



AGENDA

FOR COUNCIL ASSESSMENT PANEL MEETING TO BE HELD ON

25 OCTOBER 2022 AT 6.30 PM

IN THE COUNCIL CHAMBER, SALISBURY COMMUNITY HUB, 34 CHURCH STREET, SALISBURY

MEMBERS

Mr T Mosel (Presiding Member)
Mr R Bateup
Ms C Gill
Mr B Brug
Mr M Atkinson

REQUIRED STAFF

Assessment Manager, Mr C Zafiropoulos
General Manager, City Development, Ms M English
Team Leader Planning, Mr C Carrey

APOLOGIES

LEAVE OF ABSENCE

ADOPTED MINUTES FROM PREVIOUS MEETING

Presentation of the Minutes of the Council Assessment Panel Meeting held on 27 September 2022.

DECLARATIONS OF CONFLICTS OF INTEREST

REPORTS

Nil

OTHER BUSINESS

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CLOSE

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MINUTES OF COUNCIL ASSESSMENT PANEL MEETING HELD IN THE COUNCIL CHAMBER, SALISBURY COMMUNITY HUB, 34 CHURCH STREET, SALISBURY ON

27 SEPTEMBER 2022

MEMBERS PRESENT

Mr T Mosel (Presiding Member)
Mr R Bateup
Ms C Gill
Mr B Brug
Mr M Atkinson

STAFF

Assessment Manager, Mr C Zafiropoulos
General Manager, City Development, Ms M English
Team Leader Planning, Mr C Carrey
Team Leader Business Services, Ms H Crossley

The meeting commenced at 6.30pm.

The Presiding Member welcomed the members, staff and the gallery to the meeting.

APOLOGIES

Nil

LEAVE OF ABSENCE

Nil

ADOPTED MINUTES FROM PREVIOUS MEETING

The Minutes of the Council Assessment Panel Meeting held on 23 August 2022, be taken as read and confirmed.

DECLARATIONS OF CONFLICTS OF INTEREST

Mr B Brug declared a conflict of interest in relation to Item 8.1.2 - development application 21038042 at 14 & 16 Shepherdson Road, Parafield Gardens when Council resolved to make a representation on this development application.

Mr B Brug is a Councillor on the City of Salisbury, and is the nominated Elected Member on the Council Assessment Panel.

Mr B Brug made the following statement to the effect of he did not believe that he had a conflict of interest as a member of the Council Assessment Panel, especially as when the matter was discussed at Council he appropriately declared a conflict, and did not participate or vote; and left the room which is reflected in the minutes of the Council meeting.

That said, given that the Council had resolved to lodge a representation on this development application and passed a formal resolution to oppose the Application, even without the Councillor in the room as noted above, it there is the potential for a reasonable apprehension of bias due to Mr Brug being an Elected Member of the Council.

In response, Mr B Brug decided that he would acknowledge the potential for a reasonable apprehension of bias on his part due to his membership of the Council & therefore he would not participate in the consideration, assessment & determination of the development application. Following his acknowledgement Mr B Brug left the meeting at 7.06 pm prior to any consideration of the application & did not return until the application had been determined by the remaining members of CAP.

Ms M English, General Manager City Development, declared a conflict of interest in relation to Item 8.1.2 and advised that she would leave the meeting when the Item 8.1.2 is being considered by the Panel.

REPORTS

Development Applications

8.1.1 22009141

Detached Dwelling, Retaining walls and Fencing at 19b Anzac Street Salisbury Heights SA 5109 for Vatsu Design

REPRESSMENTORS

Mr T Keen, spoke in relation to his representation.

APPLICANT

Mr G Jenkins, Heynen Planning Consultants, spoke on behalf of the applicant

Ms C Gill moved, and the Council Assessment Panel resolved that:

- A. The proposed development is not considered to be seriously at variance with the Planning and Design Code.
- B. Pursuant to Section 107 of the *Planning, Development and Infrastructure Act 2016*, Planning Consent is **GRANTED** to application number 22009141 for Detached Dwelling, Retaining walls and Fencing in accordance with the plans and details submitted with the application and subject to the following conditions:

Planning Consent Conditions

- 1. The development shall be carried out in accordance with the details submitted with the application and the following stamped approved plans and documents, except where otherwise varied by the conditions herein:

Drawing No.	Plan Type	Date	Prepared By
211261 A101	Site Plan	30/08/2022	Vatsu Design
211261 A102	Floor Plan	30/08/2022	Vatsu Design
211261 A104	Landscape Plan	21/02/2022	Vatsu Design
211261 A103	Roof Plan	30/08/2022	Vatsu Design
211261 A201	Elevations	30/08/2022	Vatsu Design
211261 A202	Side Elevation	30/08/2022	Vatsu Design
AJX 2123.04	Retaining Wall Elevations & Section – Revision H	25/08/2022	Ajax Engineering
AJX 2123.04	Site Drainage Plan – Revision G	25/08/2022	Ajax Engineering
	Overshadow Diagram at 9am	24/05/2022	Vatsu Design
	Overshadow Diagram at 12pm	24/05/2022	Vatsu Design
	Overshadow Diagram at 3pm	24/05/2022	Vatsu Design
	Overshadow Diagram at 9am	29/07/2022	Vatsu Design
	Overshadow Diagram at 12pm	29/07/2022	Vatsu Design
	Overshadow Diagram at 3pm	29/07/2022	Vatsu Design
	Overshadow Diagram at 9am	22/08/2022	Vatsu Design
	Overshadow Diagram at 12pm	22/08/2022	Vatsu Design
	Overshadow Diagram at 3pm	22/08/2022	Vatsu Design

2. The external surfaces of the buildings shall:
 - be of new non-reflective materials; and
 - be finished in natural tones; and
 - be maintained in good condition at all times.
3. The invert, crossover and driveway shall be constructed, prior to commencement of use, in accordance with Council's Vehicle Crossover Standard Detail, Drawing SD-12, SD-13 and SD-14.
4. Soft landscaping shall be provided on the site within 12 months from the date of occupation of the dwelling in accordance with all of the following:
 - a. At least 20% of the site area; and
 - b. At least 30% of any land between the primary street boundary and the primary building line.

The soft landscaping shall be designated and maintained in good health and condition at all times.

Note: Soft landscaping means "*Landscaped areas that are pervious and capable of supporting the growth of plant species. It does not include artificial turf or any form of pervious paving or paved/hardstand areas used for pedestrian and/or vehicle movement.*"

5. Tree planting shall be undertaken within 12 months from the date of occupation of the dwelling in accordance with the following table:
 - Where allotment is less than 450 square metres, 1 small tree; or
 - Where allotment between 450 square metres and 800 square metres, 1 medium tree or 2 small trees; or
 - Where allotment between 800 square metres, 1 large tree or 2 medium trees or 4 small trees.

Except where otherwise Approved, the tree planting shall be maintained in good health and condition at all times thereafter.

Note: For meaning of tree sizes, please refer to the Urban Tree Canopy Overlay, Planning and Design Code.

6. Rainwater tank storage shall be provided, prior to occupation of the dwelling, in accordance with all of the following:
 1. Connected to at least 60% of the roof area; and
 2. Connected to one toilet;
 3. The laundry cold water outlets or hot water service; and
 4. Have a minimum tank capacity of 2,000 litres for retention; and
 5. Where site perviousness is less than 30% of the total site area, 1,000 litres for detention; and
 6. Where detention is required, includes a 20-25mm diameter slow release orifice at bottom of the detention component of the tank (or tanks).

The rainwater tank storage shall remain in place at all times thereafter.

Advice Notes

1. Building Consent and Development Approval must be obtained within 24 months from the date of this Notification, unless this period has been extended by the Council. Work cannot commence until a Development Approval is obtained.
2. The Council approved plans should be available on site at all times while performing the building work.
3. It is your responsibility to ensure that any building work is correctly sited with respect to the property boundaries of the site and it is strongly recommended that a boundary survey be undertaken before any work commences to ensure the building work is accommodated within the designated footprint and achieves the designated boundary setbacks.
4. 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 the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause environmental harm.

EPA information sheets, guidelines documents, codes of practice, technical bulletins etc. can be accessed on the following web site:

<http://www.epa.sa.gov.au>.

