policy. On this basis there is no planning objection to this variation.

As approved, the 'Retail fuel outlet' will operate from 5am until 12 midnight, 7 days per week with the following. The following hours of operation will remain as approved;

- Use of car/dog washing bays restricted to 7am until 10pm;
- Rubbish collection and site deliveries restricted to between 9am and 7pm on Sunday and public holidays and 7am until 7pm any other day;
- Fuel delivery restricted to between 7am and 10pm;

Additional recommendations have been also made in the Sonus report relating to the construction of specific fences; installing absorption in nominated locations; constructing the manual wash bays and auto wash buildings using specific methods; installing glass doors on the auto wash buildings; reducing the noise from any alarms as far as practical; and ensuring all inspection points, grated trenches, etc. are correctly fixed.

On the basis that the predicted noise levels from the development will achieve the relevant requirements of the Environment Protection (Noise) Policy 2007 subject to the treatments outlined in the Sonus report, it is considered that the hours of operation are appropriate in terms of acoustic impact on the locality.

### Odour

The applicant has provided no specific details in relation to odour control measures relating to the fast food element of the proposal.

Unlike the fuel element of the development, the EPA is not responsible for food odour and no comment has been provided on this element by the EPA.

The EPA requires licensed facilities (e.g. the fuel tanks) to take all reasonable and practicable measures to prevent or minimise odour. Other odour issues within the community (kitchen odour) are regulated by local councils under the Local Nuisance and Litter Control Act 2016.

Food cooking odour control measures will vary significantly depending on the type of food being produced on site, notwithstanding that the use is specifically envisaged within the Zone.

Food outlets can emit particulates in the form of oil and grease mist from deep frying and wok-type cooking, and from fats released during roasting and barbecuing.

Mechanical ventilation is required in most food shops. It should comply with Clause F4.12 of the Building Code of Australia and Australian Standard AS 1668 Parts 1 & 2. The business must provide a report certified by a mechanical ventilation engineer indicating compliance. In particular, air capture velocities and air exhaust rates must comply.

A condition of consent is recommended to address the requirement to manage cooking odour.

### **Stormwater Management**

Updated stormwater details have been provided by the applicant, albeit that the overall site configuration and stormwater strategy remains largely unchanged.

Roof water is considered appropriate to be discharged to existing Council infrastructure.

The EPA considered water quality as part of its initial advice, which was as follows:

Potentially contaminated stormwater runoff can be generated at retail petrol stations from the hard surfaced forecourt areas including re-fuelling areas, parking areas, footpaths, loading areas and other trafficable areas. Pursuant to the Environment Protection (Water Quality) Policy 2015, occupiers of land must take all reasonable and practicable measures to avoid the discharge or deposit of pollutants (including petroleum products) into any waters or onto land in a place from which it is reasonably likely to enter any waters.

The EPA notes that the proposed development includes car wash and dog wash elements on the same site as the petrol station. As part of its assessment, the EPA has only considered run-off (stormwater and spills) for the 'site' pertaining to the proposed petrol station.

The information provided identifies that all runoff (including spills) from hardstand areas would be collected via a series of grated inlet pits and pass to a SPEL Puraceptor Class 1 full retention oil/water separator (P.080.C1.2C). It is proposed that this has a 10,000 litre capacity retention tank to capture a major spill on site from a delivery truck.

A further two underground stormwater detention tanks (each with the capacity of 23m<sup>3</sup>) and a pumping station (incorporating 23m<sup>3</sup> detention) is proposed to achieve 'pre-development flow' detention prior to a controlled discharge to the Council stormwater system.

This is satisfactory to the EPA and a condition to this effect is directed.

