

**NOTICE OF
COUNCIL ASSESSMENT PANEL MEETING**

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

Wednesday 19 October 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

12 October 2022

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

**CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 19 OCTOBER 2022
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 22018339

15 Angas Crescent, Marino

Two storey dwelling additions

Report Reference: CAP191022 - 4.1.....2

4.2 DEVELOPMENT NO 22021047

2A Midera Avenue, Edwardstown

Additions and alterations to an existing indoor recreation facility – squash courts

Report Reference: CAP191022 - 4.2.....22

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 discussion.

7. OTHER BUSINESS

No items listed for discussion.

**8. CONFIRMATION OF THE COUNCIL DEVELOPMENT ASSESSMENT PANEL MEETING
HELD ON 19 OCTOBER 2022**

9. MEETING CLOSURE

**2. GENERAL OPERATING PROCEDURES
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 19 OCTOBER 2022**



No items listed for discussion.

**REPORT REFERENCE: CAP191022 – 4.1
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 19 OCTOBER 2022**



Originating Officer:	Nicholas Lupo Development Officer – Planning
Applicant:	Mr Graham Fowlie
Development Description:	Two storey dwelling additions
Site Location:	15 Angas Crescent, Marino
Zone & Policy Area:	Hills Neighbourhood Zone
Lodgement Date:	10 June 2022
Planning and Design Code:	9 June 2022, Version 2022.10
Referrals:	Nil
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: 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	Not Excluded from Notification <i>An application which involves a total building height exceeding 9m is listed in Table 5 of the General Neighbourhood Zone as not excluded from Public Notification.</i>
Application No:	22018339
Recommendation:	That Planning Consent be GRANTED subject to Conditions

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 comprises the following property:

15 Angas Crescent, Marino, SA 5049

The subject land comprises a single storey detached dwelling on a large allotment, with ancillary development in the form of an outbuilding, as well as a variety of vegetation, none of which is classed as regulated or significant. The subject site is non-conventionally shaped, with the north-western corner of the allotment having been cut off. The subject site has a frontage width of 28.5 metres and a maximum depth of 34.2 metres, totalling a site area of 935 square metres. The land falls at an approximate 1-in-9 to the north.



LOCALITY

The locality is entirely residential in nature, the predominant character being large allotments with moderately sized dwellings on sloping allotments.

Due to the undulating topography of the locality, the nature and height of dwellings varies, ranging from single storey dwellings, split level dwellings, and several two-storey dwellings. Dwellings on the northern side of Angas Street typically have a finished floor level at a lower height than the street level, whereas dwellings on the northern side sit above the street level.

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



PROPOSED DEVELOPMENT

The proposal seeks the construction of additions to an existing detached dwelling, comprising ground and upper storey additions. Specifically, the dwelling addition is comprised of the following:

- Entrance and stairwell
- 2 additional bedrooms to a total of 5 bedrooms
- Ensuite and walk in robe for Bedroom 5
- Upstairs kitchen and dining area
- Upstairs rear balcony
- Upstairs studio
- Upstairs bathroom

