



AGENDA

FOR COUNCIL ASSESSMENT PANEL MEETING TO BE HELD ON

27 AUGUST 2024 AT 6.30PM

**IN LITTLE PARA CONFERENCE ROOMS, SALISBURY COMMUNITY HUB, 34
CHURCH STREET, SALISBURY**

MEMBERS

Mr T Mosel (Presiding Member)
Mr R Bateup
Ms C Gill
Mr B Brug
Mr J Botten

REQUIRED STAFF

Assessment Manager, Mr C Zafiropoulos
Team Leader Planning, Mr C Carrey
Development Officer Planning, Mr B Ferguson

APOLOGIES

LEAVE OF ABSENCE

ADOPTED MINUTES FROM PREVIOUS MEETING

Presentation of the Minutes of the Council Assessment Panel Meeting held on 23 April 2024.

DECLARATIONS OF CONFLICTS OF INTEREST

REPORTS

Nil

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CLOSE

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**MINUTES OF COUNCIL ASSESSMENT PANEL MEETING HELD IN LITTLE PARA
CONFERENCE ROOMS, SALISBURY COMMUNITY HUB, 34 CHURCH STREET,
SALISBURY ON**

23 APRIL 2024

MEMBERS PRESENT

Mr T Mosel (Presiding Member)
Mr R Bateup
Ms C Gill
Mr B Brug
Mr J Botten

STAFF

Assessment Manager, Mr C Zafiropoulos
Team Leader Planning, Mr C Carrey
Planning Consultant, Mr Barnes
Team Leader Business Services, Ms H Crossley

The meeting commenced at 6.33pm.

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

APOLOGIES

Nil.

LEAVE OF ABSENCE

Mr J Botten advised that he will be an apology for meeting to be held on 28 May 2024.

ADOPTED MINUTES FROM PREVIOUS MEETING

The Minutes of the Council Assessment Panel Meeting held on 27 February 2024, be taken as read and confirmed.

DECLARATIONS OF CONFLICTS OF INTEREST

Mr B Brug declared a conflict of interest, being an Elected Member on Council in relation to Item 8.1.1 Tree Climb Facility at Harry Bowey Reserve and advised that he would leave the meeting when the Item is being considered by the Panel. Mr B Brug will not debate or vote on the item.

OTHER BUSINESS

8.2.1 Assessment Manager Quarterly Report - January to March 2024

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

8.2.2 Status of Current Appeal Matters and Deferred Items

Ms C Gill moved, and the Council Assessment Panel resolved that the information was received

8.2.3 Policy Issues Arising from Consideration of Development Applications

Nil

Mr B Brug left the meeting at 6.37pm and advised that he would not return to the meeting.

REPORTS

Development Applications

8.1.1 23003207

Tree climb facility with associated office, shop, signage and car parks (Located within Harry Bowey Reserve) at Harry Bowey Reserve – Allotments 42 and 43 Goddard Drive, Salisbury Park SA 5109 for Tree Climb.

REPRESENTORS

Ms Regan Jeffrey, spoke to her representation.

Mr Geoffrey Cooke, represented himself and Mr Ken Carey, Mr Jennifer Carey, Ms Susan Cooke and Ms Mel Cooke and advised that they agree with comments made by Ms Regan Jeffrey.

Mr Ian Hulmes spoke to his and Christine Taylor and Craig Taylor's representations.

Mr Garry Newsam, spoke to his representation.

Mr Robert Barnes, advised he agreed with previous representors that spoke.

Ms Konstantina Martinis, advised she agreed with previous representors that spoke and in particular representors Ms Regan Jeffrey and Mr Ian Hulmes.

Mr Timothy White, spoke to his representation.

APPLICANT

Mr Rick Hutchins, Ekistics, spoke on behalf of the applicant.

Mr David Kwong, Empirical Traffic, spoke on behalf of the applicant.

Mr Carmine Gallarello, 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; and
- B. Pursuant to Section 102 of the *Planning, Development and Infrastructure Act 2016*, Planning Consent is **GRANTED** to Development Application 23003207 for the construction of a recreational facility comprising a tree climb facility with associated office, shop and signage in accordance with the plans and details submitted with the application and subject to the following 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. Final Civil and Siteworks Plan, which shall address:
 - a. Finished floor levels for the eco-hut and hardstand surfaces; and
 - b. Footing details; and
 - c. Cut/fill details; and
 - d. Retaining walls, kerbing or ramps, their design and grades; and
 - e. Pavement design details and gradients; and

- f. Stormwater Management arrangements; and
- g. Location of trenching for underground services.

Note: The civil and siteworks plan should be developed in conjunction with the project arborist, having regard to Reserved Matter 2 below.

2. Detailed Arborist Assessment report prepared by qualified and experienced arborist which shall address all of the following:
 - a. Isolated pier construction is specified – consideration should be given to the use of permeable or open jointed paving to be installed without lowering the grade to maintain soil infiltration and oxygenation; and
 - b. Construction methodology for post supports;
 - c. Tree sensitive construction is recommended (i.e. permeable paving installed without lowering the grade); and
 - d. Appropriate construction methodologies and arborist supervision specified to minimize impacts within the SRZ of a tree; and
 - e. Site specific Tree Protection Plan which should include:
 - i. Site specific Tree Protection Zone (TPZ) fencing or other tree protection measures during the works on the site (considering that multiple trees require protection).
 - ii. Installation methodology for the proposed footings.
 - iii. Paving specification and installation methodology
 - iv. Other tree protection considerations as per AS4970.
 - f. The civil drawings, prepared in response to Reserved Matter 1, should be assessed by the arborist.

Planning Conditions – Council

1. The proposal shall be developed in accordance with the details and Council stamped approved plans lodged with the application, except where varied by the conditions herein.
2. The approved use operating times shall be limited Monday to Sunday from 10.00am to 6.00pm.
3. Except where otherwise approved, the external finishes of the building shall:
 - (i) be of new non-reflective materials; and
 - (ii) be finished in natural tones; and
 - (iii) be maintained in good condition at all times.
4. In relation to access, maneuvering, surface treatments and car parking:
 - (i) All internal driveways and maneuvering areas, shall be constructed with brick paving, concrete or bitumen to a standard appropriate for the intended traffic volumes and vehicle types; and
 - (ii) A minimum of 85 car parking bays and 6 accessible car parking bays shall be constructed with brick paving, concrete or bitumen to a standard appropriate for the intended traffic volumes and vehicle types and shall be clearly line marked; and
 - (iii) 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. The development herein approved must not commence operation until all of the proposed road, driveway and car-parking modification works as depicted on the stamped approved plans (prepared by the City of Salisbury, Pr No. 31127, Sheets C00-07 and A01-A04, Revision A inclusive) are completed to the reasonable satisfaction of the Council. For the avoidance of doubt, this includes all works within, and external to, the Harry Bowey Reserve including works on Riversdale Drive, Wildwood Drive and Malinya Drive.
6. All vehicle driveways, vehicle manoeuvring areas, car-parking areas and pedestrian footpaths which are:
 - (i) situated within the Harry Bowey Reserve; and
 - (ii) utilised by, or relied on in conjunction with, the development herein approved (whether depicted on the stamped approved plans or not) must be maintained at all times to the reasonable satisfaction of the Council.
7. 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’.
8. All loading and unloading of vehicles and manoeuvring of vehicles in connection with the approved land use shall be carried out entirely within the site at all times.
9. Except where otherwise approved, no materials, goods or containers shall be stored in the designated car parking area or driveways at any time.
10. All waste and other rubbish shall be contained and stored pending removal in covered containers which shall be contained within the building or otherwise screened from public view.
11. Stormwater systems shall be designed and constructed to cater for minor storm flows (Industrial / Commercial ARI = 10 years). 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 condition, and no runoff into neighbouring property for the major storm ARI = 100 years.
12. All roof and ground level plant and equipment shall incorporate screening devices.

13. In relation to advertisements:

- (i) The advertisement and advertising structure shall be maintained in good repair at all times to the reasonable satisfaction of Council; and
- (ii) Except where otherwise approved, the approved advertisements shall not:
 - Move; or
 - Flash; or
 - Reflect light so as to be an undue distraction to motorists; or
 - Be externally illuminated.

Advice Notes

Rights of Appeal

The applicant has a right of appeal against the conditions which have been imposed on this Planning Consent. Such an appeal must be lodged at the Environment, Resources and Development Court within two months from the day of receiving this notice or such longer time as the Court may allow. The applicant is asked to contact the Court if wishing to appeal. The Court is located in the Sir Samuel Way Building, Victoria Square, Adelaide, (telephone number 8204 0289).

Building Rules Consent and Approval Still Required

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.

Commencement

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.

Advice regarding Council land

This Development Approval does not constitute land owners approval. The following applies to any works on Council land:

1. 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*.
2. 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 roof expansion.
3. 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;
4. 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 wilful damage.

Siting of Building Work

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.

Plans Available Onsite

The Council approved plans should be available on site at all times while performing the building work.

Fences Act

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>

Building Work Affecting Other Land

Pursuant to Section 139 of the *Planning, Development and Infrastructure Act 2016*, a person undertaking activity that affects stability of land or premises must serve notice in the prescribed form to the owner of the affected site. For the purposes of Section 139, work of the following nature is prescribed as building work which is to be treated for the purposes of that section as building work that affects the stability of other land or premises, namely:

- An excavation which intersects a notational plane extending downwards at a slope of 1 vertical to 21 horizontal from a point 600mm below natural ground level at a boundary with an adjoining site;
- An excavation which intersects any notional plane extending downwards at a slope of 1 vertical to 2 horizontal from a point at natural ground level at any boundary between 2 sites (not being a boundary with the site of the excavation), where the boundary is within a distance equal to twice the depth of the excavation;
- Any fill which is within 600mm of an adjoining site, other than where the fill is not greater than 200mm in depth (or height) and is for landscaping, gardening or other similar purposes.

To find out more, please visit:

<https://lawhandbook.sa.gov.au/ch28s02s06s03.php>

Construction Noise

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.*

EPA and Local Nuisance Matters

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:

- providing a stabilised entry/exit point to the site for all construction and trade vehicles, including contained wash down area for vehicles and equipment
- appropriately located stockpiles and storage materials
- a suitable and designated area for brick cutting and concrete works
- a contained area for paint and plastering waste and wash waters
- appropriate location of noisy equipment so as to avoid unreasonable impacts to neighbours
- 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>.

Amendments

Except where otherwise varied by this Consent, the conditions imposed are in addition to conditions that apply to the site from previous approvals that remain active.

OTHER BUSINESS

8.2.4 Future Meetings & Agenda Items

Next meeting scheduled for Tuesday 28 May 2024.

ADOPTION OF MINUTES

Ms C Gill 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 8.21pm.

PRESIDING MEMBER: Mr T Mosel

DATE: 23 April 2024
(refer to email approving minutes registered in the City of Salisbury's Record Management System - Document Number 8167897)

**INFORMATION
ONLY
ITEM**

8.2.1

COUNCIL ASSESSMENT PANEL**DATE**

27 August 2024

HEADING

Assessment Manager Quarterly Report - April to June 2024

AUTHOR

Chris Zafiropoulos, Assessment Manager, City Development

SUMMARY

This report provides the Assessment Manager Quarterly Report for the period between April to June 2024.

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 April to June 2024.

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.

	Number
Planning Applications Lodged	437
Planning Applications determined	311
Notified Applications	3
Determined planning consents by relevant authority (excluding private certification)	
➤ CAP	1
➤ Assessment Manager (AM)	302
➤ AM as delegate for Panel	5

2.4 The number of development applications that were notified during this period was three (3). This is a relatively low number for this period. Five (5) development applications were determined by the Assessment Manager under delegated authority, and one (1) development applications was 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 four (4).

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:

Expansion of existing Service Trade Premise including amendments to car park layout, ancillary workshop and landscaping at 704-712 and 714-720 Pt Wakefield Road, Parafield Gardens

Representations – None

Decision – Approve with conditions

Retention of existing childcare, alterations to car park and construction of eight (8) retail tenancies (shop) with associated advertising signage, car parking, access from Brecon Drive, landscaping and removal of one (1) regulated tree at 2-6 Roopena Street & 6 Brecon Dr Ingle Farm

Representations – Four (1 support with concerns / three oppose)

Decision – Approve with conditions

Two (2) Two Storey Semi-Detached Dwellings with Associated Retaining Wall and Fence Combined Exceeding 2.1m high at 20A & 20B Trowbridge Circuit, Gulfview Heights

Representations – One (Oppose)

Decision – Approve with conditions

Forty One (41) Transportable Dwellings in association with existing Caravan & Tourist Park at 925-963 Port Wakefield Rd Bolivar

Representations – None

Decision – Approve with conditions

Amendment to Development Approval 23012823 for Change of Use to Place of Worship and Acoustic Fencing, comprising:

- Demolition of existing building (formerly Plaster Fun House) and Partial Demolition (formerly indoor cricket)
- Construction of a Two Storey Addition to the south-eastern side of the land and Alterations to Existing Building
- Construction of two (2) verandahs
- Increase in overall Floor Area of the Place of Worship
- Alterations to Car Parking, Access and Landscaping

at 10-14 Clayson Rd Salisbury East

Representations – One (Oppose)

Decision – Approve with conditions

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 April to June 2024 be received and noted.

**INFORMATION
ONLY
ITEM**

8.2.2

COUNCIL ASSESSMENT PANEL

DATE	27 August 2024
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.

RECOMMENDATION

That the Panel:

1. Receives the information.

ATTACHMENTS

There are no attachments to this report.

1. REPORT

Applicant Appeal to Environment, Resources and Development Court, Development Holdings Pty Ltd v City of Salisbury Assessment Panel (ERD-23-000053) - Development Application 23002678

The Supreme Court has dismissed the Panel’s appeal against the ERDC judgement to approve the childcare centre.

Background

The Applicant appealed against the decision of the Panel on 28 May 2023 to refuse the development application for the *Childcare Centre ('pre-school') with associated car parking, landscaping, signage, retaining walls and fencing* at 61 Stanford Road, Salisbury Heights.

The ERD Court hearing was held 20-22 September 2023. The Court issued its judgment on 1 February 2024 overturning the Panel’s decision and approving the development application.

The Panel considered further legal advice in relation to the decision and the prospects of an appeal against the decision of the ERD Court to the Supreme Court. The confidential advice was that there are grounds of appeal which are reasonably arguable relating to the way in which the Commissioner construed the Plan. As a result of this advice the Panel has resolved to lodge an appeal to the Supreme Court. The appeal against the ERDC judgment to approve the childcare centre has been dismissed by the Supreme Court in a judgement released on 12 July 2024. A separate report on this matter is presented to the Panel for its consideration.

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

This appeal has been adjourned at the request of the appellant in order for the applicant to appeal another development application that has been refused by Council.

Background

The Applicant appealed against the decision of the Panel to refuse the development application for three two storey group dwellings at 173-175 Park Terrace, Salisbury. 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 have been engaged to act on behalf of the Panel before the ERD Court.

The applicant requested an adjournment of the current proceedings in order to lodge a new application and for a decision to be made on this application. The new application has been made under the Planning and Design Code and is proposing two dwellings. This application has been refused planning consent by the Assessment Manager and an appeal has also been lodged against this decision.

