

**NOTICE OF  
COUNCIL ASSESSMENT PANEL MEETING**

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

**Wednesday 16 March 2022**

**Commencing at 6.30 p.m.**

**Council Chamber**

**Council Administration Centre**

**245 Sturt Road, Sturt**

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



Alex Wright  
**ASSESSMENT MANAGER**

9 March 2022

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**CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 16 MARCH 2022  
COMMENCING AT 6.30PM**

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**1. MEETING PROCEDURES**

**1.1 OPEN MEETING**

**1.2 PRESENT**

**1.3 APOLOGIES**

**1.4 IN ATTENDANCE**

**2. GENERAL OPERATIONS**

No items listed for discussions

**3. DEVELOPMENT ACT 1993 APPLICATIONS**

No items listed

**4. PDI ACT APPLICATIONS**

**4.1 DEVELOPMENT NO 21042168**

**18 Victoria Street, Glandore**

Two storey dwelling addition (upper level addition within roof space) and carport addition  
Report Reference: CAP160322 - 4.1.....2

**4.2 DEVELOPMENT NO 21030525**

**27 Trumara Road, Marino & 22 Barula Road, Marino**

Chain mesh fencing (3.6m high), 2x lighting poles, swimming pool safety fencing and 1.5m  
high fence attached to retaining wall.  
Report Reference: CAP160322 - 4.2.....13

**5. APPEALS UPDATE**

Verbal Update Provided

**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 discussions

**7. OTHER BUSINESS**

No items listed for discussions

8. **CONFIRMATION OF THE COUNCIL DEVELOPMENT ASSESSMENT PANEL MEETING  
HELD ON 16 MARCH 2022**
9. **MEETING CLOSURE**

**2. GENERAL OPERATING PROCEDURES  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 16 MARCH 2022**

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No items listed for discussion

**REPORT REFERENCE: CAP160322 – 4.1  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 16 MARCH 2022**



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<b>Originating Officer:</b>	<b>Theresa James Consultant Development Officer – Planning</b>
<b>Applicant:</b>	<b>Mr Andrew Foster</b>
<b>Development Description:</b>	<b>Two storey dwelling addition (upper level addition within roof space) and carport addition</b>
<b>Elements:</b>	<b>Two storey dwelling addition Carport addition</b>
<b>Site Location:</b>	<b>18 Victoria Street, Glandore</b>
<b>Zone:</b>	<b>Established Neighbourhood</b>
<b>Lodgement Date:</b>	<b>02/01/2022</b>
<b>Planning and Design Code:</b>	<b>16 December 2021 Version 2021.17</b>
<b>Referrals:</b>	<b>N/A</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 dwelling building height of more than one level, and where the length of a carport exceeds eight metres 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>21042168</b>
<b>Recommendation:</b>	<b>That Planning Consent be GRANTED subject to Conditions</b>

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**Appendices**

*Appendix 1: Planning and Design Code guidelines*

**Attachments**

*Attachment I: Proposal Plan and supporting documentation*

*Attachment II: Statement of Representations*

*Attachment III: Applicant's Response to Representations*

## BACKGROUND

- 22 December 2021 an application for an upper-level dwelling addition and carport addition was submitted on the PlanSA Portal.
- 30 December 2021 Council requested additional information in order to verify the application.
- 2 January 2022, when application fees were paid, the application was formally lodged.