PROCEDURAL MATTERS

Classification

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

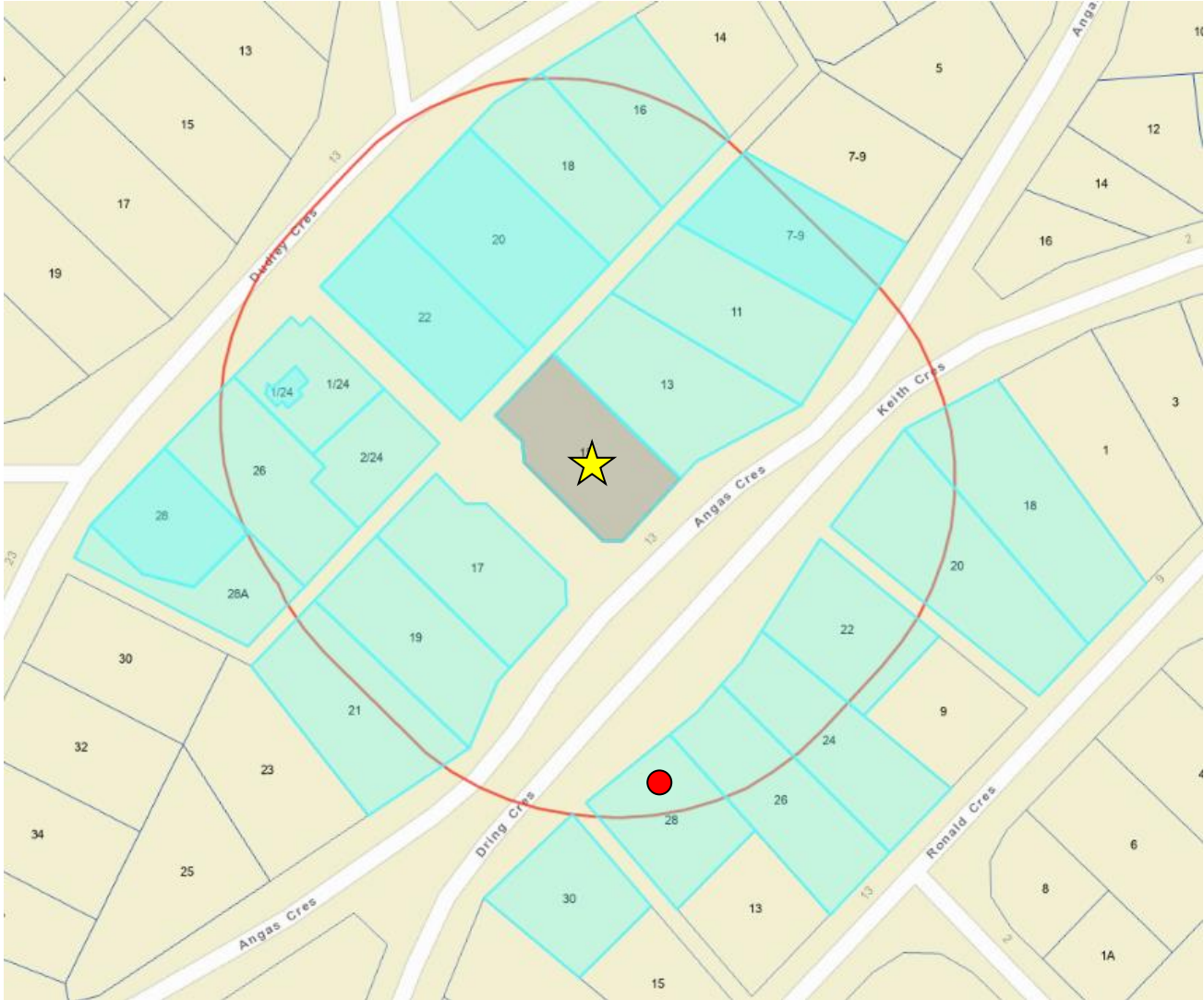
Categorisation

The proposal incorporates a height above 9 metres in height when measured from natural ground level. Dwellings and dwelling additions are not excluded from Public Notification where the height of the dwelling exceeds 9m in height from the lower of the natural or finished ground level.

Having regard to the total height of the built form of 10 metres, considering the natural ground level and overall height, and the manner in which the development relates to nearby sites, 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.

PUBLIC NOTIFICATION



Properties Notified

44

Representations

1 received

1 oppose the development

Representations received

1. Greg Hall of 28 Angus Crescent, Marino

Wish to be heard
✓

Applicant Response

A response by the applicant is included within the Report attachments.

Referrals

Nil

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:

- Building siting and height
- Design and appearance
- View loss and overlooking

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 3.1, PO 4.1, PO 5.1, PO 6.1, PO 7.1, PO 7.2, PO 8.1, PO 9.1, PO 10.1, PO 10.2, PO 11.1, PO 11.2

OVERLAY CONSIDERATIONS

Airport Building Heights (Regulated) Overlay: DO1, PO 1.1

GENERAL DEVELOPMENT POLICIES CONSIDERATIONS

Clearance from Overhead Powerlines: DO1, PO 1.1

Design in Urban Areas: DO1, PO 8.1, PO 8.2, PO 8.3, PO 8.4, PO 8.5, PO 10.1, PO 10.2, PO 17.1, PO 17.2, PO 18.1, PO 20.1, PO 20.2, PO 20.3, PO 21.1, PO 21.2, PO 22.1, PO 24.1

Infrastructure and Renewable Energy Facilities: DO1, PO 12.2

Interface between Land Uses: DO1, PO 3.1 – PO 3.3

Transport, Access and Parking: DO1, PO 5.1

Quantitative Snapshot Table

Existing Site Features

Site Area	935m ²
Frontage Width	28.5m
Depth	33.9m – 34.2m

Proposed Features

Provisions	DTS/DPF Guidelines	Proposed
Site Coverage	40%	23.6%
Building Height	9m (from the lowest point of the building)	10m (from lowest point of garage).
Primary Street Setback	2.4m (average of adjoining – 1m)	7.75m
Side Setbacks	0.9m (below 1-in-8 gradient)	1.65m
Secondary Street Setback	0.9m (below 1-in-8 gradient)	2.98m
Side Setbacks (Upper)	1.75m (0.9m + 1/3 of wall height above 3m)	1.65m
Rear Setback	4m	Ranges from 13.71m – 20.92m
Rear Setback (Upper)	6m	
Private Open Space	60m ²	280m ²
Soft Landscaping	25% (or unchanged)	Unchanged.
Soft Landscaping forward of dwelling	30%	Unchanged.

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

Building Siting and Height:

Building Siting

Hills Neighbourhood Zone, Desired Outcome 1 seeks the following:

Development provides a complementary transition to adjacent natural and rural landscapes. Low density housing minimises disturbance to natural landforms and existing vegetation to mitigate the visible extent of buildings, earthworks and retaining walls.

The proposal maintains the density of the site and locality and does not propose any earthworks which would disturb the natural landforms or existing vegetation. It is considered the intent of the Desired Outcome is to mitigate earthworks and loss of vegetation which may occur through an increased density, not to entirely mitigate the visibility of buildings.

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.

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.**

The proposed building footprint remains consistent with the character in the locality by way of remaining generally unchanged in regards to site coverage. Furthermore, the dwelling addition maintains front, side, and rear setbacks which are considered to be consistent and complementary to the established character within the locality.

The upper storey setbacks from the side boundaries allow sufficient space to mitigate visual impact, particularly as the setback is not parallel to the boundary, which results in only a small portion of the upper storey being in proximity to the adjacent dwelling to the east. Due to the orientation of the allotment and dwelling, any overshadowing would occur on the subject site or the public realm.

Building Height

Hills Neighbourhood, Performance Outcome 5.1 seeks:

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

Low-rise is defined by the Planning and Design Code as buildings of two (2) building levels, or 9 metres. The proposal will result in a total height of 10 metres, measured from the lowest point of the garage to the top of the roof ridge.

The garage of the dwelling sits towards the rear of the site, at a finished floor level 2.8 metres below the remainder of the dwelling. Irrespective of the garage height, the dwelling in the current form presents to the primary and secondary street as a single storey dwelling. Furthermore, the finished floor level of the ground floor of the subject dwelling is approximately 2 metres below the ground level of the primary street, which will assist in mitigating the total height above 9 metres, appearing from the public realm as a height of 7.2 metres measured from the ground floor.