The applicant has requested a further adjournment to await the outcome of a development application lodged over another site within the Council area before determining whether to proceed to trial in this appeal.

Applicant Appeal to Environment, Resources and Development Court, Tony Maiello (N43 Pty Ltd) v City of Salisbury (ERD-23-000022) - Development Application 22031953

This appeal has been adjourned at the request of the appellant in order for the applicant to appeal another development application that has been refused by Council.

Background

The Applicant has appealed against the decision of the Panel to affirm the decision of the Assessment Manager to refuse the development application for the *Construction of Two (2) Single Storey Group Dwellings in Association with Four (4) Existing Single Storey Group Dwellings, Shared Driveway, Visitor Car Parking and Landscaping* at Unit 1-2, 30 Shepherdson Road, Parafield Gardens, SA 5107. The applicant requested that this matter be adjourned to enable the submission of a revised proposal.

A revised proposal (Development Application 23013692) has been submitted for two ancillary accommodation buildings. Having sought a legal opinion, the applicant was advised that the nature of development has been determined to be *‘Two (2) single storey group dwellings in association with four (4) existing single storey group dwellings’*. The applicant has been requested to advise if they wish for Council to verify the application as two additional group dwellings. At this time, no response has been provided to Council on this application.

Applicant Appeal to Environment, Resources and Development Court, N43 Pty Ltd v City of Salisbury (ERD-24-000009) - Development Application 23023699

At the request of the Applicant, the matter has been adjourned until the week commencing 21 October 2024. The Applicant is waiting the outcome of the ‘Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment’, before progressing any further argument.

The applicant submitted a development application with another planning accredited authority for *Two Ancillary Buildings* at Unit 1-2, 30 Shepherdson Road, Parafield Gardens, SA 5107. The application was subsequently lodged with Council for development approval – having obtained both planning consent and building consent from accredited professionals.

Council staff received legal advice and wrote to the applicant to advise that Council considers it cannot grant a development approval to the proposed development as it considers the planning consent to have been granted contrary to the *Planning, Development and Infrastructure Act 2016* per *Mundy v City of West Torrens* [2016] SAERDC 30. In particular, the proposal comprises two (2) new group dwellings on each allotment. The planning consent assessment pathway is performance assessed, not deemed-to-satisfy and the planning consent is not considered to have legal effect as it was not assessed or determined by the correct relevant authority.

The development application was refused (and the applicant invited to submit a new planning application for this development, to the correct relevant authority).

The applicant appealed this decision.

Note: At this time, the N27 and N43 matters listed above will follow the same ERD Court schedule, and therefore, all matters are presently adjourned until the week commencing 21 October 2024.

ITEM	8.2.3 COUNCIL ASSESSMENT PANEL
DATE	27 August 2024
HEADING	Annual Report of the Council Assessment Panel for 2023/24
AUTHOR	Chris Zafiropoulos, Assessment Manager, City Development
CITY PLAN LINKS	3.4 Our urban growth is well planned and our centres are active 4.2 We deliver quality outcomes that meet the needs of our community
SUMMARY	The Council Assessment Panel Operating Procedures require the preparation of an Annual Report to Council via the Policy and Planning Committee. A draft report is provided for the Panel's consideration and endorsement.

RECOMMENDATION

1. That the draft Council Assessment Panel Annual Report for 2023/24 be adopted.

ATTACHMENTS

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

1. Salisbury Council Assessment Panel Draft Annual Report

1. BACKGROUND

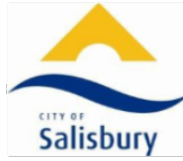
- 1.1 The General Operating Procedures require the Panel to provide an Annual Report to Council via the appropriate standing committee.
- 1.2 The Panel may provide advice to Council on trends, issues and other matters relating to planning and development that have become apparent or arisen through the assessment of applications under the *Planning, Development and Infrastructure Act 2016*.

2. REPORT

- 2.1 The draft report is provided in Attachment 1 for the Panel's consideration and adoption. The draft report provides for commentary from the Presiding Member, which has been included in the draft report.

3. CONCLUSION / PROPOSAL

- 3.1 That the Panel adopts the Annual Report for 2023/24.



2023/24
Annual Report
of the
Salisbury Council Assessment Panel

August 2024

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DRAFT

BACKGROUND

- 1.1 Council is required to establish a Council Assessment Panel (CAP) to assess and determine development applications assigned to the Panel under the *Planning, Development and Infrastructure Act 2016* (the Act).
- 1.2 The Panel has established in its General Operating Procedures a process to provide Council an annual report via the appropriate Standing Committee. This report provides an outline of the performance of the Panel and advice to Council on trends and issues.
- 1.3 The Panel endorsed this report at its meeting held ...

REPORT

Overview of the Panel

- 1.4 In accordance with the Act, Council has appointed five members to the Panel comprising four independent members and one elected member. A deputy elected member has also been appointed for this term.

Mr Terry Mosel	Presiding Member
Mr R Bateup	Independent Member
Ms C Gill	Independent Member
Mr J Botten	Independent Member
Mr B Brug	Elected Member
Ms Shiralee Reardon	Deputy Elected Member
- 1.5 The Act provides that an Assessment Panel will be a relevant authority (planning and building) in relation to a proposed development that is to be undertaken within the area of a council, unless another authority is prescribed by the Act or regulations (section 93 of the Act). The Assessment Panel is designated the relevant authority for Performance Assessed development under section 107 of the Act where notice of the application must be given under section 107(3) of the Act.
- 1.6 The Panel takes considerable effort in providing an environment for hearing representors in a way to encourage participation, recognising that for some members of the community presenting to a formal committee in front of a gallery can be an intimidating experience.
- 1.7 The Panel has established General Operating Procedures in accordance with the requirement under the Act. A copy of the General Operating procedures is published on Council's website.

Statutory Functions of the Panel

- 1.8 The Act has established specific statutory functions for the Council Assessment Panel, including that the Panel is assigned as a relevant authority in its own right under the Act.
- 1.9 The Panel is required to consider the following additional administration matters under the Act:
 - Delegations.
 - Policy for the Assessment Panel review of Decisions of the Assessment Manager.
 - Standing referral for Building Rules Assessment.

- Procedure for Appeals.

Delegations

- 1.10 In the exercise of its duties, the Panel has provided delegations to Council staff to undertake specific duties and exercise powers on its behalf in relation to planning applications.
- 1.11 Delegations are necessary for an effective and efficient development assessment system to achieve outcomes prescribed under the Act. Tasks delegated to Council staff facilitate the assessment process. The Panel reviews its delegations annually. The current delegations provide for the Assessment Manager to determine development applications:
 - Where no valid representations are received; or
 - All valid representations are withdrawn; or
 - No valid representor wishes to be heard.
- 1.12 The Assessment Manager provides the Panel a quarterly report for all the development applications considered under delegated authority. The Assessment Manager determined twenty seven (27) development applications under delegated authority in this period.

Policy for the Assessment Panel review of Decisions of the Assessment Manager

- 1.13 The Act provides that where the application is made to an Assessment Manager, a person who has applied for the development authorisation may apply to the Assessment Panel for a review of a prescribed matter. A prescribed matter essentially includes any aspect of the development application. The Local Government Association has provided templates for this process and the Panel has adopted a procedure to facilitate this process. The procedure is published as part of the Panel's General Operating procedures.
- 1.14 A person that has the benefit of this review may also still apply to the Environment, Resources and Development Court (ERD Court) for a full hearing of the matter. The person may also appeal against the review decision of the Panel.
- 1.15 There was one application for the Panel for a review of a decision by the Assessment Manager for this period. The Applicant sought a review of the decision of the Assessment Manager to Refuse the development application for *Land Division (1 into 2) Conventional. Retain existing dwelling. Carport at 24 O'Grady Drive, Para Hills.* On review of the application decision, the Panel resolved to affirm the decision of the Assessment Manager.

Standing referral for Building Rules Assessment.

- 1.16 The Act assigns the Panel as the relevant authority for the Building Rules Assessment where the applicant does not nominate a building certifier for the building assessment. The Act provides that Panels may refer a proposed development which involves the assessment of the Building Rules to the council for the area in which the proposed development is to be undertaken. The Panel has referred the building rules assessment to Council, which was considered by Council at its meeting December 2020 and Council delegated these functions to the Chief Executive Officer.

Procedure for Appeals

- 1.17 The Panel has been assigned a relevant authority in its own right under the Act. The implication of this change is that the Panel is the respondent to appeals against their decisions, rather than the Council. There were no appeals lodged against the decision of the Panel during this period.
- 1.18 An appeal matter from the previous period was determined by the courts during this period. The appeal matters are summarised below.

Applicant Appeal to Environment, Resources and Development Court, Development Holdings Pty Ltd v City of Salisbury Assessment Panel (ERD-23-000053) - Development Application 23002678

The Applicant appealed against the decision of the Panel on 28 May 2023 to refuse the development application for a *Childcare Centre ('pre-school') with associated car parking, landscaping, signage, retaining walls and fencing* at 61 Stanford Road, Salisbury Heights.

The ERD Court hearing was held 20-22 September 2023. The Court issued its judgment on 1 February 2024 overturning the Panel's decision and approving the development application.

The Panel considered further legal advice in relation to the decision and the prospects of an appeal against the decision of the ERD Court to the Supreme Court. The confidential advice was that there are grounds of appeal which are reasonably arguable, relating to the way in which the Commissioner construed the Plan. As a result of this advice, the Panel resolved to lodge an appeal to the Supreme Court. The appeal against the ERDC judgment to approve the childcare centre was dismissed by the Supreme Court in a judgement released on 12 July 2024. A separate report on the implications of this decision has been prepared for the consideration of Council.

- 1.19 There are three appeal matters from the previous years that are still pending. The matters have been deferred at the request of the appellant, who is the same appellant for all three matters, to enable them to consider alternative proposals.

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 to *retain the existing two storey residential flat building (comprising six (6) dwellings), demolition of the existing utilities building, construction of three (3) two-storey group dwellings and pergola, vehicular access from the rear laneway (public road), alterations to on-site carparking, retaining walls, fencing, landscaping and provision of communal areas* at 173-175 Park Terrace, Brahma Lodge. The applicant presented two alternative proposals in response to the decision of the Panel but the amendments did not address the concerns of the Panel. The applicant has requested and received a number of adjournments from the Court to await the outcome of a development application lodged over another site within the Council area before determining whether to proceed to trial in this appeal.

Applicant Appeal to Environment, Resources and Development Court, Tony Maiello (N43 Pty Ltd) v City of Salisbury (ERD-22-000022) - Development Application 22031953

The Applicant has appealed against the decision of the Panel to affirm the decision of the Assessment Manager to refuse the development application for the *Construction of Two (2) Single Storey Group Dwellings in Association with Four (4) Existing Single Storey Group Dwellings, Shared Driveway, Visitor Car Parking and Landscaping* at Unit 1-2, 30 Shepherdson Road, Parafield Gardens. This appeal has been adjourned at the request of the appellant to enable the submission of a revised proposal.

A revised proposal (Development Application 23013692) has been submitted for two ancillary accommodation buildings. Having sought a legal opinion, the applicant was advised that the nature of development has been determined to be *'Two (2) single storey group dwellings in association with four (4) existing single storey group dwellings'*. The applicant has been requested to advise if they wish for Council to verify the application as two additional group dwellings. At this time, no response has been provided to Council on this application.

Applicant Appeal to Environment, Resources and Development Court, N43 Pty Ltd v City of Salisbury (ERD-24-000009) - Development Application 23023699

The applicant submitted a development application with another planning accredited authority for Two Ancillary Buildings at Unit 1-2, 30 Shepherdson Road, Parafield Gardens, SA 5107. The application was subsequently lodged with Council for development approval – having obtained both planning consent and building consent from accredited professionals.

Council staff received legal advice and wrote to the applicant to advise that Council considers it cannot grant a development approval to the proposed development as it considers the planning consent to have been granted contrary to the Planning, Development and Infrastructure Act 2016 per *Mundy v City of West Torrens [2016] SAERDC 30*. In particular, the proposal comprises two (2) new group dwellings on each allotment. The planning consent assessment pathway is performance assessed, not deemed-to-satisfy and the planning consent is not considered to have legal effect as it was not assessed or determined by the correct relevant authority.

The development application was refused (and the applicant invited to submit a new planning application for this development, to the correct relevant authority).

The applicant appealed this decision.

At this time, the N27 and N43 matters listed above (three separate matters) will follow the same ERD Court schedule, and therefore, all matters are presently adjourned. The Applicant has advised they are awaiting the outcome of the *'Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment'* which is expected to be approved soon, before progressing any further argument for this appeal.

Panel Performance

- 1.20 The Panel held nine (9) meetings over the period and considered ten (10) development applications. The option of attending meetings by electronic means was made available to all attendees where requested.
- 1.21 The Panel approved nine (9) development applications and affirmed the decision to refuse one (1) development application by the Assessment Manager during this period. An overview of the development applications considered by the Panel is provided in Attachment 1.
- 1.22 A summary of key statistics is provided in the table below.

	2022/23	2023/24
Overview		
Meetings	10	9
Applications	17	10
Applications with representors	9	9
Business Items		
Delegations, Quarterly Reports from Assessment Manager, Operating Procedures, Appeal Matters	11	13
Decisions		
Approve	13	9
Refuse	3	1
Defer	1	0
Deemed Consent	0	0
ERD Court Appeals		
Applicant	2	0
ERD Court Decisions		
Compromise	0	0
Appeal withdrawn	1	0
Appeal upheld	0	0
Appeal dismissed	0	0
Still pending	3	2

- 1.23 While the number of applications considered by the Panel is low, they often represent the more complicated and contentious proposals, where representors have objected to a proposal or an element of a proposal. A total of nine (9) applications considered by the Panel included verbal submissions from representors.
- 1.24 The Panel considered a relatively broad range of development applications including residential infill development, major Council developments, commercial and industrial developments with residential interface issues.
- 1.25 The applications that are not considered by the Panel are assigned by the Regulations to either the Assessment Manager, State Commission Assessment Panel or in the case of a Deemed to Satisfy Development, an applicant may choose to use an Accredited Professional.

Key Policy and Operational Issues

- 1.26 The Panel made a submission to the Expert Panel on Planning reform in 2022 raising concerns with the Planning & Design Code policy for non-residential uses in the General Neighborhood Zone. The Panel highlighted that in the assessment of two development applications proposing non-residential uses within the General Neighbourhood Zone, a combination of permissibility intended by the zone, together with policy expression, created some uncertainty in the assessment process. The Panel's submission recommended consideration be given to better guidance on residential amenity and character to determine the appropriateness of these non-residential uses. The Expert Panel has not explicitly addressed this matter in their recommendations that were provided to the government.
- 1.27 Furthermore, the recent Supreme Court judgement (Development Holdings v City of Salisbury Assessment Panel) that dismissed the Panel's appeal against the ERDC judgement to approve the childcare centre has reinforced the policy setting that supports increased permissibility of non-residential uses within the residential types zones.