5. The applicant is reminded that demolition and construction is required to be carried out so that it complies with the mandatory construction noise provisions of Part 6, Division 1 of the *Environment Protection (Noise) Policy 2007* and the provisions of the *Local Nuisance and Litter Control Act 2016*. Under the *Local Nuisance and Litter Control Act 2016*, construction noise is declared to constitute a local nuisance as follows:
The noise has travelled from the location of the construction activity to neighbouring premises –
 - *On any Sunday or public holiday;*
 - *After 7pm or before 7am on any other day.*

Mr B Brug, Panel Member, and Ms M English, General Manager City Development, left the meeting at 7.06 pm.

8.1.2 21038042

Construction of a child care centre with associated signage, carparking, landscaping and boundary acoustic fencing at 14 & 16 Shepherdson Road, Parafield Gardens SA 5107 for Hewlett Property C-/ Future Urban

REPRESENTORS

Ms K Amos, Principal, Parafield Gardens High School spoke in relation to her representation.

Ms K Grenfell, Parafield Gardens High School Governing Council Chair, spoke on behalf of Ms K Amos representation.

Cr C Buchanan and Cr S Ouk, spoke on behalf of City of Salisbury to their representation.

APPLICANT

Mr M Duncan, Hewlett Property C-/ Future Urban, Mr B Wilson, CIRQA, and Mr J Reynolds, spoke on behalf of the applicant.

Mr R Bateup moved, and the Council Assessment Panel resolved that:

- A. The proposed development is not considered to be seriously at variance with the Planning and Design Code.
- B. Pursuant to 107 of the *Planning, Development and Infrastructure Act 2016*, Planning Consent is **GRANTED** to application number 21038042 for Construction of a child care centre with associated signage, carparking, landscaping and boundary acoustic fencing in accordance with the plans and details submitted with the application and subject to the following Reserved Matters and Conditions:

Reserved Matters:

The following matter/s shall be submitted for further assessment and approval by the Assessment Manager, as delegate of the Council Assessment Panel, as Reserved Matters under Section 102(5) of the *Planning, Development and Infrastructure Act 2016*:

1. Civil and Siteworks Plan, prepared by a qualified and experienced stormwater engineer, for all civil and stormwater works, which shall address all of the following:
 - (a) Finished floor levels for all buildings, hardstand surfaces, pavement design details and gradients; and
 - (b) Cut/fill details; and
 - (c) Retaining walls, kerbing or ramps, their design and grades; and
 - (d) To provide additional protection from stormwater within the road, the level of the driveway at the boundary is to maintain a minimum 150mm boundary rise be raised from the adjacent top of kerb in accordance with Council's standard detail SD-13; and
 - (e) Car parking dimensions, aisle widths, circulation movements and associated pavement markings and signage; and
 - (f) Pumped stormwater systems are to be designed and constructed in accordance with AS3500.3 – Section 8. This includes the provision of duplicate, alternate duty pumps, alarms and emergency storage; and
 - (g) Plans prepared are to be consistent and reflective of the advice received by third party consultants (Environmental Noise Assessment, Traffic and Parking Report, Landscape Plans and Waste Management Advice)
2. Stormwater management arrangements, including accompanying design calculations, which consider the 10% AEP minor storm and 1% AEP major storm events.
 - (a) Stormwater discharge to the downstream system is not to exceed the pre development discharge rate for the equivalent minor and major storm events; and
 - (b) Stormwater systems shall be designed and constructed to cater for minor storm flows (10% AEP). The design of the stormwater system shall ensure that no stormwater is discharged onto any adjoining land. Surface stormwater is to be managed in a manner that ensures no ponding of water against buildings and structures, no creation of any insanitary conditions and no runoff into neighbouring property for the 1% AEP major storm event
 - (c) Surface drainage systems are to be designed and constructed in accordance with AS3500.3 – Section 5. Surface drainage systems are to be designed to ensure overflows, in storm events with an ARI of 100 years, do not present a hazard or nuisance to people or property or discharge over any adjoining land. Roof drainage systems are to be designed in accordance with AS3500.3 – Section 3. Stormwater discharge from the site to the downstream stormwater system is not to exceed the equivalent of the pre-developed minor storm event (10% AEP)
 - (d) MUSIC modelling is to be provided to demonstrate that Council's water quality targets can be achieved. The P&D Code (Design in Urban Areas – Assessment Provision PO 42.2) includes the following Water Sensitive Design provision; Water discharged from a development site is to be of a physical, chemical and biological condition equivalent to of better than its pre-development state. To achieve the requirements of the Code and

ensure Council's water quality objectives are met, it's recommended that the following water quality targets requirements apply. These are to be verified through provision of a MUSIC model to support the proposal:

- i. 80% retention of the typical urban annual load for Total Suspended Solids
 - ii. 60% retention of the typical urban annual load for Total Phosphorus
 - iii. 45% retention of the typical urban annual load for Total Nitrogen
 - iv. 100% retention of the typical urban annual load for Gross Pollutants (litter)
 - v. No visible oil flows up to the 3month ARI peak flow.
3. Final landscaping plan, prepared by a qualified and experienced landscape architect or horticulturalist, which shall include all of the following:
- a. Final locations for all landscaped areas, including designated areas for trees, shrubs and groundcovers; and
 - b. Designated species to be used, noting should comprise species contained in the City of Salisbury Landscape Plan; and
 - c. Pot sizes, confirming the tree planting shall comprise advanced growth species at time of planting; and
 - d. Maintenance methods including irrigation, barriers and protection from vehicles and pedestrians.

Planning Consent Conditions

1. The development shall be carried out in accordance with the details submitted with the application and the following stamped approved plans and documents, except where otherwise varied by the conditions herein:

Drawing No.	Plan Type	Date	Prepared By
DA00 to DA06	Plans and Elevations	2 June 2022	Insite Architects
LS 101 to LS 106	Landscape Plans	June 2022	Nature Play Solutions
S56681 - 279301	Stormwater Management Report	21 June 2022	FMG Engineering
S7142C4	Environmental Noise Assessment	June 2022	Sonus
21451	Traffic and Parking Report	10 June 2022	CIRQA
	Waste Management Advice	10 June 2022	Colby Phillips Advisory

2. The external surfaces of the building shall:
 - a. be of new non-reflective materials; and
 - b. be finished in natural tones; and
 - c. be maintained in good condition at all times.

3. The invert, crossover and driveway shall be constructed, prior to commencement of use, in accordance with Council's Vehicle Crossover Standard Detail, Drawing SD-12, SD-13 and SD-14.
4. The car parking layout including car park spaces, aisle widths and manoeuvring area shall be designed and constructed to comply with AS 2890.1-2009 – Off-Street Car Parking, Part 1, Austroads "Guide to Traffic Engineering Practice Part 11 – Parking", AS 2890.2 – Facilities for Commercial Vehicles and AS 2890.6 – 2009 – Parking Facilities – Part 6: Off-street parking for people with disabilities.
5. All driveways, car parking and manoeuvring areas as designated on the Civil Plan, requested under Reserved Matter 1 shall be constructed with brick paving, concrete or bitumen to a standard appropriate for the intended traffic volumes and vehicle types. Individual car parking bays shall be clearly line marked. Driveways and car parking areas shall be established prior to commencement of use and shall be maintained at all times thereafter to the reasonable satisfaction of Council.
6. All existing crossovers made redundant by this development shall be reinstated to kerb, prior to commencement of use, in accordance with Council's kerb design standard, to the satisfaction of Council.
7. The designated landscaping areas shall be planted with shade trees, shrubs and ground covers in accordance with the Landscaping Plan approved under Reserved Matter 3. All landscaping shall be completed, prior to commencement of use and shall be maintained at all times thereafter to the reasonable satisfaction of Council (including the replacement of diseased or dying plants and the removal of weeds and pest plants).
8. The approved use operating times shall be limited Monday to Friday 6:30am to 6.30pm with no activity on Saturdays, Sundays and Public Holidays.
9. Noise measured at the nearest residential property boundary shall comply with the *Environment Protection (Noise) Policy 2007* at all times.
10. The windows fixed to the upper storey walls of the building on the eastern and southern elevations shall have a sill height of at least 1.5m above finished floor level, or where the sill height is less than 1.5m above finished floor level, the window shall be fixed, unable to be opened and provided with translucent glass or film up to a height of 1.5m above finished floor level. The above window treatments shall be established prior to occupation of the building and shall be maintained to the reasonable satisfaction of Council.
11. Prior to the occupation of the building, the glazing around the upper-level outdoor play area shall be provided with translucent glass or film to minimise the potential for overlooking to adjacent residential development. This treatment shall be established and maintained to the reasonable satisfaction of Council.