The proposed building height is acknowledged to increase beyond the height of dwellings within the streetscape, particularly towards the east. It should be noted that each of these dwellings have been constructed as split-level dwellings or have been constructed with a lower finished floor level than the subject dwelling. Within the streetscape towards the west, 17 Angas Crescent is constructed at a higher ground level, with a large gable roof, presenting to the streetscape with a similar (albeit slightly lesser) height when viewed from the public realm.

It should be noted that the provision does not strictly seek dwellings to be low-rise in and of themselves, merely that buildings contribute to a low-rise character, whilst complementing the height of nearby buildings. While the proposed height of the dwelling may not be entirely consistent with the streetscape, a dwelling which presents as a low-rise, two storey dwelling, adjacent to dwellings which present as single storey dwellings still complements the height of the adjacent dwellings within a residential context.

To this end, despite the overall height totalling 10 metres, the dwelling will present to the primary and secondary streets as a two-storey building, therefore appearing 'low-rise' and complementing the height of nearby buildings.

Design and Appearance

Front Facade

Design in Urban Areas, Performance Outcome 17.1 seeks:

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

Design in Urban Areas, Performance Outcome 20.2 seeks:

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

The proposed dwelling addition presents fenestration from habitable rooms on the ground and upper floor facing the public realm. The proposal presents attractively to the street, with a mix of materials, a high level of fenestration, and varied articulation. The proposal incorporates feature stonework to the entrance foyer, which presents to both streets, with a gable end facing the public realm. The presentation to the street is a positive contribution to the streetscape as a result of the above design features.

Design in Urban Areas, Performance Outcome 17.2 seeks:

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

The proposal is noted to not present an entry door directly to the primary street frontage. However, it should be noted that the site in the current formation is not tailored to entry from Angas Crescent, due to the sloping nature of the front of the site. It is also considered that the feature stonework contributes to the façade and highlights an entry point to the dwelling.

'Larger' building

Design in Urban Areas, Performance Outcome 20.3 seeks:

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

The Planning and Design Code does not define 'larger' in the context of Performance Outcome 20.3. However, the proposed dwelling addition is larger than existing, and larger than adjacent dwellings in terms of height. For this reason, the PO is considered relevant for the subject proposal.

As discussed in the building height assessment above, the dwellings ground level finished floor level is 2 metres below the ground level of the street, assisting in mitigating visual mass resulting from the two-storey nature of the addition. Furthermore, the upper storey is appropriately setback from both Angas Crescent and the side street laneway to assist in mitigating the visual mass of the second storey addition.

The orientation of the subject dwelling and addition result in a setback which is not parallel to the eastern boundary. The setback from the eastern boundary increases towards the front of the site, resulting in a majority of the eastern façade being appropriately setback, assisting in mitigating the visual mass of the addition. Furthermore, the addition in proximity to the eastern boundary is largely adjacent to walls with no visual outlook. Whilst a balcony on the adjacent eastern property is noted, the visual outlook from the adjacent property is largely poised towards the north as opposed to the west.

View Loss and Overlooking

View Loss

Interface between Land Uses, Desired Outcome 1 seeks:

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

In assessing the potential loss of views which could be considered to constitute an 'adverse effect' on adjoining properties, it is nonetheless of value to recognise that the subject allotment is a private parcel of land, the owner of which have a right to development on, subject to the proposal being in general accordance with the Planning and Design Code.

Given that adjacent dwellings to the south-east are designed to take advantage of views over the subject land, it is inevitable that any development, particularly one which increases height above the existing dwelling will have an impact upon the views currently available to adjacent properties.

In the Supreme Court judgment of *Hutchens v City of Holdfast Bay*, Justice Debelle stated that, when determining whether to grant consent to a new building which will obstruct views enjoyed by existing developments, regard "*must be had to the nature and extent of the view, the extent to which the view will be obstructed by the proposed development, and the reasonableness of the proposal as determined by reference to planning controls*".

This statement and subsequent endorsement of a four-part test was conceived under the previous planning system, however, it is considered that the test remains an appropriate means of establishing and considering view loss.

The four-part test for the assessment of a development which would result in the obstruction of views of existing developments were, in short:

- Step 1: Assess the views to be affected (i.e. water, land, coast etc);
- Step 2: Consider from which part of the property the views were being obtained;
- Step 3: Assess the extent of impact of the loss of views; and lastly
- Step 4: Assess the reasonableness of the development proposal.

26 Angas Crescent – 28 Angas Crescent

Step 1: The views from the properties on the southern side of Angas Crescent range from south-east to north, including over the subject site and nearby properties on the lower end of Angas Crescent. Views of the Gulf of St Vincent to the east and north-east, including views of Brighton beach, and to a lesser extent Glenelg are enjoyed from each dwelling. Each dwelling also enjoys views of the Adelaide plains. Vegetation on public land is noted to obscure portions of some views from these properties. The dwellings on the lower side of Angas Crescent reasonably slope with the land, mitigating a majority of the visual obstruction.

Step 2: Each dwelling possesses views from front facing balconies, generally ranging from approximately 4 metres to 5 metres from the street level on the southern side of Angas Crescent, resulting in a height of 10 metres to 11 metres above the ground level of the subject property. The dwellings possess setbacks from the street to the balcony ranging from 13.5 metres – 21 metres.



Balconies of 26 – 28 Angas Crescent from the southern side of Angas Crescent

Step 3: Existing view lost as a result of the subject proposal are not considered to be unreasonable. The increase to a height of 7.2m from the ground floor level of the subject proposal will be unlikely to manifest in a loss of views of significant features of value. The loss will be primarily views of vegetation in nearby properties and streets. A slight loss of the southern end of Brighton beach may occur from the vantage points discussed above. Views of the Adelaide Plains, and a majority of the Gulf of St Vincent will be mostly unaffected. It is noted sitting views are likely to be affected to a greater degree, however these views are more difficult to retain and as such are weighted less in consideration.



