

**NOTICE OF
COUNCIL ASSESSMENT PANEL MEETING**

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

Wednesday 18 December 2024

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

12 December 2024

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**CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 18 DECEMBER 2024
COMMENCING AT 6.30PM**



1. MEETING PROCEDURES

1.1 OPEN MEETING

1.2 PRESENT

1.3 APOLOGIES

1.4 IN ATTENDANCE

2. GENERAL OPERATIONS

No items listed for discussion.

3. DEVELOPMENT ACT 1993 APPLICATIONS

No items listed for discussion.

4. PDI ACT APPLICATIONS

4.1 DEVELOPMENT NO 24018054

6 DE LAINE AVENUE, EDWARDSTOWN

Change of Use (Industry to Indoor Recreation Facility)

Report Reference: CAP181224 - 4.1.....3

5. APPEALS UPDATE

Verbal update provided.

6. POLICY OBSERVATIONS

No items listed for discussion.

7. OTHER BUSINESS

No items listed for discussion.

**8. CONFIRMATION OF THE COUNCIL DEVELOPMENT ASSESSMENT PANEL MEETING
HELD ON 18 DECEMBER 2024**

9. MEETING CLOSURE

**2. GENERAL OPERATING PROCEDURES
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 18 DECEMBER 2024**



No items listed for discussion.

**3. DEVELOPMENT ACT APPLICATIONS
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 18 DECEMBER 2024**



No items listed for discussion.

**REPORT REFERENCE: CAP181224 – 4.1
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 18 DECEMBER 2024**



Report Author:	Matthew Falconer Development Officer (Consulting Planner)	
Application No:	24018054	
Applicant:	Crossfit Zenith	
Development Description:	Change of use from industry (warehouse) to indoor recreation facility	
Site Location:	6 De Laine Avenue, Edwardstown	
Zone & Sub-Zone	Strategic Employment	
Lodgement Date:	17 October 2024	
Planning and Design Code:	2024.18	
Elements & Pathway	Indoor Recreation Facility	Performance Assessed
External Referrals:	EPA	
Application Type:	Performance Assessed	
Delegations Policy:	Instrument of Delegation – CAP, Clause 5.1.1.1 <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>	
Public Notification	Public Notification required <i>Indoor Recreation Facility is not a use listed in Table 5 of the Zone as being exempt from notification and the proposed development was not deemed to be minor for the purposes of notification.</i>	
Recommendation:	That Planning Consent be REFUSED	

Attachments

<i>Attachment I:</i>	<i>Original Planning Submission Documentation</i>
<i>Attachment II:</i>	<i>Statement of Representations</i>
<i>Attachment III:</i>	<i>Applicant's Response to Representations</i>
<i>Attachment IV:</i>	<i>Amended Planning Submission Documentation</i>
<i>Appendix 1:</i>	<i>Applicable Assessment Policies</i>

Assessment Manager Comment

Staff have raised concerns with the proposal on several occasions, primarily in respect to the lack of appropriate supporting information, inconsistencies in the various planning and traffic statements and the shortfall in on-site carparking.

The applicant instructed Council staff to present this proposal to the earliest possible Panel following the Public Notification period.

SUBJECT LAND

The subject land is located at 6 De Laine Avenue, Edwardstown. The land is formally identified as Lot 205 in Certificate of Title Volume 5671 Folio 423 and located within the Strategic Employment Zone. The subject land is regular in shape with a frontage of 28.04 metres and a depth of 36.88 metres with an overall site area of 1034 square metres.

An existing double storey building currently occupies the subject land with the building extending the width of the property and approximately 28 metres in depth with an overall building footprint of approximately 785 square metres. The building is setback approximately 9 metres from the front property boundary which currently enables ten, semi-formal,carparking spaces and a loading area to extend across the frontage. Based on the current land use of a warehouse, there is a shortfall of 4 spaces.

The building has an internal floor area of approximately 900 square metres that is made up of 770 square metres (excluding wall widths etc) on the ground floor and 130 square metres on the upper floor. The ground floor comprises of a combination of large open areas (previously used for storage as a warehouse), kitchen, staff room and toilets as well as offices.