## Landscaping

General Development Policies under the Design heading include the following:

*PO 1.5*

*The negative visual impact of outdoor storage, waste management, loading and service areas is minimised by integrating them into the building design and screening them from public view (such as fencing, landscaping and built form) taking into account the form of development contemplated in the relevant zone.*

*PO 3.1*

*Soft landscaping and tree planting is incorporated to:*

- a) minimise heat absorption and reflection*
- b) maximise shade and shelter*
- c) maximise stormwater infiltration*
- d) enhance the appearance of land and streetscapes*
- e) contribute to biodiversity.*

*PO 3.2*

*Soft landscaping and tree planting maximises the use of locally indigenous plant species, incorporates plant species best suited to current and future climate conditions and avoids pest plant and weed species.*

The variation includes a landscaping plan. This plan responds to the landscape requirements with a gated and screened bin store is provided to the east of the car wash building that is integrated into overall design and includes black screening slats to screen this area from public view.

Soft landscaping is provided to the perimeter of the site planted with a range of trees, ground covers and shrubs to soften the appearance of the site and maintain sight lines for motorists.

Given the nature of the proposed use, there is some inherent conflict between the requirement for vehicle manoeuvring areas, sight lines and ability to incorporate significant areas of landscaping for heat absorption and reflection.

There are no specific landscaping provisions within the Suburban Activity Centre Zone.

Whilst not a car parking area, Design in Urban Areas DPF 7.5 (which is relevant to car parking design and not a drive-through facility) seeks that vehicle parking areas comprising 10 or more car parking spaces include soft landscaping with a minimum dimension of 1m along all public road frontages and allotment boundaries.

The proposal is generally consistent with this minimum dimension with the exception of the western driveway.

The proposed approach to landscaping is considered to be a less desirable outcome compared with the approved design but nevertheless satisfactory for the proposed use and commensurate with similar new facilities within Metropolitan Adelaide.

## CONCLUSION

As a result of the above considerations, it is my view that the proposed development is not seriously at variance to the Planning and Design Code, in accordance with Section 126(1) of the Planning, Development and Infrastructure Act 2016.

The proposed land use is a kind of development specifically envisaged in Zone DTS/DPF 1.1 and is generally an appropriate kind of development for the site and the Zone generally.

Assessed against the Code I note:

- The proposed building height remains consistent with the minimum building height for the zone.
- The visual impact from the building massing has been mitigated by the siting of the main building at the northernmost part of the site, separated from adjoining residential areas by roads to the west, north and east, and by significant setbacks to the south.
- The car wash building is located greater than 10 metres from the closest part of the southern boundary and separated by landscaping and a new 2.4m acoustic barrier fence. The main building is located more than 70 metres from the residential areas to the south.
- The change from 2.7m to 3.2m car wash openings will continue to meet the EPA Noise Policy
- The proposal is provided with parking provisions and access arrangements that meet the relevant Standards and Council requirements.
- The impact on the traffic conditions in the locality is acceptable.
- The predicted noise levels from the development will achieve the relevant requirements of the Environment Protection (Noise) Policy 2007.
- Roof water is considered appropriate to be discharged to existing Council infrastructure and the EPA is satisfied with the proposed stormwater and runoff management from the site.
- The proposal is provided with landscaping that generally satisfies the relevant Code provisions.
- The proposed advertisements are appropriate, will comply with AS 4282-1997 and satisfy the relevant signage criteria in the Planning and Design Code.

It is considered that the changes proposed exhibit 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 “Application to vary DA 21013079 proposing Introduction of drive-thru driveway, Alterations to existing control building including removal of mezzanine level, inclusion of drive-thru order and pick up canopies (including acoustic fencing), digital signage to the northern and western facades and internal layout changes, Relocation of freestanding northern-eastern pylon advertisement and associated hording to the south-west location of site, Relocation of western freestanding pylon advertisement and associated hording from the northern side of the crossover to the southern side of the crossover, Changes to previously approved site landscaping, Minor changes to internal carpark layout of site, Increase in bin enclosure size” at 373 Diagonal Road, Sturt and 45 Miller Street, Sturt be GRANTED subject to the following Reserved Matter and Conditions.

## RESERVED MATTER

Pursuant to Section 102 (3) of the Planning, Development and Infrastructure Act 2016, the matter listed as Reserved Matters are reserved for further assessment to the satisfaction of the relevant authority prior to the granting of Development Approval.