Views from southern side of Angas Crescent toward the subject property.

Step 4: The reasonableness of the development proposal has been considered in the subject report in the context of the guidelines of the Planning and Design Code.

Overlooking

Design in Urban Areas, Performance Outcome 10.1 seeks:

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

Design in Urban Areas, Performance Outcome 10.2 seeks:

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

The proposal includes a number of measures to mitigate direct overlooking from upper-level windows and balconies. In particular, the following measures are proposed:

- Sill heights exceeding 2m on the eastern façade.
- Privacy screens extending beyond the extent of the width of Bedroom 4.
- Privacy screens at a height of 1.6m at an approximate 45-degree angle on the western façade to the balcony and kitchenette/dining area.
- Frosted glazing on the window to Bedroom 5.

It is noted the proposal does not wholly restrict views to the north-west and does not restrict views to the north and north-east.

Western & north-western views

In relation to views to the north-west, the screening is considered appropriate to mitigate direct overlooking to both habitable rooms and private open space. The 45-degree angle of screening results in no overlooking occurring directly to the west / south-west, pointing views to the north-west. It should be noted that views over and into 1/24 Dudley Crescent and 2/24 Dudley Crescent are obscured by existing vegetation and existing structures as well as the limited views resulting from the privacy screens, which largely provide views of car parking, vegetation, and driveways at best.



Views to the north-west.



Views to the west.

Eastern & north-eastern views

The proposal presents some overlooking from the upper storey balcony to the east and north-east. Whilst these views are noted, it should be acknowledged that mutual overlooking across rear yards is endemic to the area (particularly to the east) by way of the sloping nature of the topography, open yards and lack of existing screening. It should also be noted that the rear balcony of each site is likely the primary portion of POS, as opposed to the ground floor rear yards which are less utilized due to the sloping nature. Finally, it is anticipated that views are more likely to be facing the north as opposed to over adjacent rear yards to the east.



View of adjacent eastern properties from rear laneway.

Northern views

A lack of screening is noted on the upper storey rear balcony. The lack of screening is considered acceptable on balance for the following reasons:

- The proposed balcony maintains a setback of approximately 15 metres from the rear boundary, which abuts a laneway approximately 4 metres in width.
- The land falls considerably between properties.
- The portions of primary POS of the adjacent northern properties are obscured from view due to the topography of the land, as well as vegetation and existing structures on adjacent properties.

The below images provide an example of the potential extent of overlooking from a height slightly below the rear balcony:



Views north from the subject property



Views north-west from the subject property



Views north-west from the subject property

CONCLUSION

The proposal seeks to construct additions to an existing detached dwelling, comprising ground and upper storey additions.

The main considerations attributed to the development relate to the building's siting, height, design & appearance, view loss and overlooking resulting from the proposed additions. The proposal is considered to satisfy a majority of the Desired Outcomes and Performance Outcomes of the Planning and Design Code.

The proposed dwelling additions appropriately respond to the context of the locality in terms of the building height whilst the setback are considered to be complementary to other similar buildings within the locality. The design and appearance of the dwelling facing the public realm is considered to provide a high design standard which contributes to the public realm and character of the locality.

Mutual overlooking is commonplace within the locality due to the sloping nature of the locality and of the subject site. Overlooking is appropriately mitigated as a result of the existing topography of the land, screening measures to the east and west, and vegetation on adjacent properties. View loss is noted, however is not considered to be unreasonable, when considered using the four-part test endorsed by Justice Debelle.

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

RECOMMENDATION

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

- (a) The Panel notes this report and concur with the findings and reasons for the recommendation;
- (b) The Panel concurs that the proposed development is not seriously at variance¹ 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: 22018339 To construct additions to an existing detached dwelling, comprising ground and upper storey additions at 15 Angas Crescent, 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. 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. 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.

NOTES

- 1. The applicant is reminded that Development Approval is required for any retaining wall over one metre in height, any masonry fence over one metre in height, any non-masonry fence (eg colorbond, wood paling, brush etc) over 2.1 metres in height, and any retaining wall with a fence on top with a total height over 2.1 metres in height (measured from the lower of the two adjacent ground levels).
- 2. The 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>

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.

3. 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.
4. The Fences Act 1975 details certain requirements and procedures in order to remove, replace or repair boundary fencing. If you intend to remove or repair an existing boundary fence, you are obligated to give the other affected neighbours 30 days notice to comment and respond as per a "Form 2". If a fence is removed (even if only temporarily) by a neighbour without the consent of the adjoining owner, or without following the procedure under the Fences Act, you may be liable to compensate the other owner.

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

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).

REPORT REFERENCE: CAP191022 – 4.2
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 19 OCTOBER 2022



Originating Officer:	Matt Falconer Development Officer - Consulting Planner
Applicant:	South Australian Masters Squash Inc.
Development Description:	Additions and alterations to an existing indoor recreation facility – squash courts
Elements:	Indoor recreation facility
Site Location:	2A Midera Avenue, Edwardstown
Zone:	Suburban Activity Centre
Lodgement Date:	27/07/2022
Planning and Design Code:	21 July 2022 Version 2022.13
Referrals (Internal):	Traffic Engineer
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>An application that involves construction within the building envelope as detailed in DTS/DPF 3.2 requires public notification as the exceptions to the exclusion from notification is triggered as per Column B in Table 5 of the Zone.</i>
Application No:	22021047
Recommendation:	That Planning Consent be GRANTED subject to Conditions

Appendices

Appendix 1: Planning and Design Code guidelines

Attachments

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SUBJECT LAND

The subject land is located at 2A Midera Avenue, Edwardstown. The land is regular in shape or the most part with the exception of a small dogleg in the north western corner of the site. The land has a frontage of 18.29 metres, a depth of 58.22 metres on the northern boundary and 55.17 metres on the southern boundary with an overall site area of approximately 1018 square metres.

