

**CITY OF MARION
COUNCIL ASSESSMENT PANEL MINUTES
FOR THE MEETING HELD ON
WEDNESDAY 6 JULY 2022**



1.1 OPEN MEETING

The Meeting commenced at 6.30pm

1.2 PRESENT

Michael Davis - Presiding Member
Yvonne Svensson- Independent Member
Ben Russ - Independent Member
Bryn Adams - Independent Member
Matt Shilling – Council Member

1.3 APOLOGIES

Alex Wright – Team Leader – Planning / CAP Assessment Manager

1.4.1 IN ATTENDANCE

Nicholas Timotheou – Acting Team Leader - Planning
Warwick Deller-Coombs - Manager - Development & Regulatory Services

2. GENERAL OPERATIONS

No items listed for discussion

3. HEARING OF DEVELOPMENT ACT 1993 APPLICATIONS

No items listed for discussion

4. HEARING OF PDI ACT APPLICATIONS

4.1 Report Reference: CAP060722 - 4.1

Application No: 22010672

Site Location: 717 & 719 Marion Road, Ascot Park

- Ben Schnell of Ekistics and Paul Morris of Stantec on behalf of CK Ascot Park Pty Ltd (Applicant) addressed the Panel

The Council Assessment Panel resolved that;

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: 22010672 for the construction of a two storey childcare centre with associated solar panels, roof mounted services/units, shade sails, fencing, advertisement displays and outbuilding at 717 and 719 Marion Road, Ascot Park be GRANTED subject to the following Conditions.

CONDITIONS

1. The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).
2. Hours of operation are limited to 6:30am until 6:30pm Monday to Friday (excluding public holidays).
3. Landscaping shall provide clear sightlines at the property line to ensure adequate visibility between vehicles leaving the site and pedestrians on the adjacent footpath, in accordance with Figure 3.3 'Minimum Sight Lines for Pedestrian Safety' in AS/NZS 2890.1:2004.
4. All landscaped areas shall be separated from adjacent driveways and parking areas by a suitable kerb or non-mountable device to prevent vehicle movement thereon (incorporating ramps or crossovers to facilitate the movement of persons with a disability).

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.

CAP060722

5. Wheel stopping devices shall be placed and maintained within each parking bay to prevent damage to adjoining fences, buildings or landscaping in accordance with Australian Standards (AS/NZS 2890.1:2004 and AS/NZS 2890.6.2009).
6. Driveways, car parking spaces, manoeuvring areas and landscaping areas shall not be used for the storage or display of any goods, materials or waste at any time.
7. Designated accessible (disabled) car parking spaces shall be designed, constructed and maintained in accordance with Australian Standards (AS/NZS 2890.6.2009).
8. All car parking areas, driveways and vehicle manoeuvring areas must be constructed in accordance with the approved plans and recognised engineering practices prior to the occupation of the premises or the use of the development herein approved and maintained in a good condition at all times.
9. All car parking spaces shall be line marked or delineated in a distinctive fashion prior to occupation of the premises, with the marking maintained in a clear and visible condition at all times.
10. The content of the advertisement(s) shall relate only to the legitimate use of the land and shall not display any third-party advertising.
11. The advertisement(s) and supporting structure(s) shall be maintained in good repair at all times.
12. All waste and other rubbish shall be stored in the designated areas and screened from public view in accordance with the approved plans.
13. All waste disposal and pick up shall be undertaken in accordance with the requirements stipulated within the Environment Protection (Noise) Policy 2007.
14. All external lighting must be designed and constructed in accordance with Australian Standard (AS 4282-1997).
15. Pedestrian walkways on the subject site shall be adequately lit in accordance with Australian / New Zealand Standard AS/NZS 1158.3.1:1999 "Road Lighting Part 3.1: Pedestrian area (Category P) lighting - Performance and installation design guidelines". Such lighting shall be maintained at all times, to the reasonable satisfaction of the Council.
16. Prior to the use and/or occupation of the structure(s), all infrastructure for the disposal of stormwater from buildings and paved areas shall be installed of in accordance with the approved plans and details.
17. In accordance with the recommendations of Sonus Pty Ltd set out at pages 8-13 of report S7193C4 dated March 2022:
 - 17.1 all fences are to be sealed airtight at all junctions, including between panels, at the retaining wall and at the ground;
 - 17.2 absorption material shall be applied to the underside of the soffit of the first floor above the car parking area as indicated in Figure 2 and to the specifications in Detail 1 of the Sonus report.