12. Except where otherwise approved, no materials, goods or containers shall be stored in the designated car parking area or driveways at any time.
13. All waste and rubbish from the activity shall be contained and stored pending removal in covered containers which shall be kept in an area screened from public view.
14. The advertisement and advertising structure shall be maintained in good repair at all times.
15. Except where otherwise approved, the approved advertisements shall not:
 - a. Move; or
 - b. Flash; or
 - c. Reflect light so as to be an undue distraction to motorists; or
 - d. Be externally illuminated.
16. Except where otherwise approved, outside lighting shall be restricted to that necessary for security purposes only and shall be directed and shaded to prevent light overspill and/or nuisance to adjacent occupiers or distraction to drivers on adjacent public roads. All lighting shall be in accordance with Australian Standard 4282 – 1997 ‘Control of the obtrusive effects of outdoor lighting’.
17. Waste collection from Boston Avenue shall only occur as follows:
 - a. Monday to Friday between the hours of 10am and 2pm.

Advice Notes

1. 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 the activities on the whole site, including during construction, do not pollute the environment in a way which causes or may cause environmental harm.

In addition, the applicant is responsible for ensuring the development (including demolition, civil works and construction activities) do not cause a ‘local nuisance’ under the Local Nuisance and Litter Control Act 2016

Accordingly, your site planning activities should consider:

- i. providing a stabilised entry/exit point to the site for all construction and trade vehicles, including contained wash down area for vehicles and equipment*
- ii. appropriately located stockpiles and storage materials*
- iii. a suitable and designated area for brick cutting and concrete works*
- iv. a contained area for paint and plastering waste and wash waters*
- v. appropriate location of noisy equipment so as to avoid unreasonable impacts to neighbours*
- vi. dust control measures such as use of a water cart and/or covering stockpiles*

Note: EPA information sheets, guidelines documents, codes of practice, technical bulletins etc. can be accessed on the following web site:

<http://www.epa.sa.gov.au>.

2. Building Consent and Development Approval must be obtained within 24 months from the date of this Notification, unless this period has been extended by the Council. Work cannot commence until a Development Approval is obtained.
3. The development shall be lawfully commenced by substantial work on the site of the development within 2 years from the date of Development Approval. If substantial work on the site has occurred within 2 years, the development shall be substantially or fully completed within 3 years from the date of Development Approval.
4. This Development Approval does not constitute land owners approval. The following applies to any works on Council land:
 - i. Any person making alteration to Council land including erecting or installing a structure (pipes, wires, cables, fixtures, fittings), storing building materials, erecting temporary fencing, altering the kerb, gutter, footpath or crossover etc. in, on, under or over Council land, is subject to a permit from Council pursuant to Section 221 of the Local Government Act 1999.
 - ii. Service infrastructure should be located as far as practicable away from street trees, in order to protect the root zone and to prevent future damage to the infrastructure from root expansion.
 - iii. Residents and businesses are encouraged to develop and maintain the verge area between their property boundary and the kerb. However, some types of development such as irrigation, tree planting and landscaping may be restricted in some areas and therefore permission should be first sought from Council before commencing any works;
 - iv. It is the developers/owners responsibility to ensure that damage does not occur to verge infrastructure during construction. Council regularly inspects the condition of verge infrastructure during construction and where damage is observed, Council may recover the costs from the owner for reinstatement of any damage to the footpath, kerb or gutter and may also impose a substantial penalty for any willful damage.
5. The Council approved plans should be available on site at all times while performing the building work.
6. It is your responsibility to ensure that any building work is correctly sited with respect to the property boundaries of the site and it is strongly recommended that a boundary survey be undertaken before any work commences to ensure the building work is accommodated within the designated footprint and achieves the designated boundary setbacks.

7. You will need to obtain your permission from your neighbour should you wish to access their property to carry out construction work adjacent the boundary or if you wish to erect common boundary fencing or boundary retaining walls, pursuant to the Fences Act 1975. To find out more, please visit:
<https://lsc.sa.gov.au/resources/fencesandthelawbooklet.pdf>
8. The applicant is reminded that demolition and construction is required to be carried out so that it complies with the mandatory construction noise provisions of Part 6, Division 1 of the Environment Protection (Noise) Policy 2007 and the provisions of the Local Nuisance and Litter Control Act 2016. Under the Local Nuisance and Litter Control Act 2016, construction noise is declared to constitute a local nuisance as follows:

The noise has travelled from the location of the construction activity to neighbouring premises –

- i. On any Sunday or public holiday;
- ii. After 7pm or before 7am on any other day.

Mr T Mosel requested a 10 minute break at 8.03pm.

Meeting reconvened at 8.12pm.

Mr B Brug, Panel Member, and Ms M English, General Manager City Development, returned to the meeting at 8.12 pm.

OTHER BUSINESS

8.2.1 Status of Current Appeal Matters and Deferred Items

Mr B Brug moved, and the Council Assessment Panel resolved that the information was received .

8.2.1 Policy Issues Arising from Consideration of Development Applications

Mr B Brug moved, and the Council Assessment Panel resolved that:

A report be prepared for the consideration of the Panel on the options for the Elected Member on Panels, where a council resolves to make a representation on a development application before a Panel.

8.2.2 Future Meetings & Agenda Items

Next meeting scheduled for Tuesday 25 October 2022

ADOPTION OF MINUTES

Mr R Bateup moved, and the Council Assessment Panel resolved that the Minutes of the Council Assessment Panel Meeting be taken and read as confirmed.

The meeting closed at 8.36pm.

PRESIDING MEMBER: Mr T Mosel

DATE: 27 September 2022
(refer to email approving minutes registered in Dataworks
Document Number 7484641)

**INFORMATION
ONLY
ITEM**

8.2.1

COUNCIL ASSESSMENT PANEL**DATE**

25 October 2022

HEADING

Assessment Manager Quarterly Report - July to September 2022

AUTHOR

Chris Zafiropoulos, Assessment Manager, City Development

SUMMARY

This report provides the Assessment Manager Quarterly Report for the period between July to September 2022.

RECOMMENDATION

1. That the information be received and noted.

ATTACHMENTS

There are no attachments to this report.

1. BACKGROUND

- 1.1 The general operating procedures require the Assessment Manager to prepare a quarterly report of:
 - the development applications with representations determined under delegated authority for the previous period.
 - any development application delegated by the Panel where a deemed consent notice has been received.
- 1.2 This report provides a quarterly report for the period July to September 2022.

2. REPORT

- 2.1 The Panel is assigned as a relevant authority in its own right under the *Planning, Development and Infrastructure Act 2016*. In the exercise of its duties, the Panel delegated to the Assessment Manager specific duties and powers on its behalf. Delegations enhance decision making processes and allow nominated matters to be resolved efficiently and effectively without the need for the Panel's consideration.
- 2.2 The delegations provide for:
 - Administrative matters to assist in the timely processing of applications such as verifying development applications, undertaking statutory referrals and public notification.
 - Determining prescribed development applications.

Overview of planning application activity

- 2.3 The planning applications for the period are summarised in the table below (excluding land division).

	Number
Planning Applications Submitted	447
Planning Applications determined	409
Notified Applications	11
Determined planning consents by relevant authority (excluding private certification)	3
➤ CAP	379
➤ Assessment Manager (AM)	8
➤ AM as delegate for Panel	

- 2.4 The number of development applications that were notified during this period was eleven (11). Eight (8) development applications were determined by the Assessment Manager under delegated authority and three (3) development applications were determined by the Panel.
- 2.5 The number of planning applications that were lodged under the previous *Development Act 1993* (prior to 19 March 2021) that are still active at the end of this quarter is forty-seven (47) down from eighty-five (85) from the previous quarter.