1. Amended engineering plans prepared by Hodge Collard Preston shall be provided illustrating the relevant pedestrian walkways as illustrated on the architectural plans.

## 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), being the following documentation;
  - Planning statement prepared by Adelaide Planning and Development Solutions dated 22 June 2022;
  - Traffic and Parking Report prepared by MFY dated 21 April 2022;
  - Environmental Noise Assessment report prepared by SONUS dated July 2022;
  - Landscape plan prepared by Hodge Collard Preston dated 6 July 2022;

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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.

- Stormwater plans prepared by SAGERO dated 15 July 2021 Dwg No. C01E, CO2D, CO3E, CO4D and C05C; and
- Drawings prepared by Hodge Collard Preston Dwg No. A001 Rev D , A100 Rev G, A101 Rev, A102 Rev, A110 Rev F, A120 Rev F, A200 Rev H, A210 Rev F, A211 Rev F, A220 Rev H, and A700 Rev D.

Except where varied by the following conditions of consent.

2. All noise mitigation measures shall be operated and maintained in accordance with the recommendations of the Sonus Environmental Noise Assessment Report dated May 2021, except where superseded by the report prepared by Sonus dated July 2022.
3. The hours of operation of the facility shall be restricted to the following times:
  - 5:00am to Midnight of each day, seven days per week.
4. Operation of the automatic car wash bays, manual car wash bays, dog wash bays and vacuum bays shall be restricted to the following times;
  - 7am and 10pm of each day, seven days per week.
5. Fuel deliveries shall be restricted to the following times;
  - 7am and 10pm of each day, seven days per week.
6. Rubbish collection and deliveries (which may also use the service bay) shall be restricted, in accordance with the Environment Protection (Noise) Policy 2007, to the following times;
  - 9am and 7pm on a Sunday or public holiday.
  - 7am and 7pm on any other day.
7. An odour control system shall be installed and maintained on an ongoing basis to the kitchen exhaust hoods in order to maintain odour control efficiency in accordance with AS 1668.2.
8. All car parking areas driveways and vehicle maneuvering area must be constructed, sealed and drained in accordance with the recognized 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.'
9. Wheel stopping devices shall be placed within each parking bay so as to prevent damage to adjoining fenced, buildings or landscaping to the reasonable satisfaction of the Council.
10. Designated accessible car parking spaces shall be designed and provided in accordance with the provisions contained in Australian Standards AS 2890.6.2009.
11. All car parking spaces shall be line marked or delineated in a distinctive fashion prior to occupation of the premises, with the marking maintained in a clear and visible condition at all times.
12. All areas nominated as landscaping or garden areas on the approved plans shall be planted and maintained with a suitable mix and density of native trees, shrubs and groundcovers prior to the occupation of the premises to the reasonable satisfaction of the Council.



13. New vegetation proposed to be planted shall be nurtured and maintained in good health and condition at all times with any diseased or dying plants being replaced, to the reasonable satisfaction of the Council.
14. All external lighting of the site, including car parking areas and buildings, shall be located, directed, shielded and of an intensity not exceeding lighting in adjacent public streets, so as not to cause nuisance or loss of amenity to any person beyond the site in accordance with AS 4282-1997- Control of the Obtrusive Effects of Outdoor Lighting (including illuminated signage), and AS 1158.1 Public Lighting Code for the illumination level of the car parking area.
15. Driveways, parking and maneuvering areas and footpaths must be lit in accordance with the Australian Standards Association Code AS 1158 during the hours of darkness that they are in use. Such lights must be directed and screened so that overspill of light into the nearby properties is avoided and motorists are not distracted. Such lighting shall be maintained at all times, to the reasonable satisfaction of the Council.
16. All waste and other rubbish shall be stored in a manner so that it does not create insanitary conditions, unreasonable nuisance or pollution to the environment (including the prevention of any materials entering the stormwater system either by wind or water), to the reasonable satisfaction of Council.
17. All waste and other rubbish shall be screened from public view, to the reasonable satisfaction of Council.