- 1.28 The second matter raised with the Expert Panel recommended consideration be given to clarifying the role of Elected Members on the Panel, when a Council makes a representation on a development application before the Panel. This is an important governance question that has arisen for both the Elected Member on Panel whose participation has been challenged by applicants, as well as the community in clarifying the role of the Panel, as distinct from Council, under this legislative scheme. It is noted that the Expert Panel on Planning reform has made the following comments and recommendations that are relevant to this matter and The Panel will await further information as the government implements the various recommendations in time.

...the [Expert] Panel has also identified a need for Elected Members to receive further education on their role in the planning system, and specifically how they are able to interact with it and/or function as community advocates, irrespective of whether they are the nominated Elected Member CAP representative. This view is based on the Panel hearing Elected Members expressing conflicting advice on how they can and cannot participate in the system.

Presiding Member General Comments

- 1.29 The Panel has previously reported that its experience with more permissive policy change under the Planning and Design Code has not been appreciated by communities when making submissions to the Panel. The concerns have been with the potential impact on residential areas arising from the directions in the Planning and Design Code to introduce small scale commercial uses and larger community uses without any further locational criteria being available to guide the assessment process.
- 1.30 The Panel made a submission to the Expert Panel on Planning Reform in 2022 on this matter. As discussed earlier in this report, the Expert Panel has not explicitly addressed this matter in their recommendations that were provided to the government. Furthermore, the recent Supreme Court judgement (Development Holdings v City of Salisbury Assessment Panel) that dismissed the Panel's appeal against the ERDC judgement to approve the childcare centre, has reinforced the policy setting that supports increased permissibility of non-residential uses within the residential types zones. While the Panel may continue to exercise its professional judgement and potentially reject proposals, this may not address the current community expectations for non-residential development proposals in residential areas. The Council may wish to give further consideration to the implication of this policy direction.
- 1.31 As I have previously mentioned, one of the many functions of the Presiding Member is to ensure that those in attendance understand the independence of the CAP, that those who are entitled to make representations are able to do so in a comfortable and non-threatening environment and in a manner able to be clearly heard and understood by the CAP, that the discussion fully utilises the professional experience and expertise of all Panel Members, and the decisions made with common sense appropriately balancing the public interest as expressed in the planning policy with the interests of the applicant. The Panel has continued to deliberate the matters before it in this way.
- 1.32 The Panel continues to place a heavy reliance on the professionalism of the planning staff in performing all the specific statutory functions under the Act. This includes having the necessary operating procedures, policies and delegations. The Panel has

maintained delegations to Council staff to determine development applications where representors have chosen not to make a verbal submission to the Panel. This has proven to be effective in providing exceptional customer service and efficient timeframes within allocated resources. The Panel receives a report of all the applications determined under delegated authority by the Assessment Manager on a quarterly reports as an oversight to these delegated decisions. The Panel will continue to review operations and monitor applications determined under delegated authority.

CONCLUSION

- 1.33 The Council Assessment Panel Annual Report for 2023/24 summarises the activities and outcomes of the Panel over the preceding financial year. The Panel is operating effectively, and reaching decisions on development applications following consideration of relevant matters under the Planning and Design Code in accordance with its operating procedures. Accordingly, this Report is submitted to Council for noting.

DRAFT

ATTACHMENT 1: APPLICATIONS CONSIDERED JULY 2023 - JUNE 2024

Meeting Date	Application Number	Address	Proposal Description	Decision	Representors / No. verbal
25 July 2023	Applicant Appeal to ERD Court, Development Holdings Pty Ltd v City of Salisbury Assessment Panel (ERD-23-000053) - Development Application 23002678				
	Assessment Manager Quarterly Report – April to June 2023				
	23013367	493 Bridge Rd, Para Hills	Change in Use from Detached Dwelling to Office with associated Carparking, Freestanding Internally Illuminated Sign and Landscaping	Approve	Received – 1 Heard – 1
	22039606	14 Barndioota Road Salisbury Plain	Transport Depot with Associated Office (Unit 3)	Approve	Received – 3 Heard – 2
29 August 2023	22035526	24 O'Grady Drive, Para Hills	Review of Assessment Manager Decision to Refuse Planning Consent and Land Division Consent to development application	Affirm Decision to Refuse	Appellant - 2
	Annual Report of the Council Assessment Panel for 2023/24				
	Review of Assessment Manager Decision Policy				
26 September 2023	Delegations				
	Case Law Update				
24 October 2023	23010242	11-17 Orange Avenue, 15-21 and 23 Brown Terrace Salisbury	Construction of a community housing development comprising 10 single-storey dwellings, a two-storey supported accommodation building with 16 units, 4 single story dwellings for high needs care, a community hall and associated internal roads, car parking, landscaping and fencing	Approve	Not required
	23025281	12, 14 & 16 Shepherdson Rd, Parafield Gardens	Construction of a Two-Storey Childcare Centre with Associated Car Parking, Landscaping and Boundary Acoustic Fencing	Approve	Received – 5 Heard – 1
	23008326	4 Dan Street, Mawson Lakes		Approve	Received – 12 Heard – 4
	Assessment Manager Quarterly Report – July to September 2023				
19 December 2023	CAP Meeting Procedures				
	Salisbury Strategic Planning Presentation				
	Council Assessment Panel Meeting Schedule				
30 January 2024	23004431	Hausler Reserve, Paralowie,		Approve	Received – 3 Heard – 1
	Assessment Manager Quarterly Report – October to December 2023				
5 February 2024	Applicant Appeal to ERD Court, Development Holdings Pty Ltd v City of Salisbury Assessment Panel (ERD-23-000053) - Development Application 23002678				
27 February 2024	23022307	21-77 Globe Derby Drive, Globe Derby Park	Staged Land Division comprising creation of Twenty-Three (23) Allotments from Four (4) Allotments, Public Roads, Reserves and associated excavation, filling, retaining walls, acoustic fence and tree damaging activity (removal of 6 Significant and 20 Regulated Trees) Stage 1 – Allotments 6-11 and 16-22, Reserves and Roads (providing connection to Port Wakefield Road and Globe Derby	Approve	Received – 52 Heard – 33

Meeting Date	Application Number	Address	Proposal Description	Decision	Representors / No. verbal
			Drive) Stage 2 – Allotments 1-5 and 12-15, completion of Road including cul-de-sac head and acoustic fence		
	23028052	24-30 Kurna Avenue, Edinburgh	Placement of Thirty-One (31) Shipping Containers to southern side of industrial building (for storage of paperwork and office materials) (Amendment to Development Application 22006655)	Approve	Received – 3 Heard – 2
23 April 2024	23003207	Harry Bowey Reserve – Allotments 42 and 43 Goddard Drive, Salisbury Park	Tree climb facility with associated office, shop, signage and car parks (Located within Harry Bowey Reserve)	Approve	Received – 63 Heard – 27
Assessment Manager Quarterly Report – January to March 2024					

The Panel also considers a standing information report on the status of appeals matters and deferred Items at each meeting that is not included in the above table.

ITEM	8.2.4
	COUNCIL ASSESSMENT PANEL
DATE	27 August 2024
HEADING	Planning System Implementation Review
AUTHOR	Chris Zafiropoulos, Assessment Manager, City Development
SUMMARY	This report provides a summary of the the Expert Panel's Final Report and the Government's response to the final recommendations on the Planning System Implementation Review.

RECOMMENDATION

That the Council Assessment Panel:

1. Notes the Final Report and State Government response to the Expert Panel on the Planning System Implementation Review.

ATTACHMENTS

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

1. CAP submission on General Neighbourhood Zone
2. CAP submission on Council Assessment Panels

1. BACKGROUND

- 1.1 The Salisbury Council Assessment Panel (CAP) made two submissions in November 2022 to the Expert Panel that was appointed on the Planning System Implementation Review. The submissions related to:
 - 1.1.1 Improved policy guidance provided for non-residential uses in the General Neighborhood Zone under the Planning and Design Code.
 - 1.1.2 Clarifying the role of Elected Members on Panels, having an alternative title than being called Council Assessment Panels and reviewing call in powers of the Minister.
- 1.2 The Expert Panel's Final Report and the State Government's response to the final recommendations were released in March 2024. This report provides the CAP with information on the recommendations relevant to the CAP's submission.

2. DISCUSSION

- 2.1 The Expert Panel has made a total of 72 recommendations to the State Government. The recommendations have been grouped into themes. In addition, the Expert Panel made *25 Minor and Operational Recommendations* in Appendix 8 of their Report.
- 2.2 The Expert Panel's recommendations do not respond to individual submissions. As such, the recommendations do not explicitly address the CAP's submissions.

- 2.3 The State Government has generally supported the Expert Panel's recommendations in full or in-part. The Government has moved to start implementing some of the recommendations and others will be further investigated. The one recommendation that the Government has not accepted is recommendation 10 that proposes a whole of government process for Impact Assessed (Declared) development.

The final Report and the State Government response, together with all the submissions, has been published on the PlanSA website. A program for implementing the recommendations has not been released at this point of time. See [Final report and government response | Planning Review](#)

General Neighbourhood Zone

- 2.4 The recommendations in relation to the Planning and Design Code are numbered 30 to 56. In addition, the Expert Panel has made a number of *Minor and Operational Recommendations* in Attachment 8 in relation to the Code (numbered 15 to 20).
- 2.5 In relation the CAP's submission on the General Neighbourhood Zone, the following recommendations are relevant:
- 2.5.1 The Expert Panel discusses cases that have had judgements issued in relation to the interpretation and application of the Code and e-Planning system. [Note this was prior to the Supreme Court judgement for *Development Holdings Pty Ltd v City of Salisbury Assessment Panel*]. The Expert Panel notes that *...matters identified by the Court were being grappled with broadly across the sector...* and mentions it has sought to address some of the concerns in its recommendations (page 38).
- 2.5.2 Recommendation no. 16 of the *Minor and Operational Recommendations* – *Consistency of language* appears to be the only recommendation relevant to the Panel's submission on this topic. This recommendation proposes that *...PLUS undertake a language and consistency check of the Code to ensure the same terms and expressions are used throughout* (page 226).

CAP issues

- 2.6 There are no explicit recommendations made in relation to the CAP issues raised by the CAP.
- 2.7 The Expert Panel makes the following comments and recommendations that are relevant to CAPs matters more generally:
- 2.7.1 Recommendation 2 proposes an increase in education on public notification (page 43). The discussion on this recommendation includes the following:
- ...the Panel has also identified a need for Elected Members to receive further education on their role in the planning system, and specifically how they are able to interact with it and/or function as community advocates, irrespective of whether they are the nominated Elected Member CAP representative. This view is based on the Panel hearing*

Elected Members expressing conflicting advice on how they can and cannot participate in the system.

- 2.7.2 The Expert Panel, in its discussion of Observations and Comments makes the following comments about CAP procedures as another way to help address feedback it received on the loss in confidence in the representation / third party appeals. (page 46).

....a further, simple, and quick way to better incorporate the community is for CAPs to increase the speaking time allocated to representors and allow for community voices to wholly heard at the time the CAP is determining an application.

- 2.7.3 Recommendation 8 proposes automatic recognition for related professional bodies to assist in increasing the professional diversity of CAPs/RAPs (see also discussion on pages 31, 32, and 48).

3. CONCLUSION

- 3.1 The Expert Panel has found that the planning system in South Australia is generally in good shape and has made recommendations specifically to the matters that were raised by the Minister for Planning to address in its review. The issues raised by the CAP have not been explicitly addressed in the final Report.

- 3.2 It is noted that the chair of the Expert Panel, in his *Message from the Chair*, makes the following comment for other matters to be addressed in the future (page 5).

... I note several submissions raised issues that were not directly related to the key matters you asked the Panel to address. Noting our time and resource limitations, we have not had an opportunity to review many of these matters and consider they are more appropriately dealt with by the State Planning Commission through the Regional Planning process that is underway, or through Code Amendments.



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10 November 2022

Mr John Stimson
Presiding Member
Expert Panel
Planning System Implementation Review

DTI.PlanningReview@sa.gov.au

Dear Mr Stimson

City of Salisbury Council Assessment Panel Submission
– Code Policy for non-residential uses in General Neighbourhood Zone

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	
DO 1	<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
PO 1.1 <i>Predominantly residential development with complementary non-residential use that support an active, convenient and walkable neighbourhood.</i>	DPF 1.1 <i>Development comprises one or more of the following:</i> <ul style="list-style-type: none"> (a) ancillary accommodation (b) community facility (c) consulting room (d) dwelling (e) educational establishment (f) office (g) place of worship (h) pre-school (i) recreation area (j) residential flat building (k) retirement facility (l) shop (m) student accommodation (n) supported accommodation

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

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

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><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>PO 1.5</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>DPF 1.5</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>

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
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City of Salisbury Council Assessment Panel



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10 November 2022

Mr John Stimson
Presiding Member
Expert Panel
Planning System Implementation Review

DTI.PlanningReview@sa.gov.au

Dear Mr Stimson

**City of Salisbury Council Assessment Panel Submission
– Council Assessment Panels**

A key reform under the *Planning, Development and Infrastructure Act 2016* has been to increase the level of 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 through making formal representations on notified 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 could be made to, and subsequently investigated by, the State Planning Commission. As a consequence, the Elected

Community perceptions are often that the CAP will make a decision consistent with a Council position, whether that be to oppose a development application as a representor or to lodge an application as developer. These perceptions cause considerable consternation for representors, CAP Members and applicants despite CAPs being 'live' to them and discharging their statutory role and functions in strict accordance with the PDI Act.