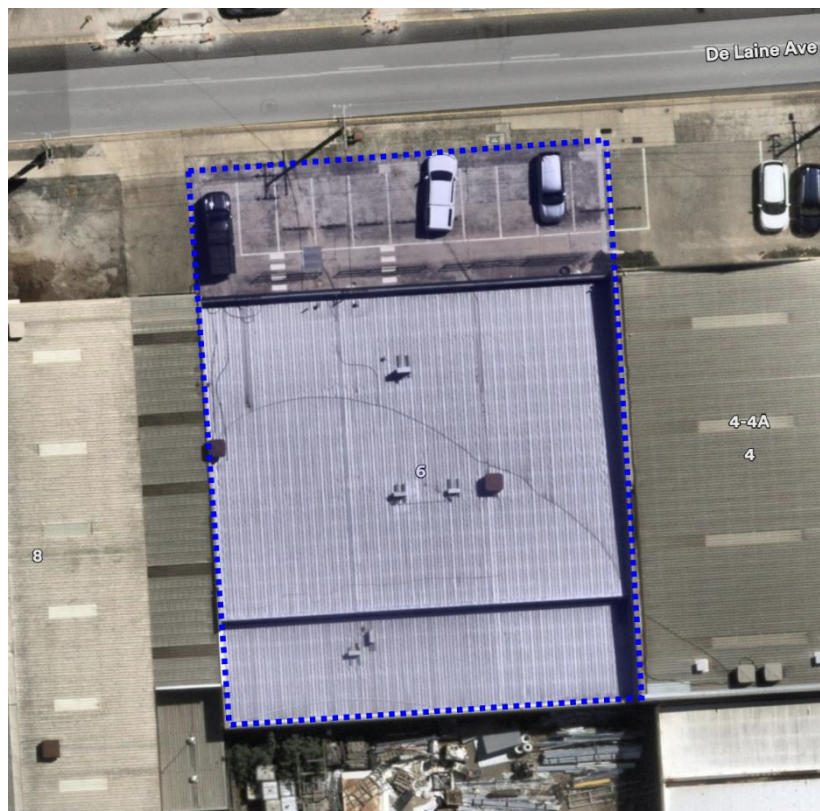


Figure 1 - Subject land outlined in Blue

LOCALITY

The locality is characterised by buildings two to three storeys in height constructed close to the front property boundary or behind car parking areas. Vegetation within properties is scarce whilst large mature street trees exist toward the eastern end of De Laine Avenue with a few recently planted street trees located opposite the subject land.

The City to Flinders and Seaford railway line is located approximately 30 metres west of the subject land whilst South Road is approximately 116 metres to the east. Industrial type development extends north and south of the subject land whilst residential development occurs on the eastern side of South Road behind the businesses presenting to South Road and west of the train line.

It is noted that no on-street car parking is available on De Laine Avenue. On street parking is available west of the train line on De Laine Avenue, on the eastern side of Mons Avenue and along Railway Terrace with two hour parking restrictions. Some unrestricted parking is available on the western side of the train line in the form of informal parking under the pine trees.

The locality is considered to extend west of the train line due to the potential for visitors to park in the streets surrounding the train line.



Figure 2 - Locality

PROPOSED DEVELOPMENT

The proposed development seeks to change the use of the existing building from a warehouse to an indoor recreation facility. There are no changes to the building proposed, however it is intended that the proposed change of use will alter the car parking configuration slightly. One additional space will be gained by removing the loading bay and converting it to a car parking space whilst one other space shall be altered to allow for two internal staff parks resulting in a total of 12 spaces in total.

The proposed development seeks to segregate 420 square metres of floor area for dedicated fitness classes, with the remaining floor area to be dedicated for storage, amenities/administration and internal carparking.

The applicant's planning consultant has advised the proposed tenancy is to be used for cross-fit fitness type classes. The classes are by appointment only with no walk-up entrants. Class sizes are limited to 18 persons per class, with 1 trainer/supervisor per class. At times, two classes may operate simultaneously.