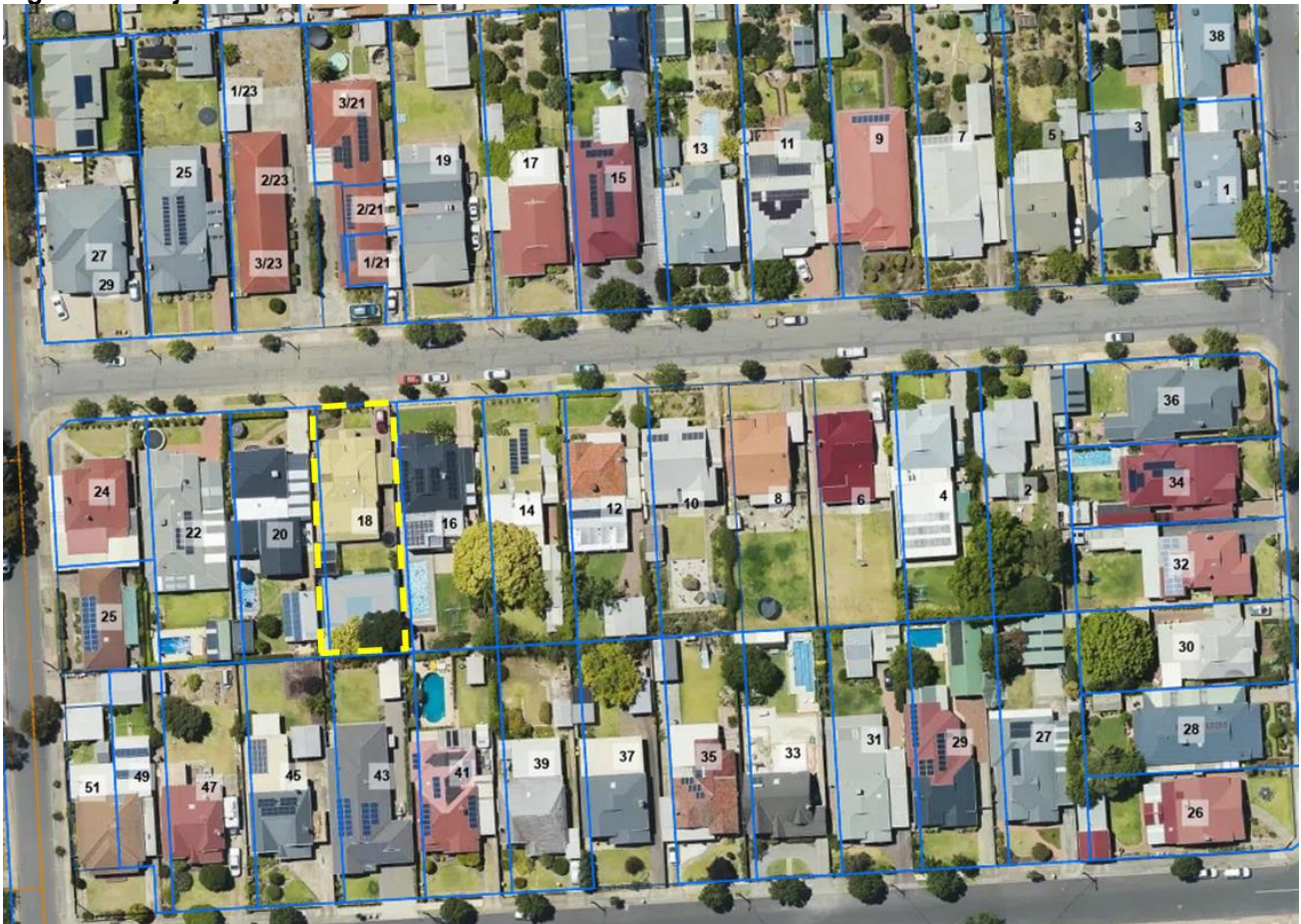
## SUBJECT LAND

The subject land is a rectangular shaped allotment located on the southern side of Victoria Street. It has an area of 708.39 square metres and a single frontage to Victoria Street measuring 15.3 metres. A single storey detached dwelling occupies the site. The dwelling includes some Bungalow style elements, such as a gable-end front verandah. However, the façade appears heavily modified and does not have strong resemblance of Bungalows typically constructed between 1920-1950.

An enclosed carport is positioned to the eastern side of the dwelling. It is setback from the building line of the dwelling and includes a gable end to its façade. A cream coloured roller door secures the carport from entry.

The land is relatively even. The front yard includes paved and landscaped areas, bordered by a front fence constructed from red/brown brick pillars and plinth and green “swimming pool style” infill.

Figure 1: Subject land — — — — —





## LOCALITY

The locality includes Victoria Street and is solely residential in nature. Single storey detached dwellings occupy most allotments, however group dwellings have been identified on land to the north of the subject land.

The streetscape is generally characterised by consistent allotment sizes and front building setbacks. Most dwellings include distinctive architectural styles including Bungalow, Tudor and some hybrid Bungalow styles. Large expanses of roof sheeting, as well as prominent front verandahs are contribute to the dwelling features in this locality.

Landscaped verges and street trees positively contribute to the streetscape by softening the appearance of concrete footpaths and the carriageway.

Figure 2: The Locality



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

The land is located within the Established Neighbourhood Zone (the Zone) of the Planning and Design Code (the Code).

## PROPOSED DEVELOPMENT

The proposed development seeks alterations and additions to an existing dwelling. Specifically, it includes an extension to the existing single-width carport to enable the covered parking of two vehicles in a stacked formation. In addition, it seeks to add an additional building level resulting in a two-storey dwelling.

The existing carport spans for a length of 5.55 metres along the eastern side boundary. This application seeks to extend its length by 6 metres to the rear. The carport addition is open to the side and rear and matches the height of the existing structure.