#### **ENVIRONMENTAL PROTECTION AUTHORITY CONDITIONS**

18. Prior to operation, all fuel storage tanks (apart from diesel and LPG) must be fitted with a Stage 1 vapour recovery system (which includes underground storage tank vent pipes being fitted with a pressure vacuum relief valve) that directs the displaced vapours back into the tank during filling.
19. Prior to operation, all fuel dispensers (apart from diesel and LPG) must be fitted with a Stage 2 vapour recovery system that directs vapours into the tank during vehicle refueling.
20. Prior to operation, all underground fuel storage tanks must be double walled and fitted with a leak detection system designed and installed in accordance with clause 4.5 of the Australian Standard 4897-2008 The design, installation and operation of underground petroleum storage systems.
21. Prior to operation, all fuel lines between the underground storage tanks and fuel dispensers must be double contained and fitted with a leak detection system, designed and installed in accordance with clause 4.5 of Australian Standard 4897-2008 The design, installation and operation of underground petroleum storage systems.
22. Stormwater runoff from all hardstand areas of the petrol station (including the refueling and fuel delivery areas) must be managed in accordance with 'Grading Plan and Details' Sheet 1, Project No. SA190085, Drawing No. C03, Issue C, 15.7.21 and 'Stormwater Plan, Notes, Legend and Schedule' Sheet 1 & 2, Project No. SA190085, Drawing No. C02, Issue C, 15.7.21 and must be directed via grates and grade changes to the SPEL Purceptor full retention oil/water separator (no bypass function) that:
  - a) has as a minimum spill capture capacity of 10,000 litres

- b) reduces oil content in the outlet to less than 5 mg/L (as confirmed by independent third party scientific testing)
- c) operates effectively in the event of a power failure

#### **COMMISSIONER OF HIGHWAYS CONDITIONS**

- 23. Access to Diagonal Road and Miller Street shall be gained as shown on Hodge Collard Preston, Site Plan, Project No. 166.19, Drawing No. A002, Revision D dated 8 April 2022. The access points shall be suitably signed and line-marked to reinforce the desired traffic flow. Chevron line-marking shall also be incorporated in the design to reduce the width of the access for passenger vehicles while still permitting access for delivery vehicles.
- 24. The existing flush median at the Diagonal Road / Darling Street intersection shall be replaced by a solid median, as shown on MFY Report 19-0285 (Dated 21 April 2022), Figure 1: Proposed median treatment on Diagonal Road at the Darling Street intersection. The design of these works shall ensure that existing lane widths are maintained along this section of road. Any requirement to relocate roadside infrastructure (eg. stobie pole and side entry pit) shall be undertaken to ensure the existing lane widths are achieved.
- 25. The existing pedestrian refuge and ramps on Diagonal Road shall be relocated to allow for the construction of the new ingress. In addition, the pedestrian ramps shall be relocated to ensure a safe crossing location is maintained for pedestrian using the existing bus stop facilities. Existing footpath widths shall be maintained as part of these works.
- 26. All road works deemed required to facilitate safe access to the development shall be designed and constructed in accordance with Austroads, Australian Standards and DIT Master Specifications with all costs (including but not limited to design, construction, project management and any changes to road drainage, lighting etc. required) being borne by the applicant. All required road works shall be completed prior to operation of the development and shall be to the satisfaction of the Department for Infrastructure and Transport.
- 27. All vehicles shall enter and exit the site in a forward direction.
- 28. Any infrastructure within the road reserve that is demolished, altered, removed or damaged during the construction of the project shall be reinstated to the satisfaction of the relevant asset owner, with all costs being borne by the applicant.
- 29. Any obsolete crossover/s (or any portion thereof) on Diagonal Road and Miller Street shall be closed and reinstated to Council's kerb and gutter standards at the applicant's expense prior to operation of the development.
- 30. All off-street parking shall be designed in accordance with AS/NZS 2890.1:2004 and AS/NZS 2890.6:2009. Clear sightlines, as shown in Figure 3.3 'Minimum Sight Lines for Pedestrian Safety' in AS/NZS 2890.1:2004, shall be provided at the property line to ensure adequate visibility between vehicles leaving the site and pedestrians on the adjacent footpath. The internal manoeuvring areas for commercial vehicles shall be designed in accordance with AS2890.2:2018.