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. As it is drafted, it can be interpreted in such a manner as to cause difficulty for CAP Members who are also Elected Members in balancing their separate roles in this regard and how this is viewed by the community.
2. Consider whether clauses 14.e. and 21 of the Code of Conduct can be refined or, whether they remain necessary and can be deleted. With respect, clauses 7 – 14.d. and 15 – 20 are very clear and detailed in their scope and application such that they ensure that CAP member behaviour is objectively appropriate, fair and impartial without causing tension with applicants and the community who may view the mere fact of a CAP Member also being an Elected Member of the Council or an Independent Member being a member of a professional organisation, or a member of several Panels, of themselves, constituting a breach of one or both of these clauses.
3. Use an alternative title than "*Council Assessment Panels*" to better differentiate the independent role of Panels for the community. The continued use of the term "Council" means that applicants and members of the community make assumptions concerning the CAP and its relationship with the Council which cause many of the tensions mentioned above.
4. 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

ITEM	8.2.5
	COUNCIL ASSESSMENT PANEL
DATE	27 August 2024
PREV REFS	Council Assessment Panel 8.2.1 26/09/2023
HEADING	Delegations
AUTHOR	Chris Zafiroopoulos, Assessment Manager, City Development
CITY PLAN LINKS	4.4 We plan effectively to address community needs and identify new opportunities
SUMMARY	The Panel reviews its delegations annually. This report provides information on outcomes of the previous financial year and seeks the Panel's endorsement of delegations for the next twelve months.
RECOMMENDATION	
	THAT THE COUNCIL ASSESSMENT PANEL:
	<ol style="list-style-type: none"> 1. Revokes, in accordance with Section 100(2)(d) of the <i>Planning, Development and Infrastructure Act 2016</i> its previous delegations to the Assessment Manager and General Manager City Development of those powers and functions under the <i>Planning, Development and Infrastructure Act 2016</i> as included in Attachment 1 (CAP meeting 26 September 2023, Item no. 8.2.1). 2. Delegates in exercise of the power contained in Section 100 of the <i>Planning, Development and Infrastructure Act 2016</i> the powers and functions under the <i>Planning, Development and Infrastructure Act 2016</i> and statutory instruments made thereunder contained in the proposed Instrument of Delegation as Attachment 1 to this report (CAP, 27 August 2024, Item 8.2.5) to the positions identified in the third column of the proposed Instrument of Delegation subject to the conditions and/or limitations, if any, specified herein or in the Schedule of Conditions in the proposed Instrument of Delegation. 3. Notes the delegated powers and functions may be exercised individually by each delegate in respect of any particular matter where the delegate is required or proposing to act in the course of their duties. 4. Notes that such powers and functions may be further delegated by the Assessment Manager in accordance with Section 100(2)(c) of the <i>Planning, Development and Infrastructure Act 2016</i> as the Assessment Manager sees fit, unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation as included in Attachment 1 (CAP, 27 August 2024, Item 8.2.5). 5. Notes the power in Sections 119(9) and (14) of the <i>Planning, Development and Infrastructure Act 2016</i> and Regulation 7 of the <i>Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019</i> may be further delegated by the General Manager City Development in accordance with Section 100(2)(c) of the <i>Planning, Development and Infrastructure Act 2016</i> as the General Manager City Development sees fit, unless otherwise indicated in the Schedule of

Conditions contained in the proposed Instrument of Delegation as included in Attachment 1(CAP, 27 August 2024, Item 8.2.5).

6. Notes that the delegations be reviewed in September 2025.

ATTACHMENTS

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

1. Salisbury Council Assessment Panel Instrument of Delegation for Adoption
2. Development Applications Determined by the Assessment Manager under Delegated Authority

1. BACKGROUND

- 1.1 The *Planning Development and Infrastructure Act 2016* (the Act) assigns the Panel as a relevant authority in its own right under the Act. In the exercise of its duties, the Panel has delegated to Council staff specific duties or to exercise powers on its behalf.
- 1.2 Delegations enhance decision making processes and allow nominated matters to be resolved efficiently and effectively without the need for the Panel's consideration. The delegations provide for:
 - Duties to assist in the timely processing of applications.
 - Determination of prescribed development applications by Council staff.
- 1.3 The Assessment Panel last reviewed its delegations under the Act at the meeting on September 2023.
- 1.4 This review has been delayed pending updated delegation templates from the LGA following legislative amendments, and to align with the term of the new Panel.

2. REPORT

Relevant Authority

- 2.1 The Act provides that an Assessment Panel will be a relevant authority (planning and building) in relation to a proposed development that is to be undertaken within the area of a council, unless another authority is prescribed by the Act or regulations (section 93 of the Act).
- 2.2 The Assessment Panel is designated the relevant authority for:
 - Performance assessed development under section 107 of the Act where notice of the application must be given under section 107(3) of the Act.
 - Development which involves the assessment of the building rules under section 99 of the Act where a building certifier has not been nominated, unless the Panel refers building rules matters to Council. The Panel referred all the building rules assessment to Council on 24 November 2020.

Current Delegations

- 2.3 The current delegations to staff include granting power to:
- 2.3.1 Perform the various duties and responsibilities for the efficient processing of development applications.
 - 2.3.2 Assess and determine development applications where no representations have been made, or are withdrawn, or representors do not wish to be heard in support of their representation.
 - 2.3.3 Assess and determine development applications that are/or may be subject deemed consent notice.

Publicly Notified Applications

- 2.4 The table below summarises the number of applications notified and assessed by the Panel since 2016/17.

	2016/17	2017/18	2018/19	2019/20	2021/22	2022/23	2023/24
Publicly Notified	48	89	102	89	64	50	34
CAP Assessed	23	9	19	11	12	17	10

- 2.5 The overall number of notified applications is lower in this last financial year. There are a couple of key considerations in this summary, including:
- 2.5.1 Tree damaging development applications accounted for some sixty (60) of the notified applications under the *Development Act* in 2018/19 & 2019/20. Tree damaging activities are not notified under the PDI Act.
 - 2.5.2 The increase in notified application with the introduction of the PDI Act (March 2021) was partly due to the notification process for minor domestic buildings (garages, verandahs, etc.) on the property boundary. The Ministerial *Miscellaneous Technical Enhancement Code Amendment* that was approved in April 2023, removed this notification process. This has correlated with a reduction of the total number of public notified development applications since.
- 2.6 A more detailed comparative breakdown of planning applications for the 2022/23 and 2023/24 financial years is summarised in the table below.

	2022/23	2023/24
Planning Applications submitted	1,753	1,632
Planning Applications determined	1,533	1,322
Notified Applications	50	34

Determined planning consents by relevant authority		
➤ CAP	17	10
➤ Assessment Manager (AM)	1,425	1,122
➤ AM as delegate for Panel	27	41

- 2.7 The quarterly reports provided to the Panel identify all the applications determined under delegated authority by the Assessment Manager for the Panel. A summary of all the applications considered in the previous financial year is provided in Attachment 2. The table highlights where representations have been made in respect to these development applications, and the representations have generally indicated support for the development application.
- 2.8 The overall number of development applications considered by the Panel during this period (10 development applications) is within the lower range of total development applications historically considered by the Panel over a 12-month period. It is noted that where representors generally have stronger objections to a development application, they will explicitly request to appear before the Panel to make a verbal submission to support their objection.
- 2.9 The delegations appear to be providing the appropriate balance of the Panel assessing more contested development applications and delegating other development applications to the Assessment Manager to maintain customer service levels within current resourcing.
- 2.10 It is recommended that the Panel retain the current delegations and that they be reviewed again in 12 months.

Deemed Approval

- 2.11 Section 125 of the PDI Act provides that in the event a relevant authority fails to determine an application for planning consent within the time stipulated by regulations, the applicant can choose to serve a “deemed consent notice” on the relevant authority. Upon service of a deemed consent notice, the application is taken to have been granted planning consent. The relevant authority can then:
- 2.11.1 Take no action, in which case the development authorisation will remain, subject to standard conditions set out in Practice Direction 11;
 - 2.11.2 Within 10 business days, issue its own planning consent, including with its own conditions; or
 - 2.11.3 Within one month, appeal the deemed consent notice.
- 2.12 The LGA has recommended that Panels (should they wish to avoid special meetings being convened from time to time), grant power to the Assessment Manager to grant planning consent within 10 days for development applications which are subject to a deemed consent notice.
- 2.13 This is because it is considered that the standard conditions in Practice Direction 11 may prove inadequate in some circumstances and it has been suggested that the enforceability of some conditions may prove difficult down the track.

Accordingly, in such situations it is preferable to issue a planning consent subject to appropriate conditions for the development.

- 2.14 In addition, there may be a circumstance where a decision may be required to refuse a development application within the prescribed timeframe, in the event the applicant has not agreed to extend the timeframe for the Panel to consider the development application. This will avoid the possibility of a deemed consent notice being issued.
- 2.15 In the event a deemed consent notice has been issued, the delegations provide that the Assessment Manager will provide a report to the Panel on the outcome of the notice. The Panel may, at this time, consider if it wishes to lodge an application with the ERD Court seeking an order to quash the deemed consent notice.
- 2.16 In the circumstance where an application to quash a deemed consent notice must be lodged before the Panel is able to meet (including a special meeting), the power to lodge the application has been delegated to the General Manager City Development. This approach was based on legal advice that identified the benefit of an additional step (review) in the process that is removed from the Assessment Manager.
- 2.17 There have been no deemed consent notices issued against the Panel in this period. It is recommended the Panel however retain the delegations for applications that may be captured by the deemed planning consent clauses of the Act.

Updates to Template as a result of legislative amendments

- 2.18 As a consequence of changes to regulations, the following parts of the delegations have been updated (shown in tracked changes in Attachment 1). The changes are generally considered to be minor in nature.
 - 2.18.1 Outline Consent (clause 6 deleted and new clause 54 added). This reflected that the CAP may be able to comment on an Outline consent, where applicable.
 - 2.18.2 Notice of decision (new clause 32.1) simply relates to giving notice in the SA Planning Portal or some other way.

3. CONCLUSION / PROPOSAL

- 3.1 Delegations have served the City of Salisbury well for a number of years, and Council has earned a reputation for efficient, timely and considered determination of development applications.
- 3.2 It is recommended that the Panel retain its current delegations for the efficient and effective processing of development applications under the *Planning, Development and Infrastructure Act 2016*.
- 3.3 The instrument of delegation is provided in Attachment 1 for the Panel's consideration and adoption.

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SALISBURY COUNCIL ASSESSMENT PANEL (FOR ENDORSEMENT)

INSTRUMENT OF DELEGATION UNDER THE
PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, REGULATIONS,
PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS
OF POWERS OF AN ASSESSMENT PANEL

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.

2. Refer to the relevant Assessment Panel decision to identify when these delegations were made, reviewed and or amended.

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

1. Environment and Food Production Areas – Greater Adelaide	Delegate
1.1 The power pursuant to Section 7(5)(a) of the Planning, Development and Infrastructure Act 2016 (the PDI Act) , in relation to a proposed development in an environment and food production area that involves a division of land that would create 1 or more additional allotments to seek the concurrence of the Commission in the granting of the development authorisation to the development.	Assessment Manager
1.2 The power pursuant to Section 7(5)(d) of the PDI Act in relation to a proposed development in an environment and food production area that involves a division of land that would create one or more additional allotments, to, if the proposed development will create additional allotments to be used for residential development, refuse to grant development authorisation in relation to the proposed development.	Assessment Manager
2. Relevant Authority – Commission	
2.1 The power pursuant to Section 94(3)(a) of the PDI Act, if the Minister acts under Section 94(1)(h) of the PDI Act to, at the request of the Commission, provide the Commission with a report relating to any application for development authorisation that has been under consideration by the relevant authority.	Assessment Manager

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**CITY OF SALISBURY COUNCIL ASSESSMENT PANEL
INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
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3. Matters Against Which Development Must Be Assessed	
3.1 The power pursuant to Section 102(1) of the PDI Act to assess a development against, and grant or refuse a consent in respect of, each of the following matters (insofar as they are relevant to the particular development):	
3.1.1.1 the relevant provisions of the Planning Rules; and	Assessment Manager General Manager City Development
3.1.1.2 to the extent provided by Part 7 Division 2 of the PDI Act – the impacts of the development, (planning consent);	Assessment Manager
3.1.2 in relation to a proposed division of land (otherwise than under the Community Titles Act 1996 or the Strata Titles Act 1988) - the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under the PDI Act):	Assessment Manager
3.1.2.1 requirements set out in the Planning and Design Code made for the purposes of this provision are satisfied;	
3.1.2.2 any relevant requirements set out in a design standard has been satisfied;	
3.1.2.3 the requirements of a water industry entity under the Water Industry Act 2012 identified under the regulations relating to the provision of water supply and sewerage services are satisfied;	
3.1.2.4 where land is to be vested in a council or other authority - the council or authority consents to the vesting;	
3.1.2.5 requirements set out in regulations	

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	made for the purposes of Section 102(1)(c) of the PDI Act are satisfied;	
3.1.3	in relation to a division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 - the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under the PDI Act):	Assessment Manager
3.1.3.1	requirements set out in the Planning and Design Code made for the purposes of this provision are satisfied;	
3.1.3.2	any relevant requirements set out in a design standard has been satisfied;	
3.1.3.3	any encroachment of a lot or unit over other land is acceptable having regard to any provision made by the Planning and Design Code or a design standard;	
3.1.3.4	where land is to be vested in a council or other authority - the council or authority consents to the vesting;	
3.1.3.5	a building or item intended to establish a boundary (or part of a boundary) of a lot or lots or a unit or units is appropriate for that purpose;	
3.1.3.6	the division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 is appropriate having regard to the nature and extent of the common property that would be established by the relevant scheme;	
3.1.3.7	the requirements of a water industry entity under the Water Industry Act 2012 identified under	

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	the regulations relating to the provision of water supply and sewerage services are satisfied;	
3.1.3.8	any building situated on the land complies with the Building Rules;	
3.1.3.9	requirements set out in the regulations made for the purposes of Section 102(d) of the PDI Act are satisfied;	
3.1.4	any encroachment of a building over, under, across or on a public place (and not otherwise dealt with above) is acceptable having regard to any provision made by the Planning and Design Code or a design standard;	Assessment Manager
3.1.5	if relevant - requirements applying under Part 15 Division 2 of the PDI Act are satisfied;	
3.1.6	such other matters as may be prescribed.	
3.2	The power pursuant to Section 102(3) of the PDI Act to, in relation to granting a planning consent, on the delegate's own initiative or on application, reserve the delegate's decision on a specified matter or reserve the delegate's decision to grant a planning consent:	Assessment Manager
3.2.1	until further assessment of the relevant development under the PDI Act; or	
3.2.2	until further assessment or consideration of the proposed development under another Act; or	
3.2.3	until a licence, permission, consent, approval, authorisation, certificate or other authority is granted, or not granted (by the decision of another authority), under another Act.	
3.3	The power pursuant to Section 102(4) of the PDI Act to allow any matter specified by the Planning and Design Code for the purposes of Section 102(4) of the PDI Act to be reserved on the application of the	Assessment Manager

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applicant.	
4. Performance Assessed Development	
4.1 The power pursuant to Section 107(2)(c) of the PDI Act to form the opinion that the development is seriously at variance with the Planning and Design Code (disregarding minor variations).	Assessment Manager
4.2 The power pursuant to Section 107(3) of the PDI Act, if a proposed development is to be assessed under Section 107 of the PDI Act to make a decision in accordance with a practice direction.	Assessment Manager
4.3 The power pursuant to Section 107(4) of the PDI Act to limit the matters that the delegate will take into account to what should be the decision of the relevant authority as to planning consent in relation to the performance based elements of the development as assessed on its merits.	Assessment Manager
5. Application and Provision of Information	
5.1 The power pursuant to Section 119(1)(b) of the PDI Act to require an application to the relevant authority for the purposes of Part 7 of the PDI Act, to include any information as the delegate may reasonably require.	Assessment Manager
5.2 The power pursuant to Section 119(3) of the PDI Act to request an applicant:	Assessment Manager
5.2.1 to provide such additional documents, assessments or information (including calculations and technical details) as the delegate may reasonably require to assess the application;	
5.2.2 to remedy any defect or deficiency in any application or accompanying document or information required by or under the PDI Act;	
5.2.3 to consult with an authority or body prescribed by the regulations;	
5.2.4 to comply with any other requirement prescribed by the regulations.	Assessment Manager

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5.3	The power pursuant to Section 119(6) of the PDI Act if a request is made under Section 119(3) of the PDI Act, and the request is not complied with within the time specified by the regulations, to	Assessment Manager
5.3.1	subject to Section 119(6)(b)(ii) of the PDI Act, refuse the application; and	
5.3.2	refuse the application in prescribed circumstances (including, if the regulations so provide, in a case involving development that is deemed-to-satisfy development).	
5.4	The power pursuant to Section 119(7) of the PDI Act to, in dealing with an application that relates to a regulated tree, consider that special circumstances apply.	Assessment Manager
5.5	The power pursuant to Section 119(9) of the PDI Act to:	
5.5.1	permit an applicant:	Assessment Manager
5.5.1.1	to vary an application;	
5.5.1.2	to vary any plans, drawings, specifications or other documents that accompanied an application,	
	(provided that the essential nature of the proposed development is not changed);	
5.5.2	permit an applicant to lodge an application without the provision of any information or document required by the regulations;	Assessment Manager
5.5.3	to the extent that the fee is payable to the relevant authority waive payment of whole or part of the application fee, or refund an application fee (in whole or in part);	Assessment Manager
5.5.4	if there is an inconsistency between any documents lodged with the relevant authority for the purposes of Part 7 of the PDI Act (whether by an applicant or any other person), or between any such document and a development authorisation that has already been given that is relevant in the	Assessment Manager

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	circumstances, return or forward any document to the applicant or to any other person and determine not to finalise the matter until any specified matter is resolved, rectified or addressed.	
5.6	The power pursuant to Section 119(10) of the PDI Act to grant a permission under Section 119(9) of the PDI Act unconditionally or subject to such conditions as the delegate thinks fit.	Assessment Manager
5.7	The power pursuant to Section 119(12) of the PDI Act to, in a consent, provide for, or envisage, the undertaking of development in stages, with separate consents or approvals for the various stages.	Assessment Manager
5.8	The power pursuant to Section 119(14) of the PDI Act to if an applicant withdraws an application to determine to refund the application fee.	Assessment Manager
6.	Outline Consent	
6.1	The power pursuant to Section 120(1) of the PDI Act and subject to Section 120 of the PDI Act, to on application, grant a consent in the nature of an outline consent.	Assessment Manager
6.2	The power pursuant to Section 120(3) of the PDI Act if an outline consent is granted and a subsequent application is made with respect to the same development (subject to any variations allowed by a practice direction) to:	Assessment Manager
6.2.1	grant any consent contemplated by the outline consent; and	
6.2.2	not impose a requirement that is inconsistent with the outline consent.	