The proposed upper-level addition is contained within the existing building footprint. It includes two new bedrooms, a living area, and small wet areas (bathroom and lavatory). It has been designed to appear as a two-storey “in-roofline” addition from the street i.e. within the roof space of the dwelling.

Side elevation walls are designed with Dutch-gable ends to reinforce the appearance of the addition within the roof-space. These walls are setback significantly from side boundaries, 4.65 metres and 3.41 metres to the east and west respectively.

## PROCEDURAL MATTERS

### Classification

The subject land is in the Established Neighbourhood Zone of the Planning & Design Code (the Code) as of 16 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” pursuant to Section 107 the Planning, Development and Infrastructure Act 2016 and will be assessed on its merits against the various provisions of the Code.

### 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.

### Public Notification

Point 3 (d) and (g) of Table 5 – Procedural Matters in the Established Neighbourhood Zone excludes notification for development comprising a carport or dwelling additions. Exemptions to these exclusions relate to:

- Dwellings that exceed 1 building level.
- Dwelling or carports that include a boundary wall more than 8 metres in length and/or 3.2 metres in height.

The application was publicly notified between 13 January 2022 and 3 February 2022. During this time three representations were received, two opposed the development and one was in support of 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 Panel Delegations Instrument, the application is now presented to the Panel for a decision.



**Properties Notified**      36

**Representations**      3 received  
1 supports the development (later withdrawn)  
2 oppose the development

<b>Representations received</b>	1. David Hawkes of 20 Victoria Street, Glandore	Wish to be heard ✓
	2. Matthew Rechner of 45 Gertrude Street, Glandore	✓

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

## **ASSESSMENT**

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

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

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

The planning assessment below identifies the relevant policies applicable to development for dwelling additions and carports. In my view the most pertinent planning considerations relate to:

- Streetscape character
- Building footprint and siting
- Interface impacts

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

## **ZONE CONSIDERATIONS**

***Established Neighbourhood Zone: DO1, DO 2, PO 3.1, PO 4.1, PO 4.2, PO 7.1, PO 8.1, PO 9.1, 10.1, 10.2, PO 11.1 & PO 11.2***

## **OVERLAY CONSIDERATIONS**

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

***Building Near Airfields: DO 1 & PO 1.3***

***Character Area: DO 1, PO 1.1, PO 2.1, PO 2.2, PO 2.3, PO 2.4, PO 2.5, PO 3.1, PO 6.1 & PO 6.2***

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

## **GENERAL DEVELOPMENT POLICIES CONSIDERATIONS**

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

***Design in Urban Areas: DO 1, PO 8.1, PO 10.1, PO 10.2, PO 18.1, PO 20.3, PO 21.1, PO 21.2, PO 22.1, PO 23.1, 23.4***

***Infrastructure and Renewable Energy Facilities: DO 1***

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

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

### **Streetscape Character**

The existing dwelling has some Bungalow architectural features. Its character has, however, been compromised by modifications to its façade. Its larger than usual window openings and unusual front porch design and siting contribute to this compromised character.

Dwellings in this streetscape are all single storey in height. Notwithstanding this many include large areas of roofing, which increases the mass of those dwellings due to unbroken expanses of roof sheeting visible to the public road.

The proposed upper level has been designed to maintain the existing building footprint and minimise site coverage by locating the proposed dwelling addition generally within the roof-space of

the existing dwelling. The resultant building height will be greater than the existing dwelling. A new Dutch gable is positioned to the centre of the new roofing, which has a single level building height. The higher portion of new roofing relates to the area accommodating the new floor area. It is 7.7 metres at the ridge and is setback significantly from the front boundary of the land, some 16.8 metres.

The relevant Performance Outcome (PO) with respect to building height for the Zone states:

***PO 4.1 Buildings contribute to the prevailing character of the neighbourhood and complements the height of nearby buildings.***

The associated Designated Performance Features (DPF) provides one way in which the PO can be achieved. The DPF at the Zone level anticipates buildings of two-storeys and up to 9 metres. However, a Technical Numeric Variation (TNV) applies to the land, where a building height of one level is considered to satisfy the PO. No quantitative value is provided by the TNV.

In determining if the proposed building height satisfies the above policy, existing building heights and roof forms in the locality were reviewed, as was the policy in the Character Areas Statement (MarC1). The Character Area Statement identifies attributes of a locality that aid in the planning assessment. Of note a second building level within the roofline is anticipated by the character statement.