The land is generally flat and does not contain any significant or regulated trees.

The land adjoins residential properties to the north, a petrol filling station to the south and a group of retail shops to the west. The land is located close to public transport with bus routes on Daws Road and South Road.

The land is currently occupied by a two-storey building and associated car parking.

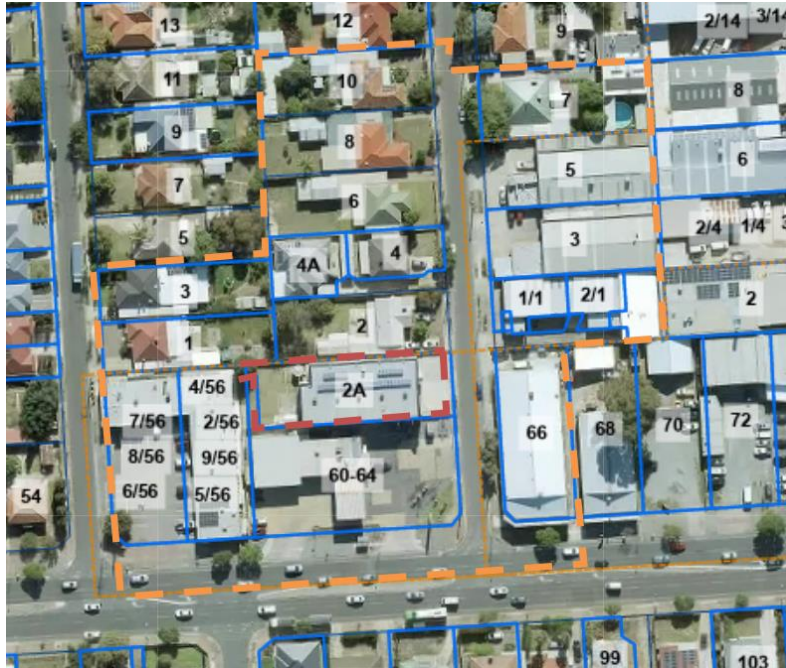
Figure 1: Subject land - - - - -



LOCALITY

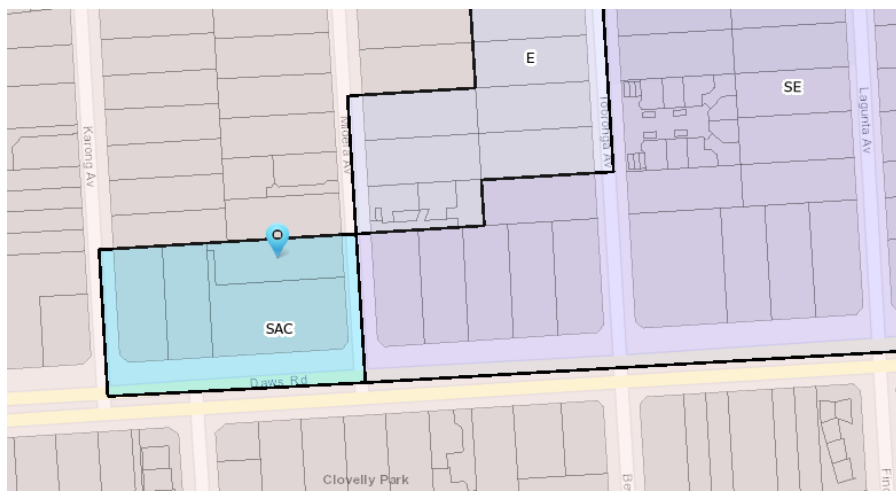
The locality is mixed with commercial type activities occurring closer to Cross Road and on the eastern side of Midera Avenue. The amenity of the locality is diminished by the existence of non-residential uses. To the north, the locality has a residential character where the amenity is greatly improved. The locality is characterised by single storey buildings with the exception of the indoor recreation facility on the subject land.

Figure 2: The Locality



The land is sited within the Suburban Activity Centre Zone (the Zone) of the Planning and Design Code (the Code). The properties to the north of the subject land are located in the General Neighbourhood Zone. The map below identifies the different zoning.

Figure 3: The Zone



PROPOSED DEVELOPMENT

The proposed development comprises of an extension to the existing indoor recreation centre by adding two squash courts. The existing building and car parking shall remain largely unchanged with the extension occurring on the underutilised vacant area of land to the west of the existing building.

The extension incorporates two new squash courts, viewing areas and outdoor area. The extension mimics the existing built form with the overall height maintained at 8.13 metres. The building extends along the southern boundary for an additional 13.24 metres and also extends to the western boundary for a length of 15.24 metres. The addition is setback 3.05 metres from the northern boundary with a lower level roof canopy extending to within 1.18 metres of the same boundary.

The northern elevation of the proposed addition features openable café style stacker doors at ground level and openable windows on the upper level. The external cladding shall feature brick on the southern and western elevations and colorbond (Monument) on the northern elevation.

PROCEDURAL MATTERS

Classification

The subject land is in the Suburban Activity Zone of the Planning & Design Code (the Code) as of 21 July 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