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7. Design Review	
7.1 The power pursuant to Section 121(7) of the PDI Act, to in acting under the PDI Act, take into account any advice provided by a design panel (insofar as may be relevant to the assessment of proposed development by the delegate).	Assessment Manager
8. Referrals to Other Authorities or Agencies	
8.1 The power pursuant to Section 122(1) of the PDI Act, where an application for consent to, or approval of, a proposed development of a prescribed class is to be assessed by a relevant authority, to:	Assessment Manager
8.1.1 refer the application, together with a copy of any relevant information provided by the applicant, to a body prescribed by the regulations (including, if so prescribed, the Commission); and	
8.1.2 not make a decision until the relevant authority has received a response from that prescribed body in relation to the matter or matters for which the referral was made	
where the regulations so provide, subject to Section 122 of the PDI Act.	
8.2 The power pursuant to Section 122(5)(b) of the PDI Act, acting by direction of a prescribed body:	Assessment Manager
8.2.1 to refuse the application; or	
8.2.2 consent to or approve the development and impose such conditions as the prescribed body thinks fit, (subject to any specific limitation under another Act as to the conditions that may be imposed by the prescribed body)	
where the regulations so provide.	
8.3 The power pursuant to Section 122(7) of the PDI Act, if the relevant authority is directed by a prescribed body to refuse an application and the refusal is the subject of an appeal under the PDI Act, to apply for the relevant authority to be joined as a party to the	Assessment Manager

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**CITY OF SALISBURY COUNCIL ASSESSMENT PANEL
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	proceedings.	
8.4	The power pursuant to Section 122(10) of the PDI Act to, if requested by an applicant, defer a referral under Section 122 of the PDI Act to a particular stage in the process of assessment.	Assessment Manager
9.	Preliminary Advice and Agreement	
9.1	The power pursuant to Section 123(2) of the PDI Act, if:	Assessment Manager
9.1.1	a proposed development is referred to a prescribed body under Section 123(1) of the PDI Act; and	
9.1.2	the prescribed body agrees to consider the matter under Section 123 of the PDI Act after taking into account any matter prescribed by the regulations; and	
9.1.3	the prescribed body agrees, in the manner prescribed by the regulations, that the development meets the requirements (if any) of the prescribed body (including on the basis of the imposition of conditions),	
	to, subject to Section 123(4) of the PDI Act if an application for planning consent with respect to the development is lodged with the relevant authority within the prescribed period after the prescribed body has indicated its agreement under Section 123(2)(c) of the PDI Act, form the opinion and be satisfied that the application accords with the agreement indicated by the prescribed body (taking into account the terms or elements of that agreement and any relevant plans and other documentation).	
9.2	The power pursuant to Section 123(4) of the PDI Act to determine an agreement under Section 123 of the PDI Act is no longer appropriate due to the operation of Section 132 of the PDI Act.	Assessment Manager
10.	Proposed Development Involving Creation of Fortifications	
10.1	The power pursuant to Section 124(1) of the PDI Act, if the delegate has reason to believe that a proposed	Assessment Manager

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**CITY OF SALISBURY COUNCIL ASSESSMENT PANEL
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	development may involve the creation of fortifications, to refer the application for consent to, or approval of, the proposed development to the Commissioner of Police (the Commissioner).	
10.2	The power pursuant to Section 124(5) of the PDI Act, if the Commissioner determines that the proposed development involves the creation of fortification, to:	Assessment Manager
10.2.1	if the proposed development consists only of the creation fortifications - refuse the application; or	
10.2.2	in any other case - impose conditions in respect of any consent to or approval of the proposed development prohibiting the creation of the fortifications	
10.3	The power pursuant to Section 124(6) of the PDI Act, if the relevant authority acting on the basis of a determination of the Commissioner under Section 124(2) of the PDI Act refuses an application or imposes conditions in respect of a development authorisation, to notify the applicant that the application was refused, or the conditions imposed, on the basis of a determination of the Commissioner under Section 124 of the PDI Act.	Assessment Manager
10.4	The power pursuant to Section 124(7) of the PDI Act, if a refusal or condition referred to in Section 124(5) of the PDI Act is the subject of an appeal under the PDI Act to apply to the Court to be joined as a party to the appeal.	Assessment Manager
11. Time Within Which Decision Must be Made		
11.1	The power pursuant to Section 125(6) of the PDI Act to form the opinion and consider that the relevant application for planning consent should have been refused and apply to the Court for an order quashing the consent.	General Manager City Development
11.2	The power pursuant to Section 125(7) of the Act to apply to the Court for an extension of time to make an application under Section 125(6) of the Act.	General Manager City Development
12. Determination of Application		

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12.1	The power pursuant to Section 126(1) of the PDI Act to, on making a decision on an application under Part 7 of the PDI Act, give notice of the decision in accordance with the regulations (and, in the case of a refusal, to include in the notice the reasons for the refusal and any appeal rights that exist under the PDI Act).	Assessment Manager
12.2	The power pursuant to Section 126(3) of the PDI Act to, on the delegate's own initiative or on the application of a person who has the benefit of any relevant development authorisation, extend a period prescribed under Section 126(2) of the PDI Act.	Assessment Manager
13. Conditions		
13.1	The power pursuant to Section 127(1) of the PDI Act to make a decision subject to such conditions (if any) as the delegate thinks fit to impose in relation to the development.	Assessment Manager General Manager City Development
13.2	The power pursuant to Section 127(2)(c) of the PDI Act to vary or revoke a condition in accordance with an application under Part 7 of the PDI Act.	Assessment Manager
13.3	The power pursuant to Section 127(4) of the PDI Act, subject to Sections 127(6) and (8) of the PDI Act, if a development authorisation provides for the killing, destruction or removal of a regulated tree or a significant tree, to apply the principle that the development authorisation be subject to a condition that the prescribed number of trees (of a kind determined by the delegate) must be planted and maintained to replace the tree (with the cost of planting to be the responsibility of the applicant or any person who acquires the benefit of the consent and the cost of maintenance to be the responsibility of the owner of the land).	Assessment Manager
13.4	The power pursuant to Section 127(6) of the PDI Act to, on the application of the applicant, determine that a payment of an amount calculated in accordance with the regulations be made into the relevant fund in lieu of planting 1 or more replacement trees under Section 127(4) of the PDI Act.	Assessment Manager
13.5	The power pursuant to Section 127(8)(b) of the PDI	Assessment

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**CITY OF SALISBURY COUNCIL ASSESSMENT PANEL
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Act to:	Manager
13.5.1 determine that it is appropriate to grant an exemption under Section 127(8)(b) of the PDI Act in a particular case after taking into account any criteria prescribed by the regulations and provided the Minister concurs in the granting of the exemption;	
13.5.2 to seek the Minister's concurrence to grant an exemption under Section 127(8)(b) of the PDI Act.	
14. Variation of Authorisation	
14.1 The power pursuant to Sections 128(1) and (2) of the PDI Act to determine an application seeking the variations of a development authorisation previously given under the PDI Act (including an application seeking the variation of a condition imposed with respect to the development authorisation).	Assessment Manager
14.2 The power pursuant to Section 128(2)(d) of the PDI Act to approve an application for a variation to a development authorisation previously given under the PDI Act, which seeks to extend the period for which the relevant authorisation remains operative.	Assessment Manager
15. Cancellation of Development Authorisation	
15.1 The power pursuant to Section 143(1) of the PDI Act to, on the application of a person who has the benefit of the authorisation, cancel a development authorisation previously given by the relevant authority.	Assessment Manager
15.2 The power pursuant to Section 143(2) of the PDI Act to make a cancellation under Section 143(1) of the PDI Act subject to such conditions (if any) as the delegate thinks fit to impose.	Assessment Manager

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16. Professional Advice to be Obtained in Relation to Certain Matters	
16.1 The power pursuant to Section 235(1) of the PDI Act, to, in the exercise of a prescribed function, rely on a certificate of a person with prescribed qualifications.	Assessment Manager
16.2 The power pursuant to Section 235(2) of the PDI Act to seek and consider the advice of a person with prescribed qualifications, or a person approved by the Minister for that purpose, in relation to a matter arising under the PDI Act that is declared by regulation to be a matter on which such advice should be sought.	Assessment Manager
17. General Transitional Schemes for Panels	
17.1 The power pursuant to Clause 12(7) of Schedule 8 of the PDI Act, to	
17.1.1 adopt any findings or determinations of a council development assessment panel under the repealed Act that may be relevant to an application made before the relevant day under the repealed Act; and	Assessment Manager
17.1.2 adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application made before the relevant day under the repealed Act; and	Assessment Manager
17.1.3 deal with any matter that is subject to a reserved decision under the repealed Act before the relevant day; and	Assessment Manager
17.1.4 deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act; and	Assessment Manager
17.1.5 deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act.	Assessment Manager

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18. Continuation of Processes	
18.1 The power pursuant to Clause 18(2) of Schedule 8 of the PDI Act, to:	
18.1.1 adopt any findings or determinations of a relevant authority under the repealed Act that may be relevant to an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and	Assessment Manager
18.1.2 adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and	Assessment Manager
18.1.3 deal with any matter that is subject to a reserved decision under the repealed Act before the designated day; and	Assessment Manager
18.1.4 deal with any requirement or grant any variation imposed or proposed in connection with an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and	Assessment Manager
18.1.5 take any other step or make any other determination authorised by the regulations, or that is reasonably necessary to promote or ensure a smooth transition on account of the transfer of functions, powers or duties under Clause 18 of Schedule 8 of the PDI Act.	Assessment Manager

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**PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL)
REGULATIONS 2017**

19. Interpretation	Delegate
19.1 The power pursuant to Regulation 3(6)(b) of the Planning, Development and Infrastructure (General) Regulations 2017 (the General Regulations) to require that a statement of site suitability provided to a relevant authority in connection with an application for development authorisation be issued by a site contamination auditor if the Environment Protection Authority directs the relevant authority to do so in relation to a particular application.	Assessment Manager
20. Verification of Application	
20.1 The power pursuant to Regulation 31(1) of the General Regulations, on the receipt of an application under Section 119 of the PDI Act, and in addition to any other requirement under the General Regulations, to, in order to ensure that an application has been correctly lodged and can be assessed in accordance with the PDI Act:	
20.1.1 determine the nature of the development; and	Assessment Manager
20.1.2 if the application is for planning consent - determine:	Assessment Manager
20.1.2.1 whether the development involves 2 or more elements and, if so, identify each of those elements for the purposes of assessment against the provisions of the Planning and Design Code; and	
20.1.2.2 the category or categories of development that apply for the purposes of development assessment; and	
20.1.3 determine whether the relevant authority is the correct entity to assess the application under the PDI Act; and	Assessment Manager
20.1.4 if the relevant authority is the correct entity to	Assessment

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assess the application (or any part of the application):	Manager
20.1.4.1 check that the appropriate documents and information have been lodged with the application; and	
20.1.4.2 confirm the fees required to be paid at that point; and	
20.1.4.3 provide an appropriate notice via the SA planning portal; and	
20.1.5 if the relevant authority is not the correct entity to assess the application (or any part of the application):	Assessment Manager
20.1.5.1 provide the application (or any relevant part of the application), and any relevant plans, drawings, specifications and other documents and information in its possession, to the entity that the delegate considers to be the correct relevant authority in accordance with any practice direction; and	
20.1.5.2 provide an appropriate notice via the SA planning portal.	