In review of the above, the proposed upper-level addition positively contributes to the character of the area and complements the height of buildings due to the following:

- The addition is largely within the roof-space and presents as a single storey building when viewed from the street.
- The Character Area Statement envisages two-storey development designed in the roofline, which is reflected by the proposal.
- The highest portion of the upper level is setback significantly from the front boundary, reducing its presence in the streetscape.
- The overall height is reflective of traditional single storey character dwellings, which are typically taller than conventional/project home dwellings.
- Gable ends to side elevations aid in the appearance of the addition being located fully within the roof space as viewed from Victoria Street.
- Roofing in the locality is monotonous with large expanses of unbroken iron sheeting. The proposed addition includes hipped roofing with Dutch gables to better articulate roofing and address the architectural details envisaged in the Character Area Statement.
- The upper-level addition is not closer to the side or rear boundaries than the existing dwelling.

Given the above rationale, the proposed upper level is considered to satisfy the relevant policies with respect to appropriate residential and streetscape character.

**Building Footprint and Siting**

Appropriate siting of buildings and their overall footprint is aided by site coverage and setback provisions in the Zone.

The Established Neighbourhood Zone addresses site coverage assessment provisions.

***PO 3.1 Building footprints are consistent with the character and pattern of the neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation.***

The associated DFP anticipates 40% site coverage. In calculating site coverage, the Code calculates the total roofed area of all buildings/structures (excluding any eaves surrounding a

habitable building). The resultant site coverage of the subject land satisfies the DPF and therefore satisfies the PO. Of note, the proposed upper level addition does not contribute to additional site coverage on the land. The carport addition is the only element that increases site coverage on the land, which is acceptable in any event.

The Established Neighbourhood Zone includes setback assessment provisions. The proposed carport extension is positioned behind the existing dwelling and therefore will not be visible from the public road. No part of the upper-level dwelling addition is located on a boundary.

***PO 7.1 Dwelling boundary walls are limited in height and length to manage visual and overshadowing impacts on adjoining properties.***

***PO 8.1 Buildings are set back from side boundaries to provide:***

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

The proposed development does not include any walls on a boundary. Only two, 2.4 meter high posts are located to the inside of the eastern boundary. These are associated with the carport extension. In this locality it is common for carports or garages to be located on a side boundary.

The development satisfies PO 8.1 due to the following:

- The carport extension is positioned behind the existing enclosed carport.
- The proposed carport extension lays adjacent only one window to a habitable room associated with the adjoining dwelling.
- The overall height of the carport is low, with posts at 2.4 metres high and ridge at 3.5 metres.
- The proposed upper-level does not encroach closer to side or rear boundaries than the existing dwelling.

For the reasons outlined above, established character formed by spacing between dwellings is maintained by the proposal. In addition, access to natural light and ventilation for neighbours will not be significantly or negatively impacted by the siting of the proposed development. This is due to the low scale of the carport, minimal windows on the adjoining dwelling adjacent the carport, and the deep setback of the upper level to the side boundaries.

## **Interface Impacts**

Interface policies with respect to overshadowing and overlooking are found within the General Development Policies of the Code.

### **Overshadowing**

With respect to overshadowing the following provisions in the 'Interface between land uses' section of the Code are relevant:

***PO 3.1 Overshadowing of habitable room windows of adjacent residential land uses in:***

- a) neighbourhood-type zone is minimised to maintain access to direct winter sunlight***
- b) other zones is managed to enable access to direct winter sunlight.***

***DFP 3.1 North-facing windows of habitable rooms of adjacent residential land uses in a neighbourhood-type zone receive at least 3 hours of direct sunlight between 9.00am and 3.00pm on 21 June.***

***PO 3.2 Overshadowing of the primary area of private open space or communal open space of adjacent residential land uses in:***

- a) neighbourhood-type zone is minimised to maintain access to direct winter sunlight***

***b) other zones is managed to enable access to direct winter sunlight.***

***DPF 3.2 Development maintains 2 hours of direct sunlight between 9.00 am and 3.00 pm on 21 June to adjacent residential land uses in a neighbourhood-type zone in accordance with the following:***

***a) for ground level private open space, the smaller of the following:***

***i. half the existing ground level open space***

***or***

***ii. 35m<sup>2</sup> of the existing ground level open space (with at least one of the area's dimensions measuring 2.5m)***

***b) for ground level communal open space, at least half of the existing ground level open space.***

***PO 3.3 Development does not unduly reduce the generating capacity of adjacent rooftop solar energy facilities taking into account:***

***a) the form of development contemplated in the zone***

***b) the orientation of the solar energy facilities***

***c) the extent to which the solar energy facilities are already overshadowed.***

The subject land and adjoining allotments resemble a grid pattern, with dwellings on the southern side of Victoria Street facing north. This orientation means that on all allotments shadowing will be cast to the west during the morning, at midday shadowing will be cast onto the land occupied by the dwelling it relates to, and during the middle of the afternoon shadowing will be cast to the east. For this reason, the proposed development will not impact sunlight access of north-facing windows or solar energy collectors on adjoining land.