Development Applications Assessed under Delegated Authority by the Assessment Manager

- 2.6 The development applications considered by the Assessment Manager under delegated authority are summarised below:

Three (3) Single Storey Dwellings and combined retaining and fencing greater than 2.1m high to side and rear boundaries at 8 Makin Road Ingle Farm

Representations – two (oppose)

Decision – Approve with conditions

Construction of a child care centre, advertisements, retaining walls and acoustic fences, removal of two regulated trees at 237 Bridge Road, Ingle Farm

Representations – one (support)

Decision – Approve with conditions

<p>Amendment to DA 361/2639/2020/2B (change in the location of control building and fuel canopy, and amendment to carparking layout and internal manoeuvring area) at 155-185 Winzor St, Salisbury Downs</p> <p>Representations – none</p> <p>Decision – Approve with conditions</p>
<p>6.3m High Freestanding LED Pylon Sign at 138-140 & 142 Salisbury Highway Salisbury</p> <p>Representations – two (support)</p> <p>Decision – Approve with conditions</p>
<p>Alterations and Additions to existing Service Trade Premise, including Office, Warehouse, Workshop, replacement Wash Bay, replacement Pylon Sign, replacement Perimeter Fencing and removal of one Regulated Tree. at UNIT 1-2 147-161 Port Wakefield Road, Cavan</p> <p>Representations – one (support)</p> <p>Decision – Approve with conditions</p>
<p>Carport and Verandah at 9 Aberdeen Cr, Brahma Lodge</p> <p>Representations – none</p> <p>Decision – Approve with conditions</p>
<p>Change of Land Use (shop to indoor recreation facility - children's play café) and internal fit-out at 1-7 Mawson Lakes Blvd, Mawson Lakes</p> <p>Representations – none</p> <p>Decision – Approve with conditions</p>
<p>Carport and Verandah (enclosed on southern side boundary) at 94 Andrew Smith Drive, Parafield Gardens</p> <p>Representations – none</p> <p>Decision – Approve with conditions</p>

Deemed Consents

2.7 No deemed consent notices have been received for this period.

3. CONCLUSION / PROPOSAL

3.1 The Assessment Manager Quarterly Report for the period July to September 2022 be received and noted.

ITEM	8.2.2
	COUNCIL ASSESSMENT PANEL
DATE	25 October 2022
HEADING	Elected Member on Panels and Council Representations
AUTHOR	Chris Zafiropoulos, Assessment Manager, City Development

SUMMARY This report provides advice for the consideration of the Panel in relation to recent development applications where the participation of the Elected Member on the Panel was challenged by the applicant due to the Council having made a representation on a development application before a Panel.

RECOMMENDATION

That the Council Assessment Panel:

1. Approves the draft submission to the Expert Panel on the Planning System Implementation Review as included in Attachment 1 Council Assessment Panel, 25 October 2022, Item No. 8.2.2).
2. Approves for this submission and associated context to be provided to Council for its information.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Draft Letter to the Expert Panel on the Planning System Implementation Review
2. PlanSA Fact Sheet Elected Members on CAPs

1. BACKGROUND

- 1.1 The Panel resolved at its meeting on 27 September 2022 that:

A report be prepared for the consideration of the Panel on the options for the Elected Member on Panels, where a council resolves to make a representation on a development application before a Panel.

- 1.2 This issue arose following two development applications where the participation of the Elected Member on the Panel was challenged by the applicant due to the Council having made a representation on a development application before a Panel.
- 1.3 A fact sheet produced by PlanSA in relation to the role of Elected Members on Panels is provided in Attachment 1 and includes the Behavioural Code for Panel Members. This Code includes the duty for Panel Members to be committed to making decisions without bias and in the best interest of the whole community.

2. REPORT

- 2.1 The applicants for two development applications that were subject to the consideration of the Council Assessment Panel (CAP) raised with Council Administration, ahead of the respective scheduled meetings, concerns on potential conflict of interest for the Panel due to the Council objecting to these particular development applications.
- 2.2 The applicants were advised that the conflict of interest had been duly managed by the Elected Member who is also a CAP Member. This occurred by declaring a conflict of interest and managing that conflict by being removed from the decision making when the Council considered the motion to lodge a representation on these development applications. Notwithstanding this process, the applicants' concern related to the *Assessment Panel Members - Code of Conduct*. In particular clause 21 that relates to Bias.

A member of an assessment panel should always have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that they may be biased in carrying out any aspect of their role under the Act.

- 2.3 Legal advice informed that – even though this Elected Member (who is also a CAP Member) was removed from the Council decision in management of this conflict - the Elected Member should be mindful that a complaint could be made against this Elected Member for investigation by the State Planning Commission given this Elected Member's affiliation with Council. As a consequence, the Elected Member declared not to be participating in the CAP's consideration and assessment of these particular applications, given the circumstances could give rise to the potential for a reasonable apprehension of bias on the Member's part, particularly as the issue had been raised by the applicants.
- 2.4 This situation raises matters for further consideration, including:
- 2.4.1 The role of the Elected Member who is also a CAP Member in the situation where Council has lodged a representation in relation to a development application.
- 2.4.2 The tension for the independent members on the Panel considering an application where the Elected Members who appoint the independent members object to the decision of the Panel. This tension could be exacerbated in circumstances where a council undertakes the development application as the Minister for Planning call-in criteria and practice has generally been not to appoint the State Commission Assessment Panel (SCAP) for development applications undertaken by a council.
- 2.4.3 Community confusion caused by Council appearing to be both opposing (via a Council decision) and supporting (via the Panel decision and recommendation by Council's administration) a development application.

- 2.5 Given the current Expert Panel that has been appointed for the Planning System Implementation Review, it is recommended that this issue be raised for consideration. The CAP may suggest:
- 2.5.1 Review clause 21 of *Assessment Panel Members - Code of Conduct* to provide better clarity on the role of Elected Members on Panels in circumstances where a council makes a representation on a development application before the Panel.
 - 2.5.2 Use an alternative title than “*Council*” *Assessment Panel*” to better differentiate the independent role of Panels from *Council* for the community.
 - 2.5.3 Review the *call-in power* and practice by the Minister for Planning under section 94 of the *Planning, Development and Infrastructure Act 2016* to include more significant development applications undertaken by a council.

3. CONCLUSION / PROPOSAL

- 3.1 A key reform under the *Planning, Development and Infrastructure Act 2016* has been to increase the level planning expertise in the assessment process and segregate Elected Members from planning decisions. This change has revealed a tension for operation of Panels as discussed in this report.
- 3.2 The Panel may wish to raise this as a matter for consideration by the Expert Panel that has been appointed for the Planning System Implementation Review, and inform the Council of its submission accordingly.



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26 October 2022

Mr John Stimson
Presiding Member
Expert Panel
Planning System Implementation Review

DTI.PlanningReview@sa.gov.au

Dear Mr Stimson

A key reform under the *Planning, Development and Infrastructure Act 2016* has been to increase the level professionalism in the assessment process and remove Elected Members from planning decisions. This change has revealed a tension for operation of the Panels that the City of Salisbury Council Assessment Panel wishes to raise with the Expert Panel for consideration.

This issue arose following development applications where the participation of the Elected Member on the Panel was challenged by the applicants due to the Council having made a representation on a development application before a Panel.

The applicants for the development applications that were subject to the consideration of the Council Assessment Panel raised concerns with conflict of interest due to Council objecting to the development applications. Notwithstanding that the Elected Member on the Panel declared a conflict of interest when the Council considered the motion to lodge a representation on the development applications, the applicant's concern related to the *Assessment Panel Members - Code of Conduct*. In particular clause 21 that relates to Bias.

A member of an assessment panel should always have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that they may be biased in carrying out any aspect of their role under the Act.

Legal advice provided to the Elected Member was that the member should be mindful that a complaint could be made about the member being affiliated with Council. Caution was suggested as a complaint would be investigated by the State Planning Commission. As a consequence, the Elected Member declared that they would not participate in the consideration and assessment of the application given the circumstances could give rise to the potential for a reasonable apprehension of bias on the member's part, particularly as the issue had been raised by the applicants.

This situation raises matters for further consideration, including:

1. The role of the Elected Member who is also a CAP Member in the situation where Council has lodged a representation in relation to a development application.
2. The tension for the independent members on the Panel considering an application where the Elected Members who appoint the independent members object to the decision of the Panel. This tension could be exacerbated in circumstances where a council undertakes the development application as the Minister for Planning call-in criteria and practice has generally been not to appoint the State Commission Assessment Panel (SCAP) for development applications undertaken by a council.
3. Community confusion caused by Council appearing to be both opposing (via a Council decision) and supporting (via the Panel decision and recommendation by Council's administration) a development application.

The Expert Panel is requested to consider this issue and may wish to:

1. Review clause 21 of *Assessment Panel Members - Code of Conduct* to provide better clarity for the role of Elected Members on Panels in circumstances where a council makes a representation and the member declares a conflict at the council meeting.
2. Use an alternative title than "*Council Assessment Panels*" to better differentiate the independent role of Panels for the community.
3. Review the call-in power and practice by the Minister for Planning under section 94 of the *Planning, Development and Infrastructure Act 2016* to include more significant development applications undertaken by a Council.