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21. Site Contamination – Detailed Site Investigation Report	
21.1 The power pursuant to Regulation 32A(1) of the General Regulations to, for the purposes of Section 119(3)(d) of the PDI Act in relation to an application to which Schedule 8 clause 2A applies, request the applicant to provide a detailed site investigation report if:	Assessment Manager
21.1.1 the preliminary site investigation report indicates that site contamination is present, or is likely to be present, at the site of the proposed development; and	Assessment Manager
21.1.2 the delegate considers that there is insufficient information to determine that the site is suitable for its intended use, having regard to:	Assessment Manager
21.1.2.1 site contamination; and	Assessment Manager
21.1.2.2 if remediation is required, the extent of that remediation; and	Assessment Manager
21.1.3 the application is not required to be referred to the Environment Protection Authority under Item 9A or 9AB of the table in Schedule 9 clause 3.	Assessment Manager
21.1.4 The power pursuant to Regulation 32A(2) of the General Regulations to require that a detailed site investigation report be prepared by a site contamination auditor if the Environment Protection Authority directs the relevant authority to do so in relation to a particular application.	Assessment Manager
22. Site Contamination – Statement of Suitability	
22.1 The power pursuant to Regulation 32B of the General Regulations to, for the purposes of Section 119(3)(d) of the PDI Act, in relation to an application to which Schedule 8 clause 2A applies, require the applicant to provide a statement of site suitability that confirms that the site is suitable for its intended use before the relevant authority issues a planning consent in relation to the application.	Assessment Manager

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23. Application and Further Information	
23.1 The power pursuant to Regulation 33(4) of the General Regulations to seek clarification about any document or information that has been provided by the applicant.	Assessment Manager
24. Amended Applications	
24.1 The power pursuant to Regulation 35(3) of the General Regulations if an application is varied following referral under Division 2 or giving of notice under Division 3, to, if the variations are not substantial, consider the application without the need to repeat an action otherwise required under Division 2 or Division 3.	Assessment Manager
24.2 The power pursuant to Regulation 35(4) of the General Regulations if a variation would change the essential nature of a proposed development (as referred to in Section 119(9)(a) of the PDI Act), to agree with the applicant to proceed with the variation on the basis that the application (as so varied) will be treated as a new application under the General Regulations.	Assessment Manager
25. Withdrawing/Lapsing Applications	
25.1 The power pursuant to Regulation 38(1) of the General Regulations if an application is withdrawn by the applicant under Section 119(14) of the PDI Act, to notify:	Assessment Manager
25.1.1 any agency to which the application has been referred under Division 2 of the General Regulations; and	
25.1.2 any person who has made a representation in relation to the application under Division 3 of the General Regulations,	
of the withdrawal.	
25.2 The power pursuant to Regulation 38(3) of the General Regulations before taking action to lapse an application under Regulation 38(2) of the General Regulations, to:	Assessment Manager

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25.2.1	take reasonable steps to notify the applicant of the action under consideration; and	
25.2.2	allow the applicant a reasonable opportunity to make submissions to the delegate (in a manner and form determined by the delegate) about the proposed course of action.	
26. Court Proceedings		
26.1	The power pursuant to Regulation 40 of the General Regulations to, subject to Section 214(14) of the PDI Act, by notice in writing to the applicant, decline to deal with the application until any proceedings under the PDI Act have been concluded.	Assessment Manager
27. Additional Information or Amended Plans		
27.1	The power pursuant to Regulation 42(1) of the General Regulations if a delegate has referred an application to a prescribed body under Division 1 of the General Regulations and the relevant authority subsequently receives additional information, or an amended plan, drawing or specification, which is materially relevant to the referral, or to any report obtained as part of the referral process, to repeat the referral process.	Assessment Manager
28. Preliminary Advice and Agreement (Section 123)		
28.1	The power pursuant to Regulation 46(6) of the General Regulations, if:	Assessment Manager
28.1.1	the delegate permits an applicant to vary an application under Section 119(9) of the PDI Act; and	
28.1.2	the delegate determines that the application no longer accords with the agreement indicated by the prescribed body,	
	to refer the application (unless withdrawn) to the prescribed body:	
28.1.3	to obtain a variation to the agreement under Section 123 of the PDI Act; or	

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28.1.4	to obtain a response from the prescribed body for the purposes of Section 122 of the PDI Act.	
28.2	The power pursuant to Regulation 46(7) of the General Regulations if:	Assessment Manager
28.2.1	an application is withdrawn by the applicant; and	
28.2.2	the applicant sought to rely on an agreement under Section 123 of the PDI Act in connection with the application,	
	to notify relevant prescribed body of the withdrawal.	
28.3	The power pursuant to Regulation 46(8) of the General Regulations, if:	Assessment Manager
28.3.1	an application is lapsed by a relevant authority under Regulation 38 of the General Regulations; and	
28.3.2	the applicant sought to rely on an agreement under Section 123 of the PDI Act in connection with the application,	
	to notify the relevant prescribed body of the lapsing.	
28.4	The power pursuant to Regulation 46(9) of the General Regulations, if:	Assessment Manager
28.4.1	an applicant seeks to rely on an agreement under Section 123 of the PDI Act in connection with the application; and	
28.4.2	a notice of a decision on the application is issued by the delegate under Regulation 57 of the General Regulations,	
	to provide a copy of the notice to the prescribed body within 5 business days after the notice is given to the applicant under Regulation 57 of the General Regulations.	
29.	Notification of Application of Tree-damaging Activity to Owner of Land	

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29.1	The power pursuant to Regulation 48 of the General Regulations, if an owner of land to which an application for a tree-damaging activity in relation to a regulated tree relates is not a party to the application, to:	Assessment Manager
29.1.1	give the owner notice of the application within 5 business days after the application is made; and	
29.1.2	give due consideration in the delegate's assessment of the application to any submission made by the owner within 10 business days after the giving of notice under Regulation 48 of the General Regulations.	
30.	Public Inspection of Applications	
30.1	The power pursuant to Regulation 49(3) of the General Regulations to request a person verify information in such manner as the delegate thinks fit.	Assessment Manager
31.	Response by Applicant	
31.1	The power pursuant to Regulation 51(1) of the General Regulations to allow a response to a representation by the applicant to be made within such longer period as the delegate may allow.	Assessment Manager
32.	Notice of Decision (Section 126(1))	
32.1	The power pursuant to Regulation 57(2)(b) of the General Regulations to provide notice via the SA Planning Portal and to determine if necessary to give notice to the applicant in some other way determined to be appropriate by the delegate.	Assessment Manager
32.2	The power pursuant to Regulation 57(4)(a) of the General Regulations to endorse a set of any approved plans and other relevant documentation with an appropriate form of authentication.	Assessment Manager
33.	Consideration of Other Development Authorisations	
33.1	The power pursuant to Regulation 60 of the General Regulations, to, in deciding whether to grant a development authorisation, take into account any	Assessment Manager

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	prior development authorisation that relates to the same proposed development under the PDI Act, and any conditions that apply in relation to that prior development authorisation.	
34. Variation of Authorisation (Section 128)		
34.1	The power pursuant to Regulation 65(1) of the General Regulations to, for the purposes of Section 128(2)(b) of the PDI Act, if a person requests the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation) to form the opinion and be satisfied that the variation is minor in nature, and approve the variation.	Assessment Manager
35. Advice from Commission		
35.1	The power pursuant to Regulation 76(2) of the General Regulations, if a report is not received from the Commission within 20 business days from the day on which the application is lodged under Regulation 29 of the General Regulations or within such longer period as the Commission may require by notice to the relevant authority, to presume that the Commission does not desire to make a report.	Assessment Manager
36. Underground Mains Area		
36.1	The power pursuant to Regulation 78(3) of the General Regulations, if an application relates to a proposed development that involves the division of land within, or partly within, an underground mains area (even if the area is declared as such after the application is lodged with the relevant authority), to require, as a condition on its decision on the application, that any electricity mains be placed underground.	Assessment Manager
37. New Dwellings		
37.1	The power pursuant to clause 2(1)(b) of Schedule 6B of the General Regulations to form the belief that the allotment is, or may have been, subject to site contamination as a result of a previous use of the land	Assessment Manager

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or a previous activity on the land or in the vicinity of the land, other than a previous use or activity that was for residential purposes.	
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**PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES,
CHARGES AND CONTRIBUTIONS) REGULATIONS 2019**

38. Calculation or Assessment of Fees	
38.1 The power pursuant to Regulation 5(1) of the PDI (Fees, Charges and Contributions) Regulations 2019 (the Fees Regulations) in relation to an application which is duly lodged with the council under a related set of regulations (including via the SA planning portal):	Assessment Manager
38.1.1 to require the applicant to provide such information as the delegate may reasonably require to calculate any fee; and	
38.1.2 to make any other determination for the purposes of the Fees Regulations or a related set of regulations or a fee notice (even if the assessment panel is not a relevant authority).	
38.2 The power pursuant to Regulation 5(2) of the Fees Regulations, if the delegate is acting under Regulation 5(1) of the Fees Regulations, or as the delegate of a relevant authority, believes that any information provided by an applicant is incomplete or inaccurate, to calculate any fee on the basis of estimates made by the delegate.	Assessment Manager
38.3 The power pursuant to Regulation 5(3) of the Fees Regulations to, at any time, and despite an earlier calculation or acceptance of an amount in respect of the fee, reassess a fee payable under the Fees Regulations or a related set of regulations.	Assessment Manager
39. Waiver or Refund of Fee	
39.1 The power pursuant to Regulation 7 of the Fees Regulations to, as the delegate considers appropriate to do so:	General Manager City Development
39.1.1 waive the payment of the fee, or the payment	

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	of part of the fee; or	
	39.1.2 refund the whole or a part of the fee.	
	PLANNING AND DESIGN CODE	
40. Procedural Matter		
40.1	The power pursuant to and in accordance with the Planning and Design Code (the PD Code) to form the opinion development is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development and therefore is excluded from the operation of Sections 107(3) and (4) of the PDI Act.	Assessment Manager
40.2	The power pursuant to and in accordance with the PD Code to determine that the variation to one or more corresponding exclusions prescribed in Column B is minor in nature and does not require notification.	Assessment Manager
41. Procedural Referrals		
41.1	The power pursuant to and in accordance with the PD Code to form the opinion development is minor in nature and would not warrant a referral when considering the purpose of the referral.	Assessment Manager
41.2	The power pursuant to and in accordance with the PD Code to form the opinion and deem:	Assessment Manager
41.2.1	alteration to an existing access or public road junction;	
41.2.2	development that changes the nature of vehicular movements or increases the number or frequency of movements through an existing access,	
	to be minor.	
41.3	The power pursuant to and in accordance with the PD Code to form the opinion an alteration or extension of an existing dwelling is minor.	Assessment Manager
41.4	The power pursuant to and in accordance with the PD Code to form the opinion development is minor in	Assessment Manager

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	nature or like for like maintenance and would not warrant a referral when considering the purpose of the referral.	
41.5	The power pursuant to and in accordance with the PD Code to form the opinion development is minor in nature or like for like maintenance and would not warrant a referral when considering the purpose of the referral.	Assessment Manager
41.6	The power pursuant to and in accordance with the PD Code to form the opinion alterations to an existing access or public road junction are minor.	Assessment Manager
41.7	The power pursuant to and in accordance with the PD Code to form the opinion development that changes the nature of vehicular movements or increase the number or frequency of movements through an existing access is minor.	Assessment Manager
41.8	The power pursuant to and in accordance with the PD Code to form the opinion the variation to an application is minor in nature or would not warrant a referral when considering the purpose of the referral.	Assessment Manager
41.9	The power pursuant to and in accordance with the PD Code to form the opinion development materially affects the context within which the State Heritage Place is situated.	Assessment Manager
42. Administrative Terms and Definition		
42.1	The power pursuant to and in accordance with Part 8 of the PD Code to for the purposes of Table 5 – Procedural Matters (PM) – Notification and the definition of 'Excluded Building', form the opinion that:	Assessment Manager
42.1.1	the building, structure or landscape feature (or part thereof) does not contribute to the building or features of identified heritage value within the State Heritage Area;	Assessment Manager
42.1.2	the building (or part thereof) does not demonstrate the historic characteristics as expressed in the Historic Area Statement.	Assessment Manager
43. Referral Body: Minister Responsible for the		

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Administration of the Aquaculture Act 2001	
43.1 The power pursuant to and in accordance with Part 9.4 of the PD Code to form the opinion that aquaculture development which involves an alteration to an existing or approved development is minor in nature.	Assessment Manager

**STATE PLANNING COMMISSION PRACTICE DIRECTION 3
(NOTIFICATION OF PERFORMANCE ASSESSED
DEVELOPMENT APPLICATIONS) 2019**

44.	Responsibility to Undertake Notification	
44.1	The power pursuant to clause 6(4) of the State Planning Commission Practice Direction 3 (Notification of Performance Assessed Development Applications) 2019 (PD3), should the applicant request the relevant authority to place the notice on the land and pay the relevant fee, to (either personally or by engagement of a contractor) give notice of the application to members of the public by notice placed on the relevant land in accordance with Section 107(3)(a)(iii) of the PDI Act.	Assessment Manager
45.	Preparing for Notification	
45.1	The power pursuant to clause 8 of PD3, if the applicant has confirmed they accept responsibility to place a notice on the land as per clause 6(3)(a) of PD3, to, at least 4 business days prior to the commencement of the notification period:	Assessment Manager
45.1.1	give notice of the anticipated commencement date and of the notification period to the applicant; and	
45.1.2	provide the applicant with a copy of the content of the notice to be placed on the relevant land; and	
45.1.3	advise the applicant of the position and number of notice(s) to be erected on the land in accordance with clause 10 of PD3.	
46.	Notice on Land	

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46.1	The power pursuant to clause 10(2) of PD3, in relation to clause 10(2) of PD3, to determine the most appropriate position for the notice on the land in order to provide for maximum visibility from a public road, and in cases where the relevant land has more than 1 frontage to a public road, to determine that more than 1 notice must be erected on each of the public road frontages to ensure that notice of the development is reasonably apparent to members of the public.	Assessment Manager
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**STATE PLANNING COMMISSION PRACTICE DIRECTION
(SCHEME TO AVOID CONFLICTING REGIMENS) 2019**

47. Scheme Provisions		
47.1	The power pursuant to clause 5(1) of the State Planning Commission Practice Direction (Scheme to Avoid Conflicting Regimens) 2019 (PD6), to in undertaking a planning assessment or imposing controls, including through the imposition of conditions of planning consent, ensure that such assessment or controls do not conflict or duplicate matters dealt with or addressed under licencing or regulatory regimens under another Act.	Assessment Manager
47.2	The power pursuant to clause 5(3) of PD6 to, where the delegate is uncertain whether a matter conflicts with, or duplicates a matter dealt with under a licencing or regulatory regime under another Act, to seek the advice of that authority or agency.	Assessment Manager

**SITE PLANNING COMMISSION PRACTICE DIRECTION 14 SITE CONTAMINATION
ASSESSMENT 2021**

48. Change of Use Where Remediation is Required After the Issue of Planning Consent – Section 127(1)(b) of Act		
48.1	The power pursuant to clause 12 of the State Planning Commission Practice Direction (Site Contamination Assessment) 2021 (PD14) to be satisfied that a site is suitable for its intended use subject to remediation being undertaken and to issue a planning consent without the remediation work having been carried out, subject to Condition A, B or	Assessment Manager

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C in PD14 as relevant.	
49. Land Division Where Remediation is Required After the Issue of Planning Consent – Section 127(1)(b) of Act	
<p>49.1 The power pursuant to clause 13 of PD14 to be satisfied in relation to proposed land division that a site is suitable for its intended use subject to remediation being undertaken and to issue a planning consent without the remediation work having been carried out subject to the consent being subject to the following condition:</p> <p><i>A land division certificate under Section 138 of the Planning, Development and Infrastructure Act 2016 must not be issued until a statement of site suitability is issued certifying that the required remediation has been undertaken and the land is suitable for the proposed use.</i></p>	Assessment Manager

**SITE PLANNING COMMISSION PRACTICE DIRECTION 16 URBAN TREE CANOPY
OFF-SET SCHEME**

50. Reserved Matter	
<p>50.1 The power pursuant to clause 6(2) of State Planning Commission Practice Direction 16 Urban Tree Canopy Off-set Scheme (PD16) to where an applicant has elected to reserve consideration of the DTS/DPF Policy in the Overlay, as provided for in the Code and under Section 102(4) of the PDI Act, to require the applicant to provide documents which are considered by the delegate as sufficient to confirm whether the relevant development site includes a Designated Soil Type.</p>	Assessment Manager