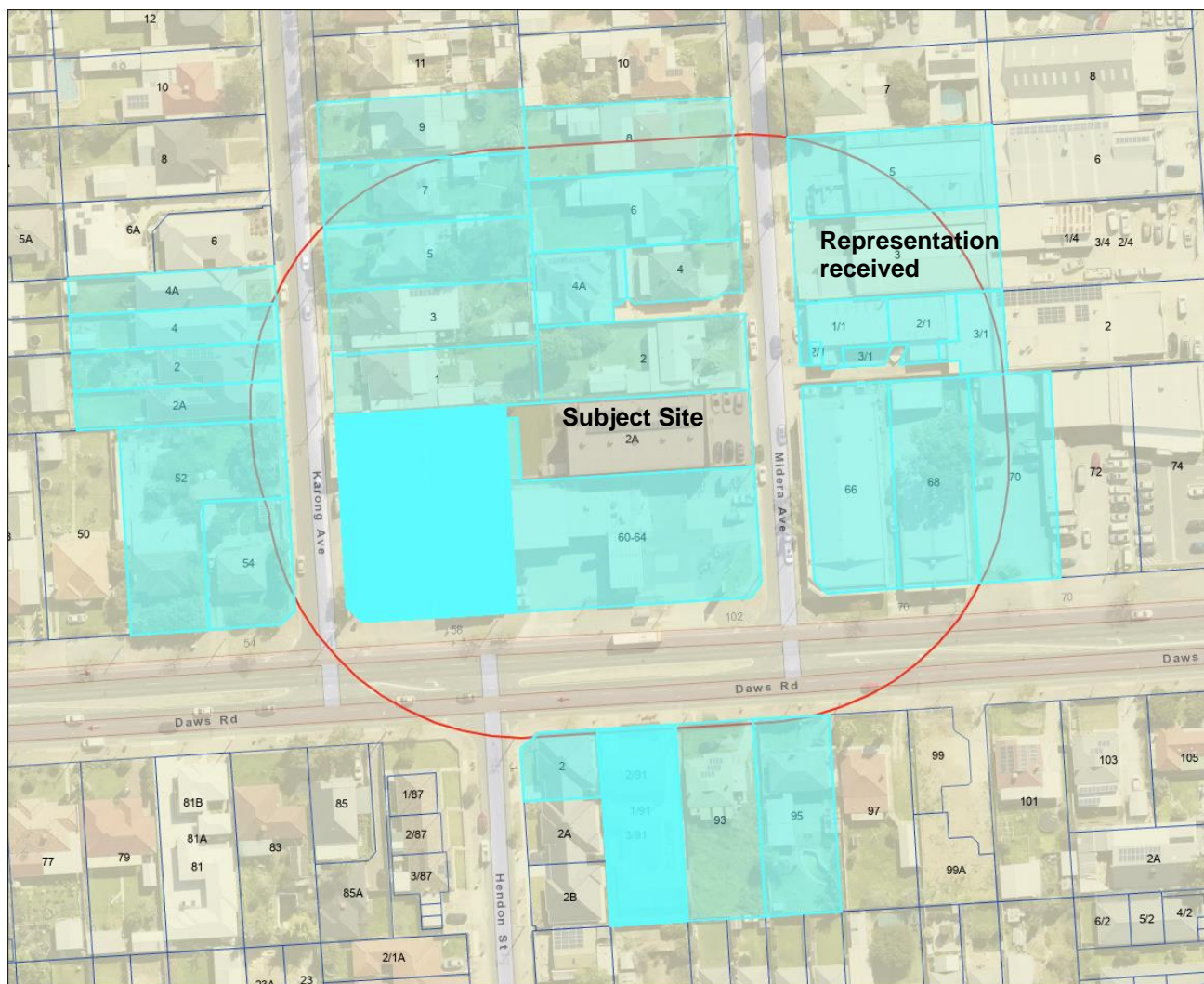
Clause 3 (i) Table 5 – Procedural Matters in the Suburban Activity Zone lists Indoor Recreation Facilities as exempt from notification.

Exemptions to the above exclusions relate to development that does not satisfy DTS/DPF 3.2.

Notification is required in this instance because the proposed building extends into the building envelope as outlined in DTS/DPF 3.2 of the zone.

The application was publicly notified between 9 August 2022 and 29 August 2022. During this time one representation that opposed the development was received. 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	30	
Representations	1 received - Opposes the development	Wish to be heard
Representations received	1. Birgit and Philip Hall, 28 Torrey Rd, Flagstaff Hill	✓
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:

- Built Form
- Interface between Land Uses
- Traffic and Parking

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

ZONE CONSIDERATIONS

Suburban Activity Centre Zone: DO1, PO 1.1, 2.1, 2.2, 3.1, 3.2, Table 5

RELEVANT OVERLAY CONSIDERATIONS

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

Building Near Airfields: DO 1, PO 1.1, 1.2, 1.3

GENERAL DEVELOPMENT POLICIES CONSIDERATIONS

Clearance from Overhead Powerlines: DO 1 & PO 1.1

Design in Urban Areas: DO 1, PO 1.1, 1.4, 1.5, 3.1, 4.1, 4.2, 4.3, 10.1, 12.1, 12.2, 12.3, 12.4, 12.5, 12.8, 13.1, 13.2, 13.3, 14.1, 14.2, 16.1 42.3

Interface between Land Uses: DO 1, PO 1.1, 1.2, 2.1, 3.1, 3.2, 3.3, 3.4, 4.1, 4.2, 4.3 & 4.4

Transport, Access and Parking: DO 1, PO 5.1 & Table 1

Built form and Character

As mentioned previously, the proposed extension occurs to the rear of the existing building. As such, the provisions relating to streetscape appearance contained in the Design in Urban Areas section of the code are irrelevant in the assessment of this application.

Of relevance are the provisions that relate to the appearance of buildings from neighbouring properties and the impact of boundary development.

Performance Outcome 3.2 of the Zone seeks to minimise the visual impacts of development on adjoining residential development. The DPF 3.2 seeks buildings to be constructed within a building envelope. In the case of the proposed development, the building envelope is measured using a 45 degree plane measured 3 metres in height from the natural ground level at the boundary and extends into the subject land.