The proposed operating hours are between 5 am and 8pm, Monday to Saturday (of each day), with classes having a duration of 50 minutes, with a 10 minute changeover.

In addition to the classes, there are times available for open gym sessions whereby no maximum number attendees has been provided. Information relating to the open gym sessions is scarce with information provided within the applicant's Planning Consultant report and the Traffic Consultant Report inconsistent.

No signage forms part of this application.

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.

Elements

The proposal incorporates the following 'elements';

- Change of use
- Indoor Recreation Facility

Categorisation

The proposal required public notification as 'Indoor Recreation Facility' is not a use that is listed as exempt in Column A of Table 5 within the Zone.

As such, the Council Assessment Panel was assigned as the Relevant Authority and the development was notified in accordance with the Act.

External Referrals

Environmental Protection Authority (EPA)

The application required a mandatory referral to the EPA as the proposal resulted in a change to a more sensitive land use (warehouse to indoor recreation centre).

The EPA did not raise any objection the proposed development and included one Condition of Consent, which reads;

'A certificate of occupancy must not be granted in relation to a building on the relevant site until a statement of site suitability (in the form described by Practice Direction 14: Site Contamination Assessment 2021) is issued by a site contamination consultant certifying the land is suitable for the proposed use.'

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.

In this instance, as an indoor recreation centre is not a use listed within Zone Table 3, the proposal is considered to be 'full code assessed'.

Policies found in the Zone, Overlays and General sections of the Code considered applicable to this assessment are outlined below.

ZONE CONSIDERATIONS

Strategic Employment Zone DO 1, DO 2, DO 3, PO 1.1, PO 1.2

OVERLAY CONSIDERATIONS

No Overlays are applicable

GENERAL DEVELOPMENT POLICIES CONSIDERATIONS

Transport Access and Parking: DO 1, PO 1.4, PO 3.1, PO 5.1, PO 9.1

Site Contamination DO 1, PO 1.1

Assessment Discussion

In my view, the most pertinent planning considerations for this assessment relate to the land use and car parking. The following assessment therefore considers the proposed development against provisions of the Planning and Design Code in relation to land use and car parking.

Land Use

The proposed development is primarily for a change in land use from a Warehouse to Indoor Recreation Facility. As a form of Indoor Recreation Facility and having regard to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, the proposed change of use to Indoor Recreation Facility is not considered to be seriously at variance to the Planning & Design Code as, whilst not anticipated within the zone, it is nonetheless a form of commercial development and the use itself would not be out of character within the Zone.

Whilst it is acknowledged that an Indoor Recreation Facility is not listed as an anticipated form of development in DPF 1.1 of the Zone, it is listed in DPF 1.2.

Zone PO (Performance Outcome) 1.2 seeks;

Development on land adjacent to another zone which is used for residential purposes incorporates a range of low-impact, non-residential uses to mitigate adverse amenity and safety impacts on the adjoining zone

DPF 1.2, which provides guidance on 'one way' of satisfying the intent of the PO, lists land uses that are suitable as an interface between adjacent zones primarily used for residential use. The land uses in DPF 1.2 are typically those that would have less amenity impacts (noise, traffic, odour etc) on adjoining residential type uses than those listed in DPF 1.1.

Whilst the subject land is not directly adjacent another zone, I form the opinion that the use is reasonable within the zone and the impacts associated with an Indoor Reaction Facility relating to noise will not be unreasonable. It is acknowledged impacts relating to carparking require further consideration and a detailed assessment is provided below.

Car Parking

The proposed Indoor Recreation Facility seeks to operate within an existing building with a floor area of approximately 900 square metres. The floor area consists of open areas previously used for warehousing, as well as areas sectioned off areas for offices, bathroom and kitchen facilities, as well as an upper level.

Transport, Access and Parking PO 5.1 seeks;

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

a) availability of on-street car parking

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

The corresponding DPF refers to an Off-street vehicle parking rate (Table 1 – General Off Street Car Parking Requirements) which provides two alternative car parking standards for Indoor Recreation Facilities, these being;

- ***6.5 spaces per 100m² of total floor area for a Fitness Centre.***
- ***4.5 spaces per 100m² of total floor area for all other Indoor recreation facilities.***

Whilst 'Indoor recreation facility' as a land use is defined within the Code, there is no guidance provided that distinguishes or defines a 'fitness centre' or 'indoor recreation facility' in relation to the different provision of parking. I.e. what's the difference and why are there separate rates.