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51. Process for Payments to the Fund	
51.1 The power pursuant to clause 7 of PD16 where an applicant has elected to make a payment into the Fund, in lieu of planting a tree (or trees) as provided in the DTS/DPF Policy in the Overlay, to verify the payment as being correct in accordance with the Scheme, prior to the granting of development authorisation under the PDI Act.	Assessment Manager
52. Development within Council Fund Designated Areas	
52.1 The power pursuant to clause 8(3) of PD16, where a development application relates to a site which is located both within a Council Fund Designated Area and within the Overlay to impose a condition requiring payment into a Council Fund, irrespective of an election by the applicant to plant a tree or make a payment into the Fund as provided under the Scheme.	Assessment Manager

URBAN TREE CANOPY OFF-SET SCHEME

53. Payment into Fund	
53.1 The power pursuant to clause 6(4) of the Urban Tree Canopy Off-set Scheme (UTCOS) where an applicant has elected to make a contribution to the fund under this scheme to impose a condition on the relevant development authorisation for planning consent requiring that payment of the amount specified in clause 6(1) of the UTCOS be made into the fund before the issue of development approval for the subject development application.	Assessment Manager

[STATE PLANNING COMMISSION PRACTICE DIRECTION 18 OUTLINE CONSENT](#)

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ACT 2016, REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF
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54. <u>Circumstances in Which Outline Consent May be Granted</u>	
54.1 <u>The power pursuant to clause 5(1)(b) of the State Planning Commission Practice Direction 18 Outline Consent (PD18) to provide advice to an applicant that if the application were to be for planning consent, the council would request the Minister to give notice under Section 94(1)(g) of the PDI Act.</u>	<u>Assessment Manager</u>

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September 2023

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**CITY OF SALISBURY COUNCIL ASSESSMENT PANEL
INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF
POWERS OF AN ASSESSMENT PANEL**

SCHEDULE OF CONDITIONS

**CONDITIONS OR LIMITATIONS
APPLICABLE TO DELEGATIONS
CONTAINED IN THIS INSTRUMENT**

Paragraph(s) in instrument to which conditions/limitations apply	Conditions / Limitations
3.1.1.1	<p>The delegation to the Assessment Manager of the power to grant or refuse planning consent pursuant to Section 102(1)(a) of the Act is limited to applications in relation to which one or more of the following apply:</p> <ol style="list-style-type: none"> 1. No valid representations are received; 2. All valid representations are withdrawn; 3. No representor who has lodged a valid representation wishes to be heard; 4. A deemed consent notice has been served on the Panel under Section 125(2) of the Act. <p>The delegation to the General Manager City Development of the power to grant or refuse planning consent pursuant to Section 102(1)(a) of the Act is limited to applications for which the applicant has not agreed to extend the statutory timeframe within which the Panel must determine the development application pursuant to Regulation 53 of the Regulations, and that timeframe will expire before the next meeting of the Panel is scheduled to occur.</p>
11.1	<p>The delegation of the power to apply to the Court for an order quashing the consent pursuant to Section 125(6) of the Act is limited to where the time within which the application must be made (being one month after the deemed planning consent is taken to have been granted) will expire before:</p> <ol style="list-style-type: none"> 1. The next meeting of the Panel is scheduled to occur; or 2. A special meeting of the Panel is able to be convened in accordance with the Panel's General Operating Procedures.
39.1	<p>Prior to exercising the power to waive or refund a fee pursuant to Regulation 7 of the Fee Regulations, the delegate shall have regard to any policy adopted by the Chief Executive Officer of Council.</p>

September 2023

Development Applications Determined by the Assessment Manager under Delegated Authority
2023-24 Financial Year

Retaining Walls, Fence and Shed at 103 Target Hill Road, Salisbury Heights Representations – Two (support) Decision – Approve with conditions
Industrial development comprising ten (10) light industrial tenancies with associated offices and amenities, access, carparking, fencing, landscaping and pylon sign at 43-45 West Avenue, Edinburgh Representations – Two (one support, one support with concerns) Decision – Approve with conditions
Dwelling Addition (Garage) and Decking Above Garage at 17 Parkeston Ct, Para Hills Representations – None Decision – Approve with conditions
Upgrade to existing telecommunications facility comprising overall increase in height of 700mm, remove and replace 3 shared panel antennas, 6 new panel antennas, 18 new remote radio units, remove and replace guy wire and ancillary equipment at 9 Ponton Street, Salisbury Representations – One (support with concerns) Decision – Approve with conditions
Two storey dwelling, walls and fencing with combined height greater than 2.1m, swimming pool and associated safety features at 22b Rivergum Cl Walkley Heights Representations – Two (support) Decision – Approve with conditions
Demolition of two (2) existing buildings, construction of workshop and ancillary office located on the north-eastern boundary and change of use to service trade premises with associated landscaping and car parking at 2-4 Hatcher Ct, Burton Representations – One (support) Decision – Approve with conditions
Single Storey Dwelling, Retaining Walls and Fencing with combined height greater than 2.1 metres at 2b Jakara Ave, Ingle Farm Representations – None Decision – Approve with conditions
Childcare centre with associated fencing, signage and landscaping at 89-97 Kings Rd, Salisbury Downs Representations – Four (three support, one support with concerns) Decision – Approve with conditions

<p>Two Storey Dwelling with Retaining Wall and Fencing over 2.1m at 3 Wunkar Rd, Ingle Farm</p> <p>Representations – One (support with concerns)</p> <p>Decision – Approve with conditions</p>
<p>Change of Use from Indoor Recreation Centre to Place of Worship and 2.1m tall Acoustic Fencing to rear (north-eastern) boundary at 10-14 Clayson Road, Salisbury East</p> <p>Representations – Thirty-six (support, two with concerns about traffic/parking)</p> <p>Decision – Approve with conditions</p>
<p>Single Storey Group Dwelling at Unit 8 683a Whites Rd, Globe Derby Park</p> <p>Representations – One (support)</p> <p>Decision – Approve with conditions</p>
<p>Change of Use from Dwelling to Office (Retrospective) with Associated Alterations and Additions to Existing Buildings, Car Parking and Landscaping at 33 Carey St, Salisbury</p> <p>Representations – One (support)</p> <p>Decision – Approve with conditions</p>
<p>Single Storey Dwelling, Retaining Walls and Fencing with combined height greater than 2.1 metres (Lot 2 in Land Division 21020502) at 40 Schumann Street, Ingle Farm</p> <p>Representations – None</p> <p>Decision – Approve with conditions</p>
<p>Alterations and Additions to Existing Place of Worship at 143 Nelson Rd, Para Vista</p> <p>Representations – Three (support)</p> <p>Decision – Approve with conditions</p>
<p>Three detached dwellings, associated retaining walls, and removal of 1 regulated tree at 22 Graham St, Para Hills</p> <p>Representations – One (support)</p> <p>Decision – Approve with conditions</p>
<p>Two storey dwelling, retaining walls and fencing with combined height greater than 2.1 metres at 34b Cornwall Dr, Gulfview Heights</p> <p>Representations – One (support)</p> <p>Decision – Approve with conditions</p>
<p>Two (2) single storey dwelling with associated retaining wall and fence exceeding 2.1m high at 10 Loral Street, Para Hills</p> <p>Representations – None</p> <p>Decision – Approve with conditions</p>

<p>Two storey dwelling, walls and fencing with combined height greater than 2.1m at 22a Rivergum Close, Walkley Heights</p> <p>Representations – Two (support)</p> <p>Decision – Approve with conditions</p>
<p>Construction of an entrance statement including eight (8) pillars and a 2.23 metre high fence with associated gates at 29 South Terrace, Pooraka</p> <p>Representations – None</p> <p>Decision – Approve with conditions</p>
<p>Demolition of existing dwelling and construction of a single storey dwelling at 60 Taylor Avenue, Salisbury Heights</p> <p>Representations – One (support)</p> <p>Decision – Approve with conditions</p>
<p>Change of Use from Light Industry to Training Facility (28 Kesters Road) at 26-28 Kesters Rd Para Hills West</p> <p>Representations – None</p> <p>Decision – Approve with conditions</p>
<p>Integrated industrial facility comprising pharmaceutical manufacturing, warehouse and office areas together with advertisements, fire tanks, retaining walls, fencing, access, car parking and landscaping at 157-165 Cross Keys Road, Salisbury South</p> <p>Representations – One (support)</p> <p>Decision – Approve with conditions</p>
<p>Alterations and additions to existing educational establishment including new reception building and hall/gym, removal of four (4) Regulated Trees, ancillary outbuildings and structures and partial demolition at 25 Commercial Rd, Salisbury</p> <p>Representations – Three (2 support concerns / one oppose)</p> <p>Decision – Approve with conditions</p>
<p>Land Division (Torrens Title) - Creation of 20 Allotments, Construction of a Public Road, Retaining Walls and Fencing at 35-41 Lantana Dr, Parafield Gardens</p> <p>Representations – None</p> <p>Decision – Approve with conditions</p>
<p>Childcare Facility (68 place capacity), retaining walls, acoustic fencing, facade signage and associated car parking and landscaping at 102-104 Bridge Road, Pooraka</p> <p>Representations – Two (one support / one oppose)</p> <p>Decision – Approve with conditions</p>
<p>Telecommunications facility comprising 30 metre high monopole with triangular headframe supporting antennas with associated equipment cabinets and 2.4 metre high fencing at 71-77 Anjanto Road, Waterloo Corner</p>

<p>Representations – One (support)</p> <p>Decision – Approve with conditions</p>
<p>Additions and Alterations to Existing Community Club and Removal of One (1) Regulated Tree at 360–370 Bridge Rd, Para Hills West</p> <p>Representations – None</p> <p>Decision – Approve with conditions</p>
<p>Ancillary Accommodation (Pool House) at 3 Chapman Avenue, Salisbury Heights</p> <p>Representations – One (support)</p> <p>Decision – Approve with conditions</p>
<p>Seven (7) two storey group dwellings, freestanding carport, two (2) office spaces and associated car parking and landscaping at 143 Winzor St Salisbury Downs</p> <p>Representations – None</p> <p>Decision – Approve with conditions</p>
<p>Alterations and Additions to Existing Service Trade Premises - Demolition of Existing Showrooms and Construction of Five (5) New Showrooms, Workshop Addition, Car Wash, Three (3) New Pylon Signs, Facade Signage and associated Civil Works, Car Parking and Landscaping at 28 Malinya Dr & 1922, 1926-1928 and 1930 Main North Road, Salisbury Park</p> <p>Representations – One (support with concerns)</p> <p>Decision – Approve with conditions</p>
<p>Single storey detached dwelling, walls and fencing with combined height greater than 2.1m. at 28a Maves Rd, Para Hills</p> <p>Representations – None</p> <p>Decision – Approve with conditions</p>
<p>Warehouse Development comprising 21 tenancies together with associated office, acoustic fencing, car parking and landscaping and removal of one significant tree at 26 Willochra Rd, Salisbury Plain</p> <p>Representations – Three (1 support with concerns / two oppose)</p> <p>Decision – Approve with conditions</p>
<p>Two storey detached dwelling, associated retaining wall, fencing and removal of a regulated tree at 44a Coomurra Dr Salisbury Heights</p> <p>Representations – One (Support)</p> <p>Decision – Approve with conditions</p>
<p>One (1) Warehouse and One (1) Light Industry, car parking and landscaping at 114 Brown Tce, Salisbury</p> <p>Representations – Two (Oppose)</p> <p>Decision – Approve with conditions</p>
<p>Dwelling Addition, Freestanding Veranda & Attached Carport at 13 Rosewall Ave, Gulfview Heights</p> <p>Representations – One (support)</p>

Decision – Approve with conditions
Single storey detached dwelling, walls and fencing with combined height greater than 2.1m at 27 Destroyer St, Salisbury Heights Representations – None Decision – Approve with conditions
Expansion of existing Service Trade Premise including amendments to car park layout, ancillary workshop and landscaping at 704-712 and 714-720 Pt Wakefield Road, Parafield Gardens Representations – None Decision – Approve with conditions
Retention of existing childcare, alterations to car park and construction of eight (8) retail tenancies (shop) with associated advertising signage, car parking, access from Brecon Drive, landscaping and removal of one (1) regulated tree at 2-6 Roopena Street & 6 Brecon Dr Ingle Farm Representations – Four (1 support with concerns / three oppose) Decision – Approve with conditions
Two (2) Two Storey Semi-Detached Dwellings with Associated Retaining Wall and Fence Combined Exceeding 2.1m high at 20A & 20B Trowbridge Cct, Gulfview Hts Representations – One (Oppose) Decision – Approve with conditions
Forty One (41) Transportable Dwellings in association with existing Caravan & Tourist Park at 925-963 Port Wakefield Rd Bolivar Representations – None Decision – Approve with conditions
Amendment to Development Approval 23012823 for Change of Use to Place of Worship and Acoustic Fencing, comprising: - Demolition of existing building (formerly Plaster Fun House) and Partial Demolition (formerly indoor cricket) - Construction of a Two Storey Addition to the south-eastern side of the land and Alterations to Existing Building - Construction of two (2) verandahs - Increase in overall Floor Area of the Place of Worship - Alterations to Car Parking, Access and Landscaping at 10-14 Clayson Rd Salisbury East Representations – One (Oppose) Decision – Approve with conditions

ITEM	8.2.6
	COUNCIL ASSESSMENT PANEL
DATE	27 August 2024
HEADING	Appeal Matter ERD-23-000053 for a Childcare Centre at 61 Stanford Road, Salisbury Heights (Development Application 23002678)
AUTHOR	Brian Ferguson, Development Officer Planning, City Development
SUMMARY	This report provides a summary of the recent judgment made in relation to Supreme Court decision to dismiss the Panel’s appeal against the decision of the ERDC Court for a pre-school at 61 Stanford Road, Salisbury Heights.

RECOMMENDATION

That the Council Assessment Panel:

1. Notes the report.
2. Provides a copy of this report to Council to consider the current Code policy expression and how it aligns with current community expectations for non-residential development proposals in residential areas.

ATTACHMENTS

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

1. Supreme Court Judgment_City of Salisbury Assessment Panel v Development Holdings

1. BACKGROUND

- 1.1 The recent judgments made in relation to Development Holdings Pty Ltd V City Of Salisbury Assessment Panel & Anor for a pre-school at 61 Stanford Road, Salisbury Heights has highlighted changes to the way assessment policy should be interpreted when assessing non-residential, particularly community service type land uses in residential type zones, in this case the Hills Neighbourhood Zone (HNZ).
- 1.2 The ERD Court's judgment, delivered on 01 February 2024, found that a pre-school was an appropriate land use within the HNZ, provided it addressed relevant policy relating to residential character and amenity of the selected locality while not being unreasonable in impact. The subsequent CAP appeal of this judgment was dismissed by the Supreme Court on 12 July 2024, which further reinforced this interpretation of relevant policies within the Planning and Design Code by the ERD Court.
- 1.3 In examining the outcome and implications, it is important to consider the findings of the Courts collectively. Viewing these judgments in isolation would overlook the nuanced interpretations and the broader implications for future developments within the zone.