The upper-level addition is setback 23 meters from the rear boundary. Private open space on adjoining land is large. Furthermore, the private open space associated with dwellings on adjoining land to each side of the subject land is positioned further south than the rear elevation of the proposed additions. For these reasons overshadowing of adjoining land is sufficiently managed.

### Overlooking

With respect to overlooking the following provisions in the 'Design in Urban Areas' section of the Code are relevant:

***PO 10.1 Development mitigates direct overlooking from upper level windows to habitable rooms and private open spaces of adjoining residential uses in neighbourhood-type zones.***

***DPF 10.1 Upper level windows facing side or rear boundaries shared with a residential use in a neighbourhood-type zone:***

***a) are permanently obscured to a height of 1.5m above finished floor level and are fixed or not capable of being opened more than 125mm***

***b) have sill heights greater than or equal to 1.5m above finished floor level***

***c) incorporate screening with a maximum of 25% openings, permanently fixed no more than 500mm from the window surface and sited adjacent to any part of the window less than 1.5 m above the finished floor level.***

Proposed upper level windows to side gables are either fixed and fitted with obscure glazing to 1.5 metres above the floor level, or have high level windows set at 1.8 metres above the floor level. Rear elevation windows include fixed and obscure glazing to 1.5 metres above the floor level. These design features satisfy the DPF and therefore the PO is satisfied.



## **CONCLUSION**

The proposed development seeks to make alterations and additions to an existing dwelling, including a new upper level largely designed within the roof space, and a rear extension to existing carport.

The siting and design of the proposed development appropriately addressed the Performance Outcomes (PO) for the relevant sections of the Code. Whilst not all Designated Performance Features (DPF) are satisfied the Rules of the Interpretation of the Code clearly recognise that a DPF is not required to be met to satisfy a PO and that the PO can be met in some other way.

I consider the POs are satisfied by this application given the in-roof design and maintenance of side boundary setback displayed by the proposed upper level addition. These features ensure the proposed building height maintains the appearance of a single level building as viewed from the street. Use of Dutch gables to the front elevation ensures roof massing is appropriately managed, which creates a good level of articulation and visual interest.

The proposed carport addition has no impact on streetscape character due to its position behind the existing enclosed carport.

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 proposed development 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 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: 21042168 for upper level dwelling additions and extension to existing carport at 18 Victoria Street, Glandore 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 devices/treatments proposed and nominated on the approved plans, and forming part of the Development Application, to protect the privacy of adjoining properties shall be installed and in use prior to occupation of the premises and maintained for the life of the building.**

**REPORT REFERENCE: CAP160322– 4.2  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 16 MARCH 2022**



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<b>Originating Officer:</b>	<b>Theresa James Consultant Development Officer – Planning</b>
<b>Applicant:</b>	<b>Ian Barnes Debra Long</b>
<b>Development Description:</b>	<b>Chain mesh fencing (3.6m high), 2x lighting poles, swimming pool safety fencing and 1.5m high fence attached to retaining wall.</b>
<b>Site Location:</b>	<b>27 Trumara Road, Marino 22 Barula Road, Marino</b>
<b>Zone &amp; Policy Area:</b>	<b>Hills Neighbourhood</b>
<b>Lodgement Date:</b>	<b>25/11/2021</b>
<b>Planning and Design Code:</b>	<b>4 November 2021 Version 2021.16</b>
<b>Referrals:</b>	<b>N/A</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 an element not identified as a class of development excluded from public notification requires public notification unless the authority considers the application minor. Lighting structures are not specifically excluded from notification in Table 5 of the Zone.</i>
<b>Application No:</b>	<b>21030525</b>
<b>Recommendation:</b>	<b>That Planning Consent be GRANTED subject to Conditions</b>

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**Attachments**

<i>Attachment I:</i>	<i>Proposal Plan and supporting documentation</i>
<i>Attachment II:</i>	<i>Statement of Representations</i>
<i>Attachment III:</i>	<i>Applicant's Response to Representations</i>

## **BACKGROUND**

On 15 April 2021 Development Approval was granted for a rear boundary realignment (land division) associated with the land at 27 Trumara Road and 22 Barula Road, Marino (development application 100/2021/625). That application resulted in an additional 300 square meters of land attributed to 27 Trumara Road from 22 Barula Road. Essentially, the rear boundary shifted south approximately 15-17 metres.