Whilst I have reviewed the reports prepared by the Applicant's Planning and Traffic Consultants, I am of the opinion the correct interpretation of the Table would be to apply the 6.5 spaces per 100 square metres of floor area as the use would be described more appropriately as a Fitness Centre. Furthermore, there is no alternative for the assessment of floor area, other than to take the total floor area of a building and apply the applicable car parking rate.

I do acknowledge the car parking rate of 6.5 spaces per 100 square metres of floor area is rather onerous when considering applicant seeks to conduct classes with a restricted number of persons. There is a concern however that the Applicant does not want the number of persons to the site capped and that the proposal also includes open gym sessions with the potential number of attendees unknown and likely to fluctuate.

When simply applying the car parking rate of 6.5 spaces per 100 square metres of floor area as suggested in Table 1 – General Off Street Car Parking Requirements, 59 car parking spaces are required. Alternatively, if a rate of 4.5 spaces per 100 square metres of floor area was applied to the reduced floor area of 420 square metres (area to be used for CrossFit activities) the development has a car parking demand of 28 spaces.

The traffic report prepared by ETA traffic consultants indicates that a typical method for determining parking rates for other gymnasiums assumes a rate of 1.2 persons per car. The consultant has advised this rate has been used by many traffic consultants based on empirical evidence. Should this be applied to the proposed development, 32 car parks would be required based on a maximum number of persons (38 - two class sizes of 18 persons and two staff). The Applicant's planning consultant has indicated that, to enable flexibility with the business, there is no restriction on the number of persons using the facility.

The table below provides the varying car parking rates that could be applied to the development.

Car parking rate	Car parking demand	Car parking shortfall after taking into consideration existing shortfall of 4 spaces and 13 on site spaces
<i>6.5 spaces per 100m² of total floor area for a Fitness Centre</i>		
6.5 parks per 100 square meters on total floor area (900 square metres)	58.5 (59) spaces	43
6.5 parks per 100 square metres of reduced floor area (420 square metres)	27.3 (28) spaces	11
<i>4.5 spaces per 100m² of total floor area for all other Indoor recreation facilities</i>		
4.5 parks per 100 square meters on total floor area (900 square metres)	40.5 (41) spaces	25
4.5 parks per 100 square metres of reduced floor area (420 square metres)	18.9 (20) spaces	3
<i>Empirical Evidence</i>		
1.2 persons per car	32 spaces	15

In my opinion, the preferred method of calculating the car parking demand would be using the 1.2 persons per car, which if applied to the subject land with a maximum number of 38 persons (two classes of 18 and 2 trainers) in attendance at any one time, the shortfall would be 15 spaces. Given the Applicant does not wish to have a restriction on the number of persons in attendance this shortfall may be exacerbated with increased participants.

Whilst Traffic, Access and Parking PO 5.1, provides an opportunity for a reduced rate of parking to be supported where there is an availability of on-street parking and shared parking areas, the calculated shortfall is too great when considering more than half the expected participants would need to find on street parking and there is no limit on the number of persons to the site. As such, the business could grow organically without any ability to enforce increased parking or limit the number of persons attending the site.

If the number of participants in attendance to the Crossfit gym could be capped, an appropriate assessment of the true car parking demand could be applied. From which appropriate conditions of consent could be applied that limited the number of persons attending sessions which would manage car parking demands.

Site Contamination

The EPA is satisfied the land can accommodate a more sensitive use, subject to satisfying the requirements outlined in the mandatory referral conditions. The proposal is therefore considered to satisfy Site Contamination PO 1.1.

Conclusion

The proposed change of use from a Warehouse to Indoor Recreation Facility is finely balanced.

Whilst the land use itself may have appropriate merit as it could be considered a low-impact type use resulting in minimal adverse amenity and safety impacts on nearby occupancies and the adjacent neighbourhood type zone, the shortfall in on-site parking is problematic.