Yours faithfully

Chris Zafiropoulos
Assessment Manager
City of Salisbury Council Assessment Panel



FACT SHEET

Elected Members on Assessment Panels

What does membership on an Assessment Panel mean for a local elected member?

Purpose

This Fact Sheet aims to provide guidance to Council Assessment Panel (CAP) members and Regional Assessment Panel (RAP) members who are also local government elected members, regarding their obligations under Codes of Conduct applying to them. This includes how to best manage interactions with the public, making public statements and media comments as well as undertaking site visits where development is proposed. Elected members should be aware of their dual roles, and how to manage both sets of responsibilities. Importantly, when undertaking duties as a member of an Assessment Panel, an elected member is not acting in their role as an elected member of a council.

Background

- Assessment Panels can include one elected member from the relevant council (or councils).
- Assessment Panel members have a number of obligations under the Minister's Code of Conduct established under the Planning, Development and Infrastructure Act 2016 (PDI Act) (the Assessment Panel Member Code of Conduct - extracts shown in Appendix A).
- Elected Members also have additional obligations under the separate Minister's Code of Conduct established under the Local Government Act 1993 (the LG Act) (the LG Code of Conduct - extracts shown in Appendix B).

Interactions with the Public

The Assessment Panel Member Code of Conduct restricts members from engaging in consultation outside of the Assessment Panel process, or giving advice or discussing a development application outside of Assessment Panel meetings.

On the other hand, the LG Act Code of Conduct also outlines principles requiring elected members to consider all relevant information and opinions, giving each due weight, in line with the council's community consultation obligations.

For obligations to co-exist under both Codes of Conduct, an elected member may need to avoid or forgo discussions or consultation with members of the public, media engagements or public statements (which they would ordinarily participate in). This is particularly so where those discussions or statements relate to a development application or proposal which is or is likely to come before the Assessment Panel.

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Government of South Australia
Attorney-General's Department

Example

The Council is landowner of community playing fields, leased to a community sporting club. The sporting club lodges a development application to upgrade their clubroom facilities where the development application is to be assessed by the Assessment Panel:

- if approached by a representative from the sporting club, the member should:
 - advise that they are unable to discuss the matter, as a result of their position on the Assessment Panel
 - disclose any conversations or interactions with the sporting club at any meeting of the Assessment Panel and the Council involving the development. Depending on the nature and context of the interactions, the member may also need to excuse themselves from any deliberations at the Assessment Panel and Council meetings
- if the Assessment Panel member is also a member of the sporting club, they should not be present for determination of the development application by the Assessment Panel. They may also need to excuse themselves for consideration of lease arrangements by the Council (as landlord).

Media and Public Statements

Under the Assessment Panel Member Code of Conduct, a member must not:

- speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application
- express an opinion on a proposed development outside of an Assessment Panel meeting
- engage in any other act or omission which may give rise to a reasonable presumption that the Assessment Panel member has prejudged a development proposal.

Under the LG Code of Conduct, an elected member may make public statements provided that in doing so, they clearly indicate that the views expressed are their own, and not the views of the relevant Council.

An Assessment Panel member should not make public statements on a development proposal, even if they stipulate that the views being expressed are their personal views (and not the views of the Assessment Panel). This means that an Assessment Panel member forfeits their ability to make public statements regarding certain development proposals, which they would otherwise be able to do if they did not hold a position on an Assessment Panel.

Example

An elected member has a strong view on a certain type of development which they consider to be of concern to their local community (for example, telecommunication towers). The member makes public statements against such developments in their campaign for election as a member of the Council, and also makes broad statements on social media against those types of development.

In this scenario, the member:

- should not make any public comments regarding a specific development application before the Assessment Panel, or which is likely to come before the Assessment Panel as this would put them in breach of the Assessment Panel Code of Conduct
- if public comments are made regarding a specific development application, should declare a perceived conflict and should excuse themselves from the relevant Assessment Panel meeting where that development application is considered
- may also be required to excuse themselves from any future Assessment Panel meetings regarding that type of development more broadly, if the previous public statements are sufficient to give rise to a reasonable presumption that the Assessment Panel member has prejudged those types of development.

Site Visits

Under the Assessment Panel Code of Conduct, an Assessment Panel member should not enter the site of a proposed development, even if invited by the land owner or a neighbouring property owner or any other person (except where required as part of the assessment of a particular decision such as a formal panel viewing of a site of a proposed development, or in the company of an authorised officer appointed by the Council).

In comparison, under the LG Code of Conduct, elected members are required to discharge their duties conscientiously, to the best of their ability, and to also consider all relevant information and opinions in assessing a matter.

An elected member who is also a member of an Assessment Panel may be restricted in the places they can visit in their local area, where particular sites are subject of a proposed development which may be considered by the Assessment Panel. If it is required as part of the assessment of a development application, Assessment Panel Members may view sites from the public realm, or may enter sites where they do so in the company of an authorised officer appointed by the Council. However, where possible, Assessment Panel members should only undertake site visits as part of a formal viewing by the Assessment Panel.

Example

An elected member may be invited to a constituent's home to view the area of a proposed development on the neighbouring property, and discuss the impact the development may have on the constituent and their property. In this scenario, where the elected member is also a member of the Assessment Panel the elected member:

- should not visit the site of the proposed development (or neighbouring properties) to discuss the proposed development
- may also need to declare a conflict of interest and excuse themselves from the Assessment Panel meeting if they have had discussions or provided their views or advice to a constituent regarding the proposed development.

Appendix A – Minister’s Code of Conduct – *Planning, Development and Infrastructure Act 2016* (Extracts Only)

7. A member of an assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the council development assessment panel (other than an indirect interest that exists in common with a substantial class of persons)—
 - (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and
 - (b) must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.
-
12. A member of an assessment panel must not approach or discuss with an applicant or representor any application which is either before the panel or will come before the panel at some future time expect during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the panel.
13. Except where required as part of the assessment of a particular decision such as a formal panel viewing of a site of a proposed development, you should not enter the site even if invited by the land owner or a neighbouring property owner or any other person.
14. A member of an assessment panel must not:
 - (a) engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
 - (b) give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;
 - (c) speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
 - (d) express an opinion on a development application or a proposed development outside of a panel meeting; and
 - (e) engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.
15. Only the presiding member or another person determined by the panel is permitted to speak publicly to the media and address the public on behalf of the panel. No other panel member may make comment to the media or the public in relation to any matter before the panel or any decision of the panel.
-
21. A member of an assessment panel should always have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that they may be biased in carrying out any aspect of their role under the Act.

Appendix B – Minister’s Code of Conduct – *Local Government Act 1993* (Extracts Only)

PART 1—PRINCIPLES

Higher principles—Overarching Statement

Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.

As representatives of open, responsive and accountable government, Council members are committed to considering all relevant information and opinions, giving each due weight, in line with the Council’s community consultation obligations.

In the performance of their role, Council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the Council.

PART 2—BEHAVIOURAL CODE

Behavioural Code

Council members must:

- 2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.

PART 3—MISCONDUCT

Member duties

Council members must:

- 3.6 Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and/or actions.
- 3.13 Council members must be committed to making decisions without bias and in the best interests of the whole community and comply with the relevant conflict of interest provisions of the *Local Government Act 1999*.

ITEM	8.2.3
	COUNCIL ASSESSMENT PANEL
DATE	25 October 2022
HEADING	Non-residential uses in the General Neighborhood Zone under the Planning and Design Code
AUTHOR	Chris Zafiropoulos, Assessment Manager, City Development
SUMMARY	This report provides advice for the consideration of the Panel in relation to its consideration of non-residential uses in the General Neighborhood Zone under the Planning and Design Code.

RECOMMENDATIONThat the Council Assessment Panel:

1. Approves the draft submission to the Expert Panel on the Planning System Implementation Review as included in Attachment 1 Council Assessment Panel, 25 October 2022, Item No. 8.2.3).
2. Approves for this submission and associated context to the provided to Council for its information.

ATTACHMENTS

This document should be read in conjunction with the following attachments:

1. Draft letter to the Expert Panel on the Planning System Implementation Review
2. Applications considered under the Planning and Design Code
3. Planning and Design Code - Guide to Interpretation

1. BACKGROUND

- 1.1 The Panel has considered fourteen (14) development applications that have been made under the Planning and Design Code. The development applications have included a range of developments, including industrial, commercial and residential. A list of the development applications is provided in Attachment 2.
- 1.2 In the assessment of two development applications proposing non-residential uses within the General Neighbourhood Zone, the Panel identified that a combination of permissibility intended by the zone, together with policy expression, created some uncertainty in the assessment process. This report provides a summary of the issues raised by Members for consideration in making a submission to the Expert Panel on the Planning System Implementation Review
- 1.3 A previous report on the *Guide to Interpreting the Code* is provided in Attachment 3 for information.