41. Stormwater run-off shall be collected on-site and discharged without impacting the safety of the adjacent roads. Any alterations to the road drainage infrastructure required to facilitate this shall be at the applicant's expense.
42. Landscaping (e.g. advanced vegetation) and/or screens to prevent headlight glare from the drive through area shall be provided along the Diagonal Road Road and Miller Street boundaries prior to the operation of the business and maintained during the life of the development.

#### **NOTES**

1. Any construction over an easement to Council is required to achieve Council's easements guidelines and a request shall be submitted to Council for approval prior to any works.
2. A Section 221 Permit under the Local Government Act is required for any works external to the site.

#### **Environment Protection Authority Notes**

3. The applicant is reminded of its general environmental duty, as required by Section 25 of the Environment Protection Act, to take all reasonable and practicable measures to ensure that the activities on the whole site, including during constructions, do not pollute the environment in a way which causes or may cause environmental harm.
4. The applicant/owner/operator are reminded that any sludge or oily residue collected within the forecourt full retention oil/water separator is required to be removed by an EPA licensed waste transporter to a licensed waste depot.
5. An environmental authorization in the form of a license is required for the operation of this development. The applicant is required to contact the Environment Protection Authority before acting on this approval to ascertain licensing requirements. Information on applying for a license (including license application forms) can be accessed here:  
[http://www.epa.sa.gov.au/business\\_and\\_industry/applying\\_for\\_a\\_license](http://www.epa.sa.gov.au/business_and_industry/applying_for_a_license)
6. A license may be refused where the applicant has failed to comply with any conditions of development approval imposed at the direction of the Environment Protection Authority.
7. EPA information sheets, guidelines documents, codes of practice, technical bulletins etc. can be accessed on the following web site: <http://www.epa.sa.gov.au>

#### **Commissioner of Highways Notes**

8. Prior to undertaking detailed design, the applicant shall contact DIT Network Management Services, Mr Narendra Patel, Senior Network Integrity Engineer, on telephone (08) 8226 8244, Mobile 0400 436 745 or via email: [narendra.patel@sa.gov.au](mailto:narendra.patel@sa.gov.au). The applicant shall enter into a Developer Agreement with DIT to undertake the above works.
9. Signage shall not contain any element of LED or LCD display, except for the fuel prices on the pylon sign. The fuel prices shall be white characters on a black background.

10. Signage shall not flash, scroll, move or change, with the exception of the LED fuel price signs, which may change on an as-needs basis.
11. Signage shall not be permitted to operate in such a manner that could result in impairing the ability of a road user by means of high levels of illumination or glare. Accordingly, all illuminated signs visible from the arterial road network shall be limited to a low level of illumination (i.e.  $< 150\text{Cd/m}^2$ ), except in the case of electronic signage, which shall be limited to the following stepped luminance levels:

Ambient Conditions	Sign Illuminance Vertical Component (Lux)	Sign Luminance (Cd/m <sup>2</sup> )
Sunny Day	40000	6300
Cloudy Day	4000	1100
Twilight	400	300
Dusk	40	200
Night	<4	150

12. Signage shall, in the case of electronic signage, incorporate an automatic error detection system which will turn the display off or to a blank, black screen should the screen or system malfunction.

**5. APPEALS UPDATE  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 AUGUST 2022**



**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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Nil

***On-going 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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Nil

**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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Nil

**6. POLICY OBSERVATIONS  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 AUGUST 2022**

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No items listed for discussion.



**7. OTHER BUSINESS  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 03 AUGUST 2022**

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No items listed for discussion.