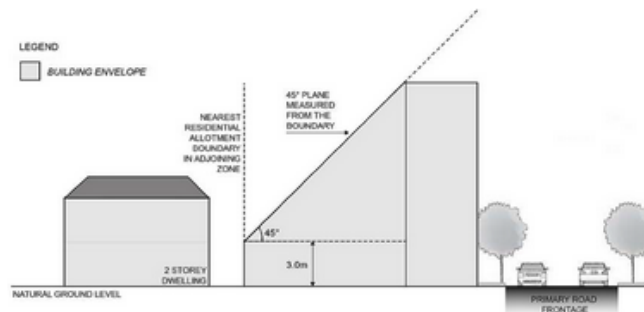
Table 5 of the Zone provides a number of exemptions from notification, one of which is compliance with DTP 3.2. As a result the failure to achieve DPF 3.2, the application was placed on Public Notification. Performance Outcome 3.2 and the corresponding DPF are highlighted below.

PO 3.2

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

Buildings constructed within a building envelope provided by a:

- (a) 45 degree plane measured from a height of 3 metres above natural ground level at the boundary of an allotment used for residential purposes within a neighbourhood-type zone as shown in the following diagram (except where this boundary is a southern boundary):



As detailed in the Planning Consultants report, the extent to which the proposed building extends beyond the building envelope is limited. It is acknowledged that the addition shall result in the built form extending to the rear boundary offering no visual relief between the group of shops and the proposed development. This being said, the subject land is within the Suburban Activity Zone and the neighbouring properties to the north are sited within the General Neighbourhood Zone. The Planning Consultant quite rightly mentions that the amenity towards the southern end of Midera Avenue is moderate, largely due to the number of non-residential properties. The amenity improves as you travel north along Midera and Karong Avenue. I form the view that residential properties that are sited directly adjacent zones that anticipate non-residential land uses cannot expect to have the same level of amenity as those within the heart of a residential area.

Whilst the proposed development will have some visual impact, I do not consider this to be unreasonable based on the above and the fact the addition is sited adjacent the back corners of the neighbouring residences rear yards away from the associated dwellings. Furthermore, whilst the built form is two storey and by nature, these types of facilities are rectangular box like structures, some attempt has been made to soften the appearance from the neighbouring residential properties. This have been achieved by using a varied material to the rest of the building, including a lower level verandah canopy and the introduction of windows to reduce the solid wall massing.

In addition to the above, there will not be any overshadowing or overlooking impacts, which are discussed in further detail in the body of this report. As such I am of the opinion PO 3.2 is sufficiently satisfied.

The proposed building shall extend over the only landscaped area on the site, I am of the opinion this is not fatal to the development. The existing landscaping does not provide any amenity benefits given its location and the applicant has advised is not currently utilised. Given the front portion of the land

is utilised for parking there is no ability to introduce landscaping to the front of the site. Whilst not ideal, the loss of landscaping in this instance is considered appropriate to facilitate the form of development proposed. In making the assessment of the application I acknowledge the historic use of the land and the constraints on the owners to satisfy all relevant provision of the Planning and Design Code.

Indoor recreation facilities play an important role in the community to promote an active lifestyle and encourage social interaction. Whilst the number of these types of facilities is reducing across the broader metropolitan area, the increase in number of squash courts will make this facility more viable and will continue to benefit the local community. I am of the opinion the failure to satisfy PO 13.1 and 13.2 of Design in Urban Areas, should not result in an unfavourable assessment outcome.

The proposed development shall have plant equipment such as air-conditioning units located on the roof of the building. The existing air-conditioning units are located on the roof which and are not visible from surrounding properties in accordance with PO 1.4 as highlighted below.

PO 1.4

Plant, exhaust and intake vents and other technical equipment are integrated into the building design to minimise visibility from the public realm and negative impacts on residential amenity by:

- (a) positioning plant and equipment discretely, in unobtrusive locations as viewed from public roads and spaces***
- (b) screening rooftop plant and equipment from view***
- (c) when located on the roof of non-residential development, locating the plant and equipment as far as practicable from adjacent sensitive land uses.***

The proposed addition is somewhat responsive to PO 4.3 given the placement of openable doors and windows and external awning on the northern façade. The building does have existing solar panels mounted on the roof as well as a 10,000 L rain water tank.

PO 4.3

Buildings incorporate climate responsive techniques and features such as building and window orientation, use of eaves, verandahs and shading structures, water harvesting, at ground landscaping, green walls, green roofs and photovoltaic cells.

In accordance with PO 10.1 and 16.1. the proposed development has been designed to ensure the overlooking to the neighbouring dwellings is minimised by ensuring the upper level window sill heights are set 1.5 meters above finished floor level.

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.

PO 16.1

Development mitigates direct overlooking of habitable rooms and private open spaces of adjacent residential uses in neighbourhood-type zones through measures such as:

- (a) appropriate site layout and building orientation***
- (b) off-setting the location of balconies and windows of habitable rooms or areas with those of other buildings so that views are oblique rather than direct to avoid direct line of sight***
- (c) building setbacks from boundaries (including building boundary to boundary where appropriate) that interrupt views or that provide a spatial separation between balconies or windows of habitable rooms***

- (d) screening devices that are integrated into the building design and have minimal negative effect on residents' or neighbours' amenity.***

Interface Between Land Uses

As mentioned previously, the subject land is located directly south of residential properties that are located in the General Neighbourhood Zone. Whilst building appearance and siting has been discussed other relevant considerations in relation to the proposed development and the impacts on adjoining residential properties are highlighted below;

- Hours of operation
- Noise
- Overshadowing

Hours of operation

The squash courts currently operate between the hours of 9am to 9pm Monday to Friday and 9am to midnight on weekends. The hours of operation are not changing as a result of the extension to the building.

Noise

An acoustic engineer was engaged by the applicant to review the proposed development and provide advice as to the impacts of noise associated with the proposed development. The report concluded that there will be no unreasonable levels of noise associated with the development where windows and doors along the north portion of the extension are closed during play. A condition to this effect is recommended.