2. REPORT

- 2.1 The General Neighbourhood Zone has essentially replaced the former Residential Zone that applied over much of the metropolitan residential areas.
- 2.2 The General Neighbourhood Zone is far more permissive than the previous Residential Zone. The zone is clearly intended to accommodate non-residential uses to achieve a more convenient living environment. This principle is expressed in Desired Outcome (DO) 1 of the Zone.

Desired Outcome	
<i>DO 1</i>	<i>Low-rise, low and medium-density housing that supports a range of needs and lifestyles located within easy reach of services and facilities. Employment and community service uses contribute to making the neighbourhood a convenient place to live without compromising residential amenity.</i>

- 2.3 The uses are listed in Designated Performance Feature (DPF) 1.1. These uses are reasonably broad.

Performance Outcome	Designated Performance Feature
<i>PO 1.1</i> <i>Predominantly residential development with complementary non-residential use that support an active, convenient and walkable neighbourhood.</i>	<i>DPF 1.1</i> <i>Development comprises one or more of the following:</i> <ul style="list-style-type: none"> <i>(a) ancillary accommodation</i> <i>(b) community facility</i> <i>(c) consulting room</i> <i>(d) dwelling</i> <i>(e) educational establishment</i> <i>(f) office</i> <i>(g) place of worship</i> <i>(h) pre-school</i> <i>(i) recreation area</i> <i>(j) residential flat building</i> <i>(k) retirement facility</i> <i>(l) shop</i> <i>(m) student accommodation</i> <i>(n) supported accommodation</i>

- 2.4 Given the zone envisages a broad range of uses within essentially residential communities, residential amenity and character are important considerations to determine the appropriateness of these non-residential uses. Sufficient guidance should be provided to relevant authorities, applicants and communities to provide reasonable expectations of outcomes. Ideally, there should be certainty, as far as is practical, and this should be readily understood early in the assessment process. The current Desired Outcome has little or no role to play in the development assessment process given its expression as a brief aspirational goal. The Performance Outcomes become the central focus for defining the appropriate use, as listed below.

Performance Outcome	Designated Performance Feature
<p><i>PO 1.2</i></p> <p><i>Non-residential development located and designed to improve community accessibility to services, primarily in the form of:</i></p> <p><i>(a) small scale commercial uses such as offices, shops and consulting rooms</i></p> <p><i>(b) community services such as educational establishments, community centres, places of worship, pre-schools, and other health and welfare services</i></p> <p><i>(c) services and facilities ancillary to the function or operation of supported accommodation or retirement facilities</i></p> <p><i>(d) open space and recreation facilities.</i></p>	<p><i>DPF 1.2</i></p> <p><i>None are applicable</i></p>

Performance Outcome	Designated Performance Feature
<p><i>PO 1.3</i></p> <p><i>Non-residential development sited and designed to complement the residential character and amenity of the neighbourhood.</i></p>	<p><i>DPF 1.3</i></p> <p><i>None are applicable</i></p>

Performance Outcome	Designated Performance Feature
<p><i>PO 1.4</i></p> <p><i>Commercial activities improve community access to services are of a scale and type to maintain residential amenity.</i></p>	<p><i>DPF 1.4</i></p> <p><i>A shop, consulting room or office (or combination thereof) satisfies any of the following:</i></p> <p><i>(d) the development site abuts an Activity Centre and all the following area satisfied:</i></p> <ul style="list-style-type: none"> <i>i. it does not exceed 200m² gross leasable floor area (individually or combined, in a single building)</i> <i>ii. the proposed development will not result in a combined gross leasable floor area (existing and proposed) of all shops, consulting rooms and offices that abut the Activity Centre in this zone exceeding the lesser of the following:</i> <ul style="list-style-type: none"> <i>A. 50% of the existing gross leasable floor area within the Activity Centre</i> <i>B. 1000m²</i>

Performance Outcome	Designated Performance Feature
<p><i>PO 1.5</i></p> <p><i>Expansion of existing community services such as educational establishments, community facilities and pre-schools in a manner which complements the scale of development envisaged by the desired outcome for the neighbourhood.</i></p>	<p><i>DPF 1.5</i></p> <p><i>Alteration of or addition to existing educational establishments, community facilities or pre-schools where all the following are satisfied:</i></p> <ul style="list-style-type: none"> <i>(a) set back at least 3m from any boundary shared with a residential land use</i> <i>(b) building height not exceeding 1 building level</i> <i>(c) the total floor area of the building not exceeding 150% of the total floor area prior to the addition/alteration</i> <i>(d) off-street vehicular parking exists or will be provided in accordance with the rate(s) specified in Transport, Access and Parking Table 1 - General Off-Street Car Parking Requirements or Table 2 - Off-Street Car Parking Requirements in Designated Areas to the nearest whole number.</i>

- 2.5 The difficulty is the Performance Outcomes advocate for uses of land couched in imprecise terms. These terms are malleable and are subject to various interpretation and/or exploitation.
- e.g. “*complementary non-residential uses*”, uses that are sited and designed to “*complement the residential character and amenity of the neighbourhood*” and to improve access to services that are of a “*scale and type to maintain residential amenity*”.
- 2.6 There is a lack of precision embodied in these terms. They are vulnerable to interpretations that have the potential to allow land uses in the General Neighbourhood Zone that are not intended or to facilitate significant incremental change.
- 2.7 The subjectivity of these terms is heightened when undefined uses or uses not listed in DPF 1.1 are proposed, such a retail fuel outlet. As a consequence, the policy framework does not provide certainty for applicants or local communities. The differing interpretation has also been amongst planners, whereas there should be an expectation that professionals within the system to be more aligned in interpretation of key policy settings.
- 2.8 Furthermore, the location and scale of non-residential uses within essentially residential neighbourhoods needs better guidance. Additional considerations should include:
- 2.8.1 A reference to residential character should be better guided with a Desired Outcome that better describes the desired character and important considerations for the assessment process of respective residential neighbourhoods.

- 2.8.2 The location of some non-residential uses should generally only be encouraged in specific circumstances such as on arterial or collector roads.
- 2.8.3 The scale of the uses should not be confined only to commercial activities. There should also be guidance on appropriate scale in relation to the built form and relative intensity of activity.

3. CONCLUSION / PROPOSAL

- 3.1 The Panel may wish to make a submission to the Expert Panel that has been appointed on the Planning System Implementation Review on the policy guidance provided for non-residential uses in the General Neighborhood Zone under the Planning and Design Code.



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26 October 2022

Mr John Stimson
Presiding Member
Expert Panel
Planning System Implementation Review

DTI.PlanningReview@sa.gov.au

Dear Mr Stimson

In the assessment development applications proposing non-residential uses within the General Neighbourhood Zone, the City of Salisbury Council Assessment Panel has identified that a combination of permissibility intended by the zone, together with policy expression, has created some uncertainty in the assessment process. This letter set outs the Panel's observations for the consideration of the Expert Panel on the Planning System Implementation Review.

The General Neighbourhood Zone has essentially replaced the former Residential Zone that applied over much of the metropolitan residential areas.

The General Neighbourhood Zone is far more permissive than the previous Residential Zone. The zone is clearly intended to accommodate non-residential uses to achieve a more convenient living environment. This principle is expressed in Desired Outcome (DO) 1 of the Zone.

Desired Outcome	
<i>DO 1</i>	<i>Low-rise, low and medium-density housing that supports a range of needs and lifestyles located within easy reach of services and facilities. Employment and community service uses contribute to making the neighbourhood a convenient place to live without compromising residential amenity.</i>

The uses are listed in Designated Performance Feature (DPF) 1.1. These uses are reasonably broad.