The position of the proposed development is on the portion of land attributed to 27 Trumara Road via the abovementioned land division approval. A final plan of division was deposited following submission of the subject development application, and therefore both addresses are captured in the site location for the application under consideration.

On 29 September 2021 the subject application, for fencing and lighting, was submitted on the PlanSA Portal.

On 6 October 2021 Council requested additional information in order to verify the application. The information was subsequently submitted by the applicant and on 25 November 2021, when application fees were paid, the application was formally lodged.

The land is in the Hills Neighbourhood Zone (the Zone) of the Planning and Design Code (the Code). The application required public notification as not all elements forming part of the assessment are listed in Table 5 of the Zone, which provides classes of development excluded from requiring notification. Specifically, as the application included lighting poles notification was required.

The application was publicly notified between 14 December 2021 and 11 January 2022. During this time two representations were received, each person making the representation is a part owner of the land at 22 Ballara Road directly south of the site of the development. They are supportive of the application however raised concerns with respect to views and location of domestic play equipment (i.e. a basketball ring).

Each representation indicated a desire to be heard by the Council Assessment Panel (the Panel) in determining this application. Pursuant to the Panel Delegations Instrument, the application is now presented to the Panel for a decision.

## SUBJECT LAND

The subject land comprises a rectangular shaped allotment located on the southern side of Trumara Road. It has an area measuring 1343 square metres and a single frontage to Trumara Road measuring 18.29 metres. A large, two-storey detached dwelling occupies the site. The dwelling has no distinct architectural elements symbolic of a particular style.

The land is elevated above the road level, and the land continues to rise towards the south-east. The front yard includes a landscaped front lawn area and a paved driveway with reversing bay enabling forward egress to the road.

A swimming pool, shed and grassed lawned areas occupy the rear yard space.