As discussed within the report the calculated shortfall in onsite parking is considered fatal to the proposal, particularly considering more than half the expected participants would need to find on street parking and no limit on the number of persons to the site is proposed. As such, the business could grow organically without any ability to enforce increased parking or limit the number of persons attending the site.

Whilst the applicant has suggested several creative solutions to reduce the overall on-site demand, it is questionable as to the appropriateness of his form of assessment. In addition, irrespective of what carparking rate is considered, the proposal will nonetheless result in a carparking deficit.

It is also noted the lack of clear and consistent information has created confusion and uncertainty as to what exactly is proposed.

RECOMMENDATION

In accordance with Section 126(1) of the Planning, Development and Infrastructure Act 2016 the Council Assessment Panel;

- (a) Notes the assessment and recommendation(s) made by the report author;
- (b) Resolves that the proposed development, pursuant to Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016*, IS NOT seriously at variance¹ with the Planning and Design Code; and
- (c) Resolves that, pursuant to Section 102 (1) *Planning, Development and Infrastructure Act 2016*, Development Application 24018054 seeking a change in the use from a warehouse to indoor recreation facility 6 De Laine Avenue, Edwardstown, be REFUSED, for the following Reason:

REASONS

1. The proposed development does not satisfy Traffic, Access and Parking PO 5.1 as sufficient on-site car parking, to satisfy the needs of the development, has not been provided. The shortfall in carparking results in an unreasonable reliance on surrounding streets to accommodate the additional car parking.

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

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

Appendix 1 – Applicable Assessment Policies

Strategic Employment Zone	
<p>DO 1 A range of industrial, logistical, warehousing, storage, research and training land uses together with compatible business activities generating wealth and employment for the state.</p>	
<p>DO 2 Employment-generating uses are arranged to:</p> <ul style="list-style-type: none"> a) support the efficient movement of goods and materials on land in the vicinity of major transport infrastructure such as ports and intermodal freight facilities b) maintain access to waterfront areas for uses that benefit from direct water access including harbour facilities, port related industry and warehousing, ship building and related support industries c) create new and enhance existing business clusters d) support opportunities for the convenient co-location of rural related industries and allied businesses that may detract from scenic rural landscapes e) be compatible with its location and setting to manage adverse impacts on the amenity of land in adjacent zones. 	
<p>DO 3 A pleasant visual amenity from adjacent arterial roads, adjoining zones and entrance ways to cities, towns and settlements.</p>	
<p>PO 1.1 Development primarily for a range of higher-impacting land uses including general industry, warehouse, transport distribution and the like is supplemented by other compatible development so as not to unduly impede the use of land in other ownership in the zone for employment-generating land uses, particularly those parts of the zone unaffected by an interface with another zone that would be sensitive to impact-generating uses.</p>	<p>DTS/DPF 1.1 Development comprises one or more of the following:</p> <ul style="list-style-type: none"> a) Advertisement b) Automotive collision repair c) Electricity substation d) Energy generation facility e) Energy storage facility f) Fuel depot g) General industry h) Intermodal facility i) Light Industry j) Motor repair station k) Public service depot l) Rail marshalling yard m) Renewable energy facility (other than a wind farm) n) Retail fuel outlet o) Service trade premises p) Shop q) Store r) Telecommunications facility s) Training facility