Performance Outcome	Designated Performance Feature
<i>PO 1.1</i>	<i>DPF 1.1</i>
<i>Predominantly residential development with complementary non-residential use that support an active, convenient and walkable neighbourhood.</i>	<i>Development comprises one or more of the following:</i> <i>(a) ancillary accommodation</i> <i>(b) community facility</i> <i>(c) consulting room</i>

	<p>(d) dwelling</p> <p>(e) educational establishment</p> <p>(f) office</p> <p>(g) place of worship</p> <p>(h) pre-school</p> <p>(i) recreation area</p> <p>(j) residential flat building</p> <p>(k) retirement facility</p> <p>(l) shop</p> <p>(m) student accommodation</p> <p>(n) supported accommodation</p>
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Given the zone envisages a broad range of uses within essentially residential communities, residential amenity and character are important considerations to determine the appropriateness of these non-residential uses. Sufficient guidance should be provided to relevant authorities, applicants and communities to provide reasonable expectations of outcomes. Ideally, there should be certainty, as far as is practical, and this should be readily understood early in the assessment process. The current DO has little or no role to play in the development assessment process given its expression as a brief aspirational goal. The PO's become the central focus for defining the appropriate use, as listed below.

Performance Outcome	Designated Performance Feature
<p>PO 1.2</p> <p><i>Non-residential development located and designed to improve community accessibility to services, primarily in the form of:</i></p> <p>(a) small scale commercial uses such as offices, shops and consulting rooms</p> <p>(b) community services such as educational establishments, community centres, places of worship, pre-schools, and other health and welfare services</p> <p>(c) services and facilities ancillary to the function or operation of supported accommodation or retirement facilities</p> <p>(d) open space and recreation facilities.</p>	<p>DPF 1.2</p> <p><i>None are applicable</i></p>

Performance Outcome	Designated Performance Feature
<p>PO 1.3</p> <p><i>Non-residential development sited and designed to complement the residential character and amenity of the neighbourhood.</i></p>	<p>DPF 1.3</p> <p><i>None are applicable</i></p>

Performance Outcome	Designated Performance Feature
<p>PO 1.4</p> <p><i>Commercial activities improve community access to services are of a scale and type to maintain residential amenity.</i></p>	<p>DPF 1.4</p> <p><i>A shop, consulting room or office (or combination thereof) satisfies any of the following:</i></p> <p>(d) <i>the development site abuts an Activity Centre and all the following area satisfied:</i></p>

	<ul style="list-style-type: none"> i. it does not exceed 200m² gross leasable floor area (individually or combined, in a single building) ii. the proposed development will not result in a combined gross leasable floor area (existing and proposed) of all shops, consulting rooms and offices that about the Activity Centre in this zone exceeding the lesser of the following: <ul style="list-style-type: none"> A. 50% of the existing gross leasable floor area within the Activity Centre B. 1000m²
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Performance Outcome	Designated Performance Feature
<p><i>PO 1.5</i> Expansion of existing community services such as educational establishments, community facilities and pre-schools in a manner which complements the scale of development envisaged by the desired outcome for the neighbourhood.</p>	<p><i>DPF 1.5</i> Alteration of or addition to existing educational establishments, community facilities or pre-schools where all the following are satisfied:</p> <ul style="list-style-type: none"> (a) set back at least 3m from any boundary shared with a residential land use (b) building height not exceeding 1 building level (c) the total floor area of the building not exceeding 150% of the total floor area prior to the addition/alteration (d) off-street vehicular parking exists or will be provided in accordance with the rate(s) specified in Transport, Access and Parking Table 1 - General Off-Street Car Parking Requirements or Table 2 - Off-Street Car Parking Requirements in Designated Areas to the nearest whole number.

The difficulty is the PO's advocate for uses of land couched in imprecise terms. These terms are malleable and are subject to various interpretation and/or exploitation.

e.g. "complementary non-residential uses", uses that are sited and designed to "complement the residential character and amenity of the neighbourhood" and to improve access to services that are of a "scale and type to maintain residential amenity".

There is a lack of precision embodied in these terms. They are vulnerable to interpretations that have the potential to allow land uses in the General Neighbourhood Zone that are not intended or to facilitate significant incremental change.

The subjectivity of these terms is heightened when undefined uses or uses not listed in DPF 1.1 are proposed, such as a retail fuel outlet. As a consequence, the policy framework does not provide certainty for applicants or local communities. The differing interpretation has also been amongst planners, whereas there should be an expectation that professionals within the system to be more aligned in interpretation of key policy settings.

Furthermore, the location and scale of non-residential uses within essentially residential neighbourhoods needs better guidance. Additional considerations should include:

1. A reference to residential character should be better guided with a DO that better describes the desired character and important considerations for the assessment process of respective residential neighbourhoods.
2. The location of some non-residential uses should generally only be encouraged in specific circumstances such as on arterial or collector roads.
3. The scale of the uses should not be confined only to commercial activities. There should be guidance on appropriate scale in relation to the built form and relative intensity of activity.

Yours faithfully

Chris Zafiropoulos
Assessment Manager
City of Salisbury Council Assessment Panel

APPLICATIONS CONSIDERED UNDER PLANNING AND DESIGN CODE

Meeting Date	Application Number	Address	Proposal Description	Decision	Representors / No. verbal	Zone
27 July 2021	21007764	19-23 Park Way, Mawson Lakes SA 5095 and 25-31 Park Way, Mawson Lakes	Additions to existing research facility including reconfiguration of carpark and fencing, relocation of storage yard, and landscaping	Approved with conditions	Received – 3 Heard – 2	Urban Neighbourhood Zone
	21004673	Unit 4, 51-53 Stanbel Road, Salisbury Plain	Change of use from warehouse to light industry (Cabinet Making) for Unit 4 only	Approved with conditions	Received – 9 Heard – 1	Strategic Employment Zone
23 November 2021	21025238	Unit 4, 6-12 Stanbel Road, Salisbury Plain	Change of use from warehouse to light industry (Manufacturing of air conditioning components) for Unit 4 only	Approved with conditions	Received – 5 Heard – 2	Strategic Employment Zone
21 December 2021	21023908	19 Penner Crescent, Para Hills	Three single storey detached dwellings in terrace arrangement, combined retaining walls and fencing exceeding 2.1 metres in height	Approved with conditions	Received – 2 Heard – 2	General Neighbourhood Zone
29 March 2022	21027237	138 Waterloo Corner Rd, Paralowie	Redevelopment of existing hotel (Addition of a beer garden, reconfiguration of car parking, two (2) advertisements, 2.4m high fencing and landscaping)	Approved with conditions	Received – 2 Heard - 2	General Neighbourhood Zone
	21034988	89 - 97 Kings Road, Salisbury Downs	Land Division - Creation of 18 Allotments, Public Roads and Reserve and construction of Retail Fuel Outlet with associated Signage and Fencing (on proposed Allotment 100)	Refused	Received – 30 Heard - 5	General Neighbourhood Zone
24 May 2022	22002996	Lot 65 Happy Home Drive, Salisbury North	Aquatic centre redevelopment comprising new indoor and outdoor swimming pools, water play areas, gymnasium, multi-purpose rooms, amenities, tennis court clubroom, plant room and alterations to existing car parking, removal of three (3) significant trees and new landscaping	Approved with conditions	Received – 4 Heard - 1	Open Space Zone General Neighbourhood Zone
	22008360	The Paddocks comprising Lot 2 (CT6079/2 & CR-6223/525), Lot 12 (CT-5471/511) and Lot 14 (CT-6098/381)	Demolition of two (2) existing sports clubrooms, construction of a single storey sports clubroom, shed, amenities, removal of 9 Regulated Trees, car parking and landscaping	Approved with conditions	Received – 5 Heard - 1	Open Space Zone
28 June 2022	22006655	24-30 Kaurna Avenue, Edinburgh	Change of use from Light Industry to General Industry (consisting of four (4) tenancies comprising machinery, equipment and steel fabrication, geomembrane fabrication, metal pressing and assembly)	Approved with conditions	Received – 4 Heard - 2	Strategic Employment Zone
23 August 2022	22008891	146-156 St Kilda Road, Waterloo Corner	Change in use to a portion of the land, for the temporary storage (2 years) of construction vehicles, materials, plant and equipment in association with civil construction works at the Bolivar Wastewater Treatment plant, and associated civil works, amenities, 4 shipping containers, tanks and landscaping	Refused	Received – 3 Heard - 1	Rural Horticulture
	22022501	94, 96, 98, 100, 102, 104, 106, 108, 110, 112 Boardwalk Drive, Paralowie	Ten (10) Two Storey Detached Dwellings	Approved with conditions	Received – 2 Heard - 1	General Neighbourhood Zone

Meeting Date	Application Number	Address	Proposal Description	Decision	Representors / No. verbal	Zone
27 September 2022	22009141	19b Anzac Street Salisbury Heights	Detached Dwelling, Retaining walls and Fencing	Approved with conditions	Received – 4 Heard - 2	General Neighbourhood Zone
	21038042	14 & 16 Shepherdson Road, Parafield Gardens	Construction of a child care centre with associated signage, carparking, landscaping and boundary acoustic fencing	Approved with conditions	Received – 8 Heard - 3	General Neighbourhood Zone