It is also recommended that the outdoor area to the north of the extension be closed off from 9pm on weekends and a condition to this effect be applied to any consent. I form the opinion that the outdoor area is located in a location that is well removed from the habitable areas and frequently used areas of private open space of the neighbouring dwellings and the fence (1.9m when measured to ground level of subject land) is of an appropriate height to provide adequate privacy.

The proposed development shall have air-conditioning units positioned on the roof in a similar fashion to the existing building which will ensure that they cannot be heard and are obscured from view.

It is worth noting that Council have not received complaints from neighbouring properties in relation to the squash courts operating hours or noise from the associated activities.

Based on the above, I am of the opinion that the proposed addition to the squash courts achieves compliance with PO 2.1, PO 4.1 and 4.4 of the Interface between Land Uses.

PO 2.1

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

- 1. the nature of the development***
- 2. measures to mitigate off-site impacts***
- 3. the extent to which the development is desired in the zone***
- 4. measures that might be taken in an adjacent zone primarily for sensitive receivers that mitigate adverse impacts without unreasonably compromising the intended use of that land.***

PO 4.1

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

PO 4.4

External noise into bedrooms is minimised by separating or shielding these rooms from service equipment areas and fixed noise sources located on the same or an adjoining allotment.

Overshadowing

The proposed development is sited directly to the south of the neighbouring residential properties. Due to the orientation, the only overshadowing that is to occur as a result of the addition, impacts the adjoining petrol filling station and small group of shops located to the south and west of the subject lands. In accordance with PO 3.1 and 3.2 there is no overshadowing impact on habitable room windows or private open space of adjoining residential properties.

PO 3.1

Overshadowing of habitable room windows of adjacent residential land uses in:

- a. 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.***

PO 3.2

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

- a. 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.***

Traffic and Parking

As previously stated, the proposed addition is located on an underutilised portion of the site located to the west of the existing building. Given the building extends across almost the entire frontage, there is no scope for additional car parking to the front of the site. At present, the subject land accommodates 6 on site car parking spaces.

Based on the floor area of the existing indoor recreation facility and the car parking requirements as specified in Table 1- General Off Street Car Parking requirements of Transport Access and Parking, a total of 30 spaces is required representing a shortfall of 24 spaces. The increased floor area (246 sq metres) results in a car parking demand of 14 car parking spaces. Therefore, based on the Plan and Design Code requirements of 4.5 spaces per 100 square metres of floor area, the total number of carparking spaces post development is 44.

An independent traffic consultant was engaged on behalf of the applicant to review the current parking arrangements and the impact of the two additional squash courts. A traffic survey was conducted within the locality on 24 February 2022. A copy of the report is contained within Attachment 1.

The survey was undertaken on a Thursday given the centres peak usage occurring on these days. Pennant competitions are held on Thursday's during the morning and evenings typically between 9.00am and 12.00 noon and 6.00pm to 9.00pm.

The report concluded that Midera Avenue has the capacity to accommodate up to 32 cars and that during peak periods of use, surplus carparking was available within the locality. Phil Weaver suggested that a more appropriate car parking rate of 3 spaces per court be applied which is derived from a 'Guide to Traffic Generating Developments' produced by Road and Traffic Authority of NSW. Council's traffic engineer agreed with this approach. Based on this approach, the existing 5 court

indoor recreation facility should accommodate 15 on site car parking spaces resulting in a shortfall of 9 spaces. With the additional 2 courts the shortfall would increase to 15 spaces.

Whilst considering the above, Council's engineering staff agreed independent traffic assessment and did not raise concern with the shortfall. Further, Council's Community Safety Team have advised that there have been no complaints associated with the parking of patrons or operations associated with the South Adelaide Squash centre.

Acknowledging the carparking shortfall when assessed against Table 1- General Off Car Parking requirements of Transport Access and Parking and considering the opinion of two separate traffic experts, I am of the view, based on the information available, the increase of 2 squash courts can be accommodated given the availability of sufficient on-street car parking within the locality. As such the proposal satisfies PO 5.1 of Transport Access and Parking highlighted below.

PO 5.1

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

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

CONCLUSION

The proposed development is consistent with the relevant provisions of the Planning and Design Code and is supported for the following reasons;

- The proposed development is not considered to have an unreasonable impact on adjoining properties in relation to the proposed built form bulk, scale and design.
- The proposed development is not considered to have an unreasonable impact on adjoining properties in relation to noise, subject to suggested conditions.
- The carparking shortfall is not significant and the available on street carparking in the local street network is considered acceptable to accommodate the anticipated car parking demands of the subject land.

It is considered that the development generally accords with the provisions of the zone and relevant overlays and will not unreasonably impact on the owners and occupiers of land in the locality of the site of the development or the character and appearance of the area. As such the development should be GRANTED Planning Consent subject to the conditions 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 variance¹ 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: 22021047 for additions and alterations to an existing indoor recreation facility at 2A Midera Avenue, Edwardstown 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 windows and doors incorporated into the northern façade, to the western end of the building (opposite courts 6 and 7), shall remain close during use of the Courts.**
- 5. The outdoor area to the north of the building, adjacent courts 6 and 7, shall be closed for use after 7pm (regardless the use of the courts).**

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.

**5. APPEALS UPDATE
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 19 OCTOBER 2022**



5.1 APPEALS AGAINST PANEL DECISIONS

New Appeals

DA No.	Address	Appeal Lodged	Recommendation	Decision	Current Status
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Nil

On-going Appeals

DA No.	Address	Appeal Lodged	Recommendation	Decision	Current Status
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Nil

5.2 APPEALS AGAINST DELEGATED APPLICATIONS

DA No.	Address	Appeal Lodged	Recommendation	Decision	Current Status
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Nil

**6. POLICY OBSERVATIONS
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 19 OCTOBER 2022**



No items listed for discussion.

**7. OTHER BUSINESS
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 19 OCTOBER 2022**



No items listed for discussion.