**Figure 1: Subject land** — — — — —



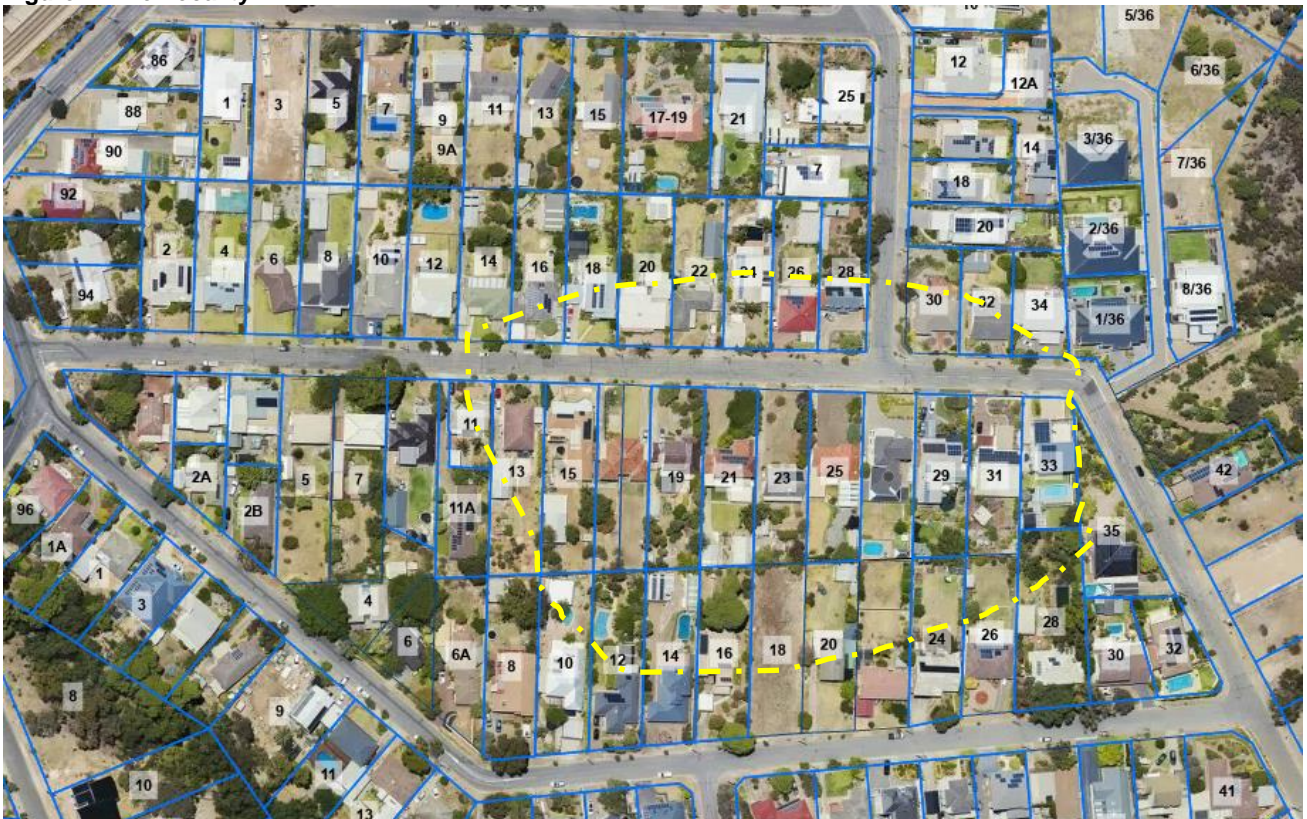


## LOCALITY

The locality includes Trumara Road and is solely residential in nature. Land on the northern side of Trumara Road falls away from the road, and land on the southern side is elevated above road level. Dwellings are generally two-storey or split level and have been designed with balconies to take advantage of western sea views.

Buildings are sited inconsistently from road boundaries, and most are unfenced to the road. Hard paved or concrete driveways, particularly those associated with dwellings on the high side of the road, are visually prominent in this locality. The land rises towards the east where Trumara Road bends and continues south, up the steep road.

Figure 2: The Locality — . . . . .



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

## PROPOSED DEVELOPMENT

The proposed development seeks to construct fencing and lighting in the rear yard of the subject land. Specifically, it includes:

- New 1.2 metre high tubular swimming pool safety fencing and gates.
- New 1.5 metre high fence affixed to retaining wall (1m high) inside eastern side boundary.
- New 3.6 metre high chain mesh fencing set 600 millimetres inside south, east and west boundaries.
- Two, 7 metre high poles with light box atop.

Utilising existing yard space for domestic play is not considered to constitute building work. Council considers this notation to extend to the laying of artificial turf, much the same as laying of pavement is not building work.

Council is also of the view that the installation of a basketball ring in the yard does not constitute building work. The basketball ring is not considered a structure of a building nature, much like a clothesline is not considered a structure or building work.

These types of items are affixed to land in such a way they are easily removed and without doing irreparable damage. Further Council is of the view that requiring development approval for clotheslines or domestic basketball rings, netball rings, tennis courts and the like is not in the spirit of *the Planning, Development and Infrastructure Act, 2016*, which seeks to provide an effective, efficient and enabling planning system.

Lighting structures are not specifically defined by the legislation as building work. I also note that Schedule 4 of *the Planning, Development and Infrastructure (General) Regulations, 2017* (the Regulations) excludes a windmill or flag pole of up to 10 metres in height from the definition of development (except where an Airport Building Height Overlay restricts such height).

Whilst lighting poles have a semblance to flag poles, the addition of a light box and resultant light generation renders these items intrinsically different in that they are connected to electricity services and result in light spill. Further, it has been long accepted by relevant authorities that lighting structures constitute development.

Swimming pool fencing and fence/retaining wall structures with a combined height exceeding 2.1 metres are specifically excluded from Schedule 4 of *the Regulations* and therefore are structures that require approval.

## PROCEDURAL MATTERS

### Classification

The subject land is in the Hills Neighbourhood Zone of the Planning & Design Code (the Code) as of 16 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” pursuant to Section 107 the Planning, Development and Infrastructure Act 2016 and will be assessed on its merits against the various provisions of the Code.

## Notification

Table 5 – Procedural Matters in the Hills Neighbourhood Zone excludes notification for development comprising a fence and retaining wall, except:

- Where a fence is on a boundary and exceeds a height of 3.2 metres or length of 8 metres.
- Where a retaining wall retains more than 1.5 metres in height, or if more than 1.5 metres of retaining it is not stepped in a series of low walls exceeding 1 metre and separated by 700 millimetres.

In consideration of the above I note:


- Proposed fencing is not situated on any boundary of the land, rather it is set inside boundary lines.
- Proposed retaining walls do not exceed 1 metre in height.

These elements, the retaining wall and all fencing, does not trigger notification.

As the proposed development includes an element (i.e. lighting poles) that is not specifically listed as an exclusion to notification, notification is automatically required.

As such, the development was processed in accordance with Section 106(3) *the Planning Development and Infrastructure Act, 2016*.