Commissioner of Highways Conditions

18. All access to the development shall be gained via the existing access to Fourth Avenue as identified in Site Plan Prepared by Insite Architects Job No. J0000602 Sheet DA 01 Printed 19/04/2022.
19. Landscaping fronting Marion Road and Fourth Avenue shall be managed in such a way that sight distances in accordance with Major Urban Transport Routes Overlay DTS/DPF 5.1 are achieved at all times.
20. Stormwater run-off shall be collected on-site and discharged without impacting the safety and integrity of the adjacent road network. Any alterations to the road drainage infrastructure required to facilitate this shall be at the applicant's cost.

Environment Protection Authority Conditions

21. A certificate of occupancy must not be granted in relation to a building on the relevant site until a statement of site suitability is issued by a site contamination consultant certifying the land is suitable for the proposed use.
22. The applicant is reminded of its general environmental duty, as required by section 25 of the Environment Protection Act 1993, to take all reasonable and practicable measures to ensure that activities on the site and associated with the site (including during construction) do not pollute the environment in a way which causes or may cause environmental harm.

CAP060722**4.2 Report Reference: CAP060722 – 4.2**

7.05pm: Pursuant to Section 13(2)(a)(ix) of the Planning, Development and Infrastructure Regulations, the Panel resolve to exclude the public from attendance for the deliberation of Item 4.2

4.2 CONFIDENTIAL ITEM

Report Reference: CAP060722 - 4.2

Application No: 21012619

Site Location: 1 Freya Avenue, Hallett Cove & 3 Freya Avenue, Hallett Cove

- James Levinson of Botten Levison Lawyers, acting on behalf of Future Urban (Applicant) addressed the Panel

The Council Assessment Panel resolved;

The Council Assessment Panel having considered this matter in confidence under Section 13(2)(a)(ix) of the Planning, Development and Infrastructure Regulations determined that the decision of the Council Assessment Panel on this item be kept confidential and not available for public inspection until such time that appeal ERD – 21- 000171 has concluded

7.50pm: Meeting re-opened to the public

5. APPEALS UPDATE

5.1 APPEALS AGAINST PANEL DECISIONS

Verbal updated provided

5.2 APPEALS AGAINST DELEGATED APPLICATIONS

6. POLICY OBSERVATIONS

- Given the commentary of Mr Levinson and recent hearing of matters in the ERD Court regarding the application of designated performance features in assessment of performance assessed applications, the production of a clear Practice Direction should be recommended to the State Planning Commission.

7. OTHER BUSINESS

- 7.1 Delegated powers of Assessment Panel as a Relevant Authority under the Planning, Development and Infrastructure Act 2016 to Assessment Manager.**

That the Panel RESOLVES the following;

- 1. In exercise of the power contained in Section 100 of the Planning, Development and Infrastructure Act 2016 the powers and functions under the Planning, Development and Infrastructure Act 2016 and statutory instruments made thereunder contained in the proposed Instrument of Delegation (annexed to the Report dated 6/07/2022 and entitled '*Marion Council Assessment Panel - Instrument of Delegation – Instrument C*' and marked Attachment II) are hereby delegated on 6th July 2022 to the City of Marion Assessment Manager subject to the conditions and/or limitations, if any, specified herein or in the Schedule of Conditions in the proposed Instrument of Delegation.**
- 2. Such powers and functions may be further delegated by the City of Marion Assessment Manager in accordance with Section 100(2)(c) of the Planning, Development and Infrastructure Act 2016 as the Assessment Manager sees fit, unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation.**

7.2 Appointment of Deputy Presiding Member

That the Panel RESOLVES the following;

- 1. To appoint Yvonne Svenson to the position of Deputy Presiding Member until 30 June 2023.**

7.3 General Analysis report

That the Panel RESOLVES the following;

- 1. The Council Assessment Panel NOTES the report.**

8. CONFIRMATION OF MINUTES

The minutes of this meeting held Wednesday 6 July 2022 taken as read and confirmed this sixth day of July 2022

9. MEETING CLOSURE

- Length of meeting: 1 hour 36 minutes
- Number of Representors appearing before the Panel: 0
- Number of Applicants appearing before the Panel: 2

MEETING DECLARED CLOSED AT 8.06PM



Michael Davis
Presiding Member