	t) Warehouse
<p>PO 1.2</p> <p>Development on land adjacent to another zone which is used for residential purposes incorporates a range of low-impact, non-residential uses to mitigate adverse amenity and safety impacts on the adjoining zone.</p>	<p>DTS/DPF 1.2</p> <p>Development involving any of the following uses on a site adjacent land in another zone used for or expected to be primarily used for residential purposes:</p> <ul style="list-style-type: none"> a) Bulky goods outlet b) Consulting room c) Indoor recreation facility d) Light industry e) Motor repair station f) Office g) Place of worship h) Research facility i) Service trade premises j) Store k) Training facility l) Warehouse.
Transport, Access and Parking	
<p>DO 1 A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.</p>	
<p>PO 1.4</p> <p>Development is sited and designed so that loading, unloading and turning of all traffic avoids interrupting the operation of and queuing on public roads and pedestrian paths.</p>	<p>DTS/DPF 1.4</p> <p>All vehicle manoeuvring occurs onsite.</p>
<p>O 3.1</p> <p>Safe and convenient access minimises impact or interruption on the operation of public roads.</p>	<p>DTS/DPF 3.1</p> <p>The access is:</p> <ul style="list-style-type: none"> a) provided via a lawfully existing or authorised driveway or access point or an access point for which consent has been granted as part of an application for the division of land or b) not located within 6m of an intersection of 2 or more roads or a pedestrian activated crossing.
<p>PO 5.1</p> <p>Sufficient on-site vehicle parking and specifically marked accessible car parking places are provided to meet the needs of the development or land use having regard to factors that may support a reduced on-site rate such as:</p>	<p>DTS/DPF 5.1</p> <p>Development provides a number of car parking spaces on-site at a rate no less than the amount calculated using one of the following, whichever is relevant:</p> <ul style="list-style-type: none"> a) Transport, Access and Parking Table 2 - Off-Street Vehicle Parking Requirements

<ul style="list-style-type: none"> a) availability of on-street car parking b) shared use of other parking areas c) in relation to a mixed-use development, where the hours of operation of commercial activities complement the residential use of the site, the provision of vehicle parking may be shared d) the adaptive reuse of a State or Local Heritage Place. 	<p>in Designated Areas if the development is a class of development listed in Table 2 and the site is in a Designated Area</p> <ul style="list-style-type: none"> b) Transport, Access and Parking Table 1 - General Off-Street Car Parking Requirements where (a) does not apply c) if located in an area where a lawfully established carparking fund operates, the number of spaces calculated under (a) or (b) less the number of spaces offset by contribution to the fund.
<p>PO 9.1 The provision of adequately sized on-site bicycle parking facilities encourages cycling as an active transport mode.</p>	<p>DTS/DPF 9.1 Areas and / or fixtures are provided for the parking and storage of bicycles at a rate not less than the amount calculated using Transport, Access and Parking Table 3 - Off Street Bicycle Parking Requirements.</p>
<p>Site Contamination</p>	
<p>DO 1 Ensure land is suitable for the proposed use in circumstances where it is, or may have been, subject to site contamination.</p>	
<p>PO 1.1 Ensure land is suitable for use when land use changes to a more sensitive use.</p>	<p>DTS/DPF 1.1 Development satisfies (a), (b), (c) or (d):</p> <ul style="list-style-type: none"> a) does not involve a change in the use of land b) involves a change in the use of land that does not constitute a change to a more sensitive use c) involves a change in the use of land to a more sensitive use on land at which site contamination is unlikely to exist (as demonstrated in a site contamination declaration form) d) involves a change in the use of land to a more sensitive use on land at which site contamination exists, or may exist (as demonstrated in a site contamination declaration form), and satisfies both of the following: <ul style="list-style-type: none"> I. a site contamination audit report has been prepared under Part 10A of the <i>Environment Protection Act 1993</i> in relation to the land within the previous 5 years which states that- <ul style="list-style-type: none"> A. site contamination does not exist (or no longer exists) at the land

	<p>or</p> <p>B. the land is suitable for the proposed use or range of uses (without the need for any further remediation)</p> <p>or</p> <p>C. where remediation is, or remains, necessary for the proposed use (or range of uses), remediation work has been carried out or will be carried out (and the applicant has provided a written undertaking that the remediation works will be implemented in association with the development)</p> <p>and</p> <p>II. no other class 1 activity or class 2 activity has taken place at the land since the preparation of the site contamination audit report (as demonstrated in a site contamination declaration form).</p>
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**5. APPEALS UPDATE
CITY OF MARION
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APPEALS AGAINST PANEL DECISIONS

New Appeals

Nil

On-going Appeals

Nil.

6. POLICY OBSERVATIONS
CITY OF MARION
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No items listed for discussion.

7. OTHER BUSINESS
CITY OF MARION
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No items listed for discussion