## PUBLIC NOTIFICATION

	<b>Properties Notified</b>
	38
	<b>Representations received</b>
	2 received 1 supports the development with some concerns 1 opposes the development and support the development with some concerns
	<b>Representations who wished to be heard</b>
	1. Sam Johnsson of 44 West Street, Seacliff Park (as owner of 22 Barula Road) 2. Tahlia Johnsson of 44 West Street, Seacliff Park (as owner of 22 Barula Road)
	<b>Applicant Response</b>
	A response by the applicant is included within the Report attachments.

## Approach to Assessment

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

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

***In order to assist a relevant authority to interpret the performance outcomes, in some cases the policy includes a standard outcome which will generally meet the corresponding performance outcome (a designated performance feature or DPF). A DPF provides a guide to a relevant authority as to what is generally considered to satisfy the corresponding performance outcome but does not need to necessarily be satisfied to meet the performance outcome, and does not derogate from the discretion to determine that the outcome is met in another way, or from the need to assess development on its merits against all relevant policies.***

(underline my emphasis)

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

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

## ASSESSMENT

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

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

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

Where an element is not specified by Table 3, all Code policies apply, except where Council considers them not relevant to a particular development.

The planning assessment below identifies the relevant policies applicable to development comprising fencing and lighting poles. In my view the most pertinent planning considerations relate to:

- Building Height
- Visual Impact
- Interface/Amenity

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

## ZONE CONSIDERATIONS

***Hills Neighbourhood: DO1, PO 1.1, PO 4.1, PO 8.1, PO 8.2, PO 11.1, PO 11.2 & PO 11.3***

## OVERLAY CONSIDERATIONS

***Airport Building Heights (Regulated – 30m): DO 1 & PO 1.1***

## GENERAL DEVELOPMENT POLICIES CONSIDERATIONS

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

***Design in Urban Areas: DO 1, PO 8.1, PO 9.1 & PO 20.3,***

***Interface between Lane Uses: DO 1, PO 6.1 PO & 6.2***

### **Building Height**

The elements subject of this assessment that are visible from neighbouring sites relate to the chain mesh sports fencing and the two light poles. The proposed retaining walls accommodate 1 metre of cut on the subject land, where the land rises in the rear south-east corner. Given the retaining walls accommodate cut rather than fill, there will be no visual impact on neighbours from this structure.

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 satisfy the PO and 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.

### **Visual Amenity**

At 3.6 metres and 7 metres high the proposed chain mesh fencing and lighting poles, respectfully, will protrude above existing fence lines and therefore be visible from adjoining land.

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.
- Limited number of light poles (x2).
- Porous nature of fencing material.
- Setback from adjoining boundaries rather than located on boundaries.

For the reasons outlined above, Council expects minimal visual impact due to the open nature of the fencing material and 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.

The general provisions of the Code seek for noise generating activities to achieve the relevant Environmental Protection (Noise) Policy criteria. Domestic noise under this policy refers to domestic machines and not 'people noise'. As such, there is no specific noise policy in the Code associated with residential land use and its impact on adjoining residential land. Should 'people-noise' become excessive SA Police are authorised officers for making subjective assessments in such circumstance.

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. Proposed fencing will limit nuisance to neighbours by ensuring balls, and other play equipment that might project vertically, remains on the subject land. Noise generated from domestic play is not expected to be worse than other backyard activities.

## **CONCLUSION**

The proposal seeks to construct chain mesh fencing and lighting structures around existing domestic yard space to be used in association with the existing residential use of the land.

Minimal visual impact as viewed from adjoining land is expected by this development due to the porous nature of the chain mesh fencing and the slender stature of the two lighting poles.

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.

For the reasons outlined above, the proposed development satisfies the relevant provisions of the Planning and Design Code and warrants 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 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: 21030525 for chain-mesh fencing, swimming pool safety fencing, retaining and fencing and lighting poles at 27 Trumara Road, Marino 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. Approved lighting shall be limited to use during the following times:
  - Between 7 am and 11 pm on any day.

**5. APPEALS UPDATE  
CITY OF MARION  
COUNCIL ASSESSMENT PANEL AGENDA  
FOR MEETING TO BE HELD ON  
WEDNESDAY 16 MARCH 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>
21012625	10 & 12 Renown Avenue, Clovelly Park	10/11/21	Approve	Refuse	Full Appeal 30 March to 1 April 2022
21012619	1 & 3 Freya Avenue, Hallett Cove	10/11/21	Approve	Refuse	Full Appeal 12 April 2022

**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 16 MARCH 2022**

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Verbal Update Provided