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ITEM	8.2.1
	COUNCIL ASSESSMENT PANEL
DATE	27 July 2021
HEADING	Planning & Design Code - Guide to Interpretation
AUTHOR	Aaron Curtis, Team Leader - Planning, City Development
CITY PLAN LINKS	4.2 We deliver quality outcomes that meet the needs of our community Choose an item.
SUMMARY	This report provides information to aid the Panel's interpretation of the Planning & Design Code in reference to Development Applications lodged pursuant to the <i>Planning, Development and Infrastructure Act 2016</i>
RECOMMENDATION	
	1. That the report be noted.
ATTACHMENTS	
	There are no attachments to this report.
1. PDI ACT	
1.1	The <i>Planning, Development and Infrastructure Act 2016</i> (hereafter the Act) establishes a Planning and Design Code (hereafter the Code). Pursuant to Section 102 of the <i>Act</i> , development shall be assessed against the relevant provisions of the Code.
1.2	Section 66 of the <i>Act</i> provides that the Code must set out a comprehensive set of policies, rules and classifications which may be selected and applied in the various parts of the State.
1.3	In particular, the Code shall: <ul style="list-style-type: none"> a) Incorporate a scheme that includes use of zones, subzones and overlays; b) Specify policies and rules that will govern the use and development of an area within a particular class of zone; c) Address specified or defined issues that may apply in any zone or subzone; d) Include definitions of land use and establish land use classes.
1.4	Section 66 of the <i>Act</i> further provides that: <ul style="list-style-type: none"> a) Policies and rules for development in a zone, subzone or overlay should be clear and straightforward; b) It should be clear which provisions in a zone are being modified by a subzone or overlay and how those provisions are being modified; c) The only spatial layers to be used are zones, subzones and overlays;

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- d) Any policy or rule may apply in relation to development generally or any class of development.

2. PLANNING & DESIGN CODE

Rules of Interpretation

- 2.1 Part 1 of the Code provides Rules of Interpretation. Part 1 sets out how the Code implements the requirements of Section 66 of the *Act*, instructs the user on how the Code is to be read and applied to development assessed under the *Act* and provides for other matters relevant to the interpretation and operation of the Code.

Categories of Development

- 2.2 The Code divides development into three categories of development, as *Accepted development* (Section 104(1) of the *Act*), *Deemed to Satisfy development* (Section 105a of the *Act*) and *Restricted Development* (Section 108(1)(a) of the *Act*). These categories are assigned in the Zones as Tables 1, 2 and 4 respectively.
- 2.3 All development not classified as *Accepted*, *Deemed to Satisfy* or *Restricted* will be categorised as code assessed development, pursuant to Sections 105(b) and 107 of the *Act* and shall be assessed on its merits against the Code.
- 2.4 Table 3 of the Zone applies policies to performance assessed development titled “*Applicable Policies for Performance Assessed Development Table*”. Each zone specifies the policies and rules that apply to classes of development within the Zone, including by the application of policies within subzones and overlays. The policies 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.
- 2.5 Development that does not fall within one of the specified classes of development in Table 3 will be designated in the table as “*All Other Code Assessed Development*”.

Desired Outcomes and Performance Outcomes

- 2.6 Zone, subzone, overlay and general development policies are comprised of desired outcomes and performance outcomes. Desired outcomes are policies that aid the interpretation of performance outcomes by setting a general policy agenda for a zone, subzone, overlay or general development policies module. Where a relevant authority is uncertain as to whether or how a performance outcome applies to a development, the desired outcome(s) may inform its consideration of the relevance and application of a performance outcome.
- 2.7 Performance outcomes are policies to facilitate assessment according to specified factors, including land use, site dimensions and land division, built form character and hazard risk minimisation.

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Designated performance features

- 2.8 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.
- 2.9 The extent of a departure from a DPF may be used as a reference point in considering whether a Performance Outcome is met, however, it is not necessarily determinative. The relevant authority should also consider and apply the performance outcome on its own terms and exercise a planning judgement.
- 2.10 If a development complies with the relevant DPF, it will likely satisfy the criteria sought by the Performance Outcome. In another way, it is likely to be difficult to justify refusal of a development which meets the relevant DPF on the basis that it doesn't satisfy the corresponding performance outcome. Conversely, where a development does not comply with a DPF, it will not necessarily follow that it fails to meet the Performance Outcome. Rather, the relevant authority will still need to consider and assess whether the Performance Outcome is met, notwithstanding the failure to meet the DPF.

Technical and Numeric Variations

- 2.11 The Code may set or determine various technical and/or numeric requirements in relation to specified classes of development. Section 66(4) of the *Act* provides that the Code may include provisions that provide for the adaptation of the rules that apply in relation to a specified zone or subzone or as an overlay to provide for necessary and appropriate local variations in specified circumstances.
- 2.12 One type of adaption of the rules is a variation of a technical or numeric requirement that would otherwise apply under a zone, subzone or overlay that applies to a particular location. An example is a front setback or a minimum allotment size for a specified area.

Hierarchy of Policies/Modification of Provisions

- 2.13 Part 1 also sets out a hierarchy of policies as per the image below.



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2.14 If there is an inconsistency between provisions in the relevant policies for a particular development, for purposes of Section 66(3)(b) of the *Act*, the following rules will apply to the extent of any inconsistency:

- (a) The provisions of an overlay will apply over all other policies applying in the particular case;
- (b) A subzone policy will apply over a zone policy or a general development policy; and
- (c) A zone policy will prevail over a general development policy.

Notification of applications for planning consent

2.15 The Zones contain a table titled “*Procedural Matters (PM) – Notification*”. Pursuant to Section 107(6) of the *Act*, the Table excludes classes of performance assessed development from notification. Except where performance assessed development is excluded from notification in the Table, public notification will apply.

Other rules of interpretation

2.16 A term used in the Code may have a meaning specifically assigned to that term by the *Act*, the *Acts Interpretation Act 1915* or within Parts 7 and 8 of the Code. Part 7 contains land use definitions that are used in the Code in relation to the use of land. Part 8 contains administrative terms which assist in the interpretation of policy used in the Code.

3. CONCLUSION

3.1 The report provides information to aid the Panel’s interpretation of the Code in reference to Development Applications lodged pursuant to the *Planning, Development and Infrastructure Act 2016*.

3.2 Further resources to assist the Panel in the assessment process can be found at:

https://plan.sa.gov.au/resources/planning/planning_and_design_code

https://plan.sa.gov.au/development_applications/getting_approval/how_applications_are_assessed/assessment_pathways

<https://code.plan.sa.gov.au/>

<https://sappa.plan.sa.gov.au/>

CO-ORDINATION

Officer:	GMCiD	A/MDS
Date:	13.07.21	12.07.21

**INFORMATION
ONLY
ITEM**

8.2.4

COUNCIL ASSESSMENT PANEL**DATE**

25 October 2022

HEADING

Status of Current Appeal Matters and Deferred Items

AUTHOR

Chris Zafiropoulos, Assessment Manager, City Development

SUMMARY

The report provides an update on current appeal matters and deferred items.

RECOMMENDATIONThat the Panel Council:

1. Receives the information.

ATTACHMENTS

There are no attachments to this report.

1. REPORT

Applicant Appeal to Environment, Resources and Development Court, Tony Maiello (N27 Pty Ltd) v City of Salisbury (ERD-22-000014) - Development Application 361/1618/2020/2A

The Applicant appealed against the decision of the Panel to refuse the development application. The applicant presented two alternative proposals in response to the decision of the Panel but the amendments have not addressed the concerns of the Panel. Kelledy Jones Lawyers and URPS have been engaged to act on behalf of the Panel before the ERD Court. The matter had been listed for a Directions Hearing before a Commissioner on 31 August 2022, but the applicant has requested a three month adjournment of the current proceedings in order to lodge a new application and for a decision to be made on this application. The Directions Hearing has been relisted for Wednesday, 7 December 2022.

The appellant has considered the Council's particulars and advised that they would like to lodge a new application under the Planning and Design Code proposing two dwellings which is (likely) to be assessed by the Assessment Manager. The appellant has advised that this *new proposal will address the Council's concerns and reduce the 'over development' of the site*. The new development application has not yet been lodged.