2. DISCUSSION

- 2.1 Six grounds of appeal were presented to the Supreme Court. The Court grouped these as incident of two overarching objections.
 - 2.1.1 The assessment of the proposal against the requirements of the Code in respect to impact of the proposal against the character and amenity of the locality.
 - 2.1.2 The approach to the proper construction of ‘complement’ in the Code in the context of the development complementing existing character, amenity and locality.
- 2.2 On the land use, the ERD Court noted *‘in light of HNZ PO1.3(b), and HNZ PO1.5 which contemplate the expansion of existing pre-schools, none of this leads me to find that a pre-school in the HNZ is not an appropriate land use generally’*. This is notwithstanding the HNZ, unlike the General Neighbourhood Zone or Suburban Neighbourhood Zone, not listing a “pre-school” in DPF 1.1. The fact that the proposed pre-school would be the first non-residential development in the locality was acknowledged, but not seen as a fatal to the proposal in its own right, stating that *‘pre-schools, and indeed schools and places of worship are all land uses that support a residential community and within the doctrines of good town planning are exactly the type of non-residential land uses that should be encouraged to locate within residential areas’*. The Court noted the lack of explicit exclusion of pre-schools in the HNZ suggests that such uses can be considered if they meet the overall objectives of the zone.
- 2.3 Having found the land use to be appropriate, the Court focused on whether the pre-school could be integrated in a manner that respects and complements the existing residential character. The consideration had a heavy focus on the siting and built form aspects of the proposal such as appropriate architectural style, low building heights, fencing, setbacks, and incorporating landscaping to soften the visual impact.
- 2.4 Understanding character and its relationship with the locality formed a key aspect of the judgment. Of note, the judgment provides guidance on “character” in this context and, by citing previous case law, identified that it refers to the multi-dimensional concept that results from the *“synthesis of land use, the appearance of buildings and spaces, the intensity of development and the scale of operation of such development.”* The importance of determining a suitable locality during the assessment was considered critical to assessment against the relative character of a locality. In this regard, the Supreme Court judgment found the ERD Court had not erred in approach, appropriately considering this aspect.
- 2.5 The Supreme Court found the ERD Court had adequately considered aspects of ‘amenity’ including considerations of noise, hours of operation and traffic impacts. In particular, the position of the front car park was deemed acceptable, due to the inclusions of landscaping and fencing. Both the ERD Court and Supreme Court accepted amenity is not static, noting that land use changes could lead to ‘incremental’ amenity changes to a locality.

- 2.6 As per previous ERD decisions there was debate throughout the process regarding the importance of a Designated Performance Feature (DPF) in achieving a Performance Outcome (PO). While a proposal may be in contrast with a PO, it may still achieve a DPF and via-versa. This can make the assessment task even more problematic.
- 2.7 The subjective nature of the PO policy was heavily considered. Key points of contention throughout the proceedings were interpretation of specific definitions of wording used within the Code, including interpretation of the word ‘complement’. On the definition of ‘complement’, the Supreme Court found that this need not be interpreted as ‘enhance’. It is understandable that this interpretation might be onerous on a developer to achieve in a particular locality. In justification for this interpretation, the Supreme Court notes that *‘for example, the Business Neighbourhood Zone Performance Outcome 1.2 uses the phrase “complement and enhance” which is strongly suggestive of two separate concepts’*.
- 2.8 Both the ERD and Supreme Court agreed that ‘complement’ should be interpreted as at best being neutral, and not to enhance, and having policy that says that a development must do both, highlights the conflict in the Code policy.
- 2.9 In terms of character, HNZ PO1.1 requires that non-residential land uses be compatible with “a low density residential character,” HNZ PO4.1 requires that buildings contribute to “a low rise suburban character,” and HNZ PO3.1 requires building footprints to align with the character and pattern of a “low-density suburban neighbourhood.” The ERD Court highlighted the problematic generic nature of these phrases when considering how to define the specific characteristics of the locality. This approach potentially resulted in less emphasis on the existing locality, which includes large allotments with significant setbacks and a much smaller footprint than what was proposed. The Supreme Court upheld this approach, finding no error.
- 2.10 Such an approach results in a shift in the way that character is assessed in planning assessments, diminishing the importance of locality character attributes. This leads to making planning assessment more difficult, particularly where a locality is atypical with a generic character. It is also considered more likely to lead to an outcome where development is approved that is contrary to the intent of the drafters of the Code and community expectations.
- 2.11 While there was some guidance on what defined character of a locality, with respect to land use and built form, there was less focus on amenity. The ERD Court took guidance on assessment of amenity from “Interface between Land Uses” DO1 - *Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses*. The Court accepted that, utilising this guidance, the mitigation measures incorporated through design, such as acoustic fencing and hours of operation which met the “Interface between Land Uses” module, satisfied the requirement for the proposal to complement the amenity of the neighbourhood.

3. CONCLUSION

- 3.1 The judgment to approve the childcare centre has reinforced the policy setting that supports increased permissibility of non-residential uses within the residential types zones. The Supreme Court describe the '*evident object of the PDI [Act] and Code to authorise change to a locality in an incremental fashion to reflect the wishes and needs of the community*'. The determination has the potential to represent a significant shift in what can be expected in the HNZ and other neighbourhood-type zones, particularly given the transition from the previous Development Plan.
- 3.2 The judgments confirm there is little policy guidance in terms of scale and intensity for non-residential, particularly community type uses, within the HNZ and decreased the relevance of locality attributes in that assessment. The ERDC judgment focused more heavily on the built form outcomes associated with the proposal (finding these to be reasonable). In turn, the Supreme Court supported these findings. Both accepted there will be incremental change to a locality through development, and provided appropriate mitigation measures are achieved, then a development may be permissible.
- 3.3 The judgments highlight tensions (and difficulties) in the policy. The findings are likely to facilitate non-residential uses within the HNZ, and, provided potential 'interface' impacts are mitigated (e.g. via landscaping, or acoustic fencing), then the finding suggests there need be less consideration for character change, with both Courts anticipating incremental change.
- 3.4 The Council administration considers that the current Code policy for assessing non-residential uses in neighbourhood-type zones is deficient and challenging to interpret. The ERD Court has expressed similar concerns too (see. for example, the recent decision of *Minicozzi (Osmond Terrace) Pty Ltd v The City of Norwood, Payneham and St Peters Assessment Panel [2024] SAERDC 18 at [147]*).
- 3.5 Given the current Code policy expression, interpretation and nature of representations that have been made on this (and other non-residential development proposals) to the Panel, the Panel may wish to highlight this for Council's consideration. A submission could be made to the Commission by the Panel or Council. While the Panel should continue to exercise its professional judgment and in doing so, rely on relevant case law in undertaking development assessment, it is considered that there is greater risk, based on these interpretations and the experience of the Panel, that those decisions may not address community expectations for non-residential development proposals in residential areas.

SUPREME COURT OF SOUTH AUSTRALIA

(Appeal to a Single Judge)

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment. The onus remains on any person using material in the judgment to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court in which it was generated.

**CITY OF SALISBURY ASSESSMENT PANEL v
DEVELOPMENT HOLDINGS PTY LTD**

[2024] SASC 92

Judgment of the Honourable Justice Hughes

12 July 2024

APPEAL AND NEW TRIAL - APPEAL - GENERAL PRINCIPLES**ENVIRONMENT AND PLANNING - BUILDING CONTROL - COUNCIL
CONSENT AND APPROVAL - CONSENTS, APPROVALS AND PERMITS****ENVIRONMENT AND PLANNING - COURTS AND TRIBUNALS WITH
ENVIRONMENT JURISDICTION - SOUTH AUSTRALIA - SUPREME COURT
- RIGHT OF APPEAL**

Appeal from a decision of the Environment Resources and Development Court (ERD Court) constituted by a Commissioner.

The respondent developer was refused planning approval for a 118-place child-care centre with 27 car parks by the City of Salisbury Assessment Panel. The developer sought a review in the ERD Court. Following minor amendments to the proposal, the appeal was allowed and planning approval granted.

The Assessment Panel appealed the decision, alleging that the ERD Court erred in law by:

1. Misconstruing and misapplying particular performance outcomes of the Planning and Design Code by assessing the proposal against generic character attributes of the locality rather than the character of the immediate surrounds of the proposed development.
2. Defining "low density character" too narrowly by reference to the Code's definition of "low net residential density".

On Appeal from ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT OF SOUTH AUSTRALIA (COMMISSIONER DYER) ERD-23-000053

**Applicant: CITY OF SALISBURY ASSESSMENT PANEL
NORMAN WATERHOUSE**

Counsel: MR M RODER KC - Solicitor:

**Respondent: DEVELOPMENT HOLDINGS PTY LTD
BOTTEN LEVINSON**

Counsel: MR D BILLINGTON - Solicitor:

Hearing Date/s: 16/05/2024

File No/s: CIV-24-001676

B

3. Assessing the proposal's conformity with the Hills Neighbourhood Zone Performance Outcome (HNZ PO) 1.4 in a manner that confined consideration to the effect on character of the scale and intensity of the proposal when the concept of character was not so limited.
4. Failing to assess the disparity between the footprint of the proposed building with other buildings in the locality and failing to consider that the footprint of the building, whether obscured by landscaping or not, was an important aspect of consistency with character.
5. Construing the word "complement" in HNZ PO 1.4 as having a similar meaning to "maintain" and failing to construe the provision as seeking enhancement by adding to the existing amenity and character.
6. Failing to assess whether noise from the proposed development would complement the amenity of the locality as provided for by HNZ PO 1.4 and / or erred in proceeding on the basis that the question was whether the effect of the anticipated noise was "not unreasonable" by reference to general provisions of the Code applying in all localities.

Held, dismissing the appeal:

- The Commissioner correctly assessed amenity by reference to the locality. There is no basis in the Code for confining the area of impact with greater emphasis on the immediate neighbours and street than was given by the ERD Court.
- No error was demonstrated in the manner in which the ERD Court undertook the task of assessing the proposal against the Code and in particular its impact on the residential character and amenity of the locality.
- The Court's focus on the scale and intensity of the proposal was appropriately aligned with the parties' approach to the appeal before it.
- Whilst in ordinary usage, "complement" may more frequently be used to connote that which enhances, the context of its use in the Code indicates that the Commissioner correctly construed the term.

Planning, Development and Infrastructure Act 2016 (SA) s 57, s 66, s 102, s 202, referred to.
Lakshmanan & Anor v City of Norwood, Payneham and St Peters & Anor [2010] SASCFC 15; *Rymill Park Apartments Pty Ltd v Rymill House Foundation Pty Ltd & Anor* [2023] SASC 107; *Villaplex P/L v Council of Norwood, Payneham and St Peters & Ors* [2000] SAERDC 10, applied.
Development Holdings Pty Ltd v City of Salisbury Assessment Panel & Anor [2024] SAERDC 6, discussed.
Town of Walkerville v Adelaide Clinic Holdings Pty Ltd (1985) 38 SASR 161; *Ditara Pty Ltd v City of Norwood, Payneham and St Peters* [2001] SASC 236; *Geber Super Pty Ltd v The Barossa Assessment Panel* [2023] SASC 154, considered.

**CITY OF SALISBURY ASSESSMENT PANEL v DEVELOPMENT
HOLDINGS PTY LTD
[2024] SASC 92**

Civil: Appeal to a Single Judge

1 **HUGHES J:** On 28 May 2023, the City of Salisbury Assessment Panel (the
Assessment Panel) refused development application no 23002678 for development
of a childcare centre and adjacent car park at 61 Stanford Road, Salisbury Heights
(the development).

2 The developer, Development Holdings Pty Ltd (the Developer), sought a
review in the Environment Resources and Development Court (ERD Court) which
was granted following a hearing.

3 The Assessment Panel appeals the ERD Court's decision to this Court.

4 For the reasons that follow, no error in the decision has been demonstrated
and the appeal is dismissed.

Background

5 The original development proposal was a 118-place child-care centre with 27
car parks. The location is on a suburban road with residential dwellings adjacent.
A neighbour, Mrs Jenzen, opposed the proposed development.

6 The Developer was refused planning approval by the Assessment Panel on
several bases. The Assessment Panel considered that the development would
introduce a scale and intensity that did not presently exist within the locality, and
would be detrimental to the locality's amenity and character.¹ It determined that
the car park would not complement the established residential character of the
locality.² Additionally, the Assessment Panel considered that the proposed
development failed to achieve desired landscape and tree planting requirements
and did not respond to the context of the locality.³

7 The Developer refined the proposed development reducing the total number
of child-care places to 108.⁴ The Developer invoked the ERD Court's review
jurisdiction.⁵ A hearing was conducted which included an inspection of the
proposed site and surrounds, and the Court received expert reports and oral
evidence from two experts. The ERD Court also heard from Mrs Jenzen through
her adult son.

¹ Development Application number 23002678.

² Ibid.

³ Ibid.

⁴ *Development Holdings Pty Ltd v City of Salisbury Assessment Panel & Anor* [2024] SAERDC 6, [6].

⁵ *Planning Development and Infrastructure Act 2017*, s 202.

Legislative scheme***The Planning, Development and Infrastructure Act 2017***

8 The assessment of the development is undertaken by reference to the *Planning, Development and Infrastructure Act 2017* (“PDI Act”). Those involved in the administration of the Act are required to advance its objects, which relevantly include the aspiration of “creating an effective, efficient and enabling planning system, linked with other laws, that promotes and facilitates development, and the integrated delivery and management of infrastructure and public spaces and facilities, consistent with planning principles and policies”.

9 Part 7 of the PDI Act creates a scheme for development approval. Within that Part, s 102(1) provides that development is approved development if, and only if, a relevant authority (in this case, the Assessment Panel) has issued a planning consent.

10 Section 66 of the PDI Act requires that there will be a Planning and Design Code (“the Code”) and that it must set out a comprehensive set of policies, rules and classifications which operate selectively in the various parts of the State.

11 The Code is required to establish a scheme of three spatial layers: zones, subzones and overlays. The Code must specify policies and rules directed to guiding the assessment of development. It was not in dispute that the development was required to be assessed on its merits against the Code. The decision-maker was required to determine whether the proposal was seriously at variance with the Planning and Design Code. A grant of planning consent where it is established that there is non-conformance with a policy is not, of itself, sufficient to demonstrate error.

The Planning and Design Code

12 The primary purpose of the Code is to set out the policies, rules and classifications for the assessment of development under the PDI Act by reference to the three spatial layers.

13 The Code contains rules of interpretation. Those rules describe Desired Outcomes, being general policy agendas for a zone, subzone, or overlay. Desired Outcomes inform the interpretation of Performance Outcomes, and are not policies in their own right.⁶

14 The rules refer to Performance Outcomes which are policies designed to facilitate assessment of proposals according to specified factors, including land use, site dimensions and land division, built form, character, and hazard risk minimisation.

⁶ *Geber Super Pty Ltd v The Barossa Assessment Panel* [2023] SASC 154 per Blue J at [87].

The location and the proposal

15 The proposed development is a single storey building constructed in a residential style. The proposal is described as a pre-school, adopting the language of the Planning and Design Code. In colloquial terms, it might be better known as a child-care centre, as it is a business that provides care to children from birth to school age.

16 The pre-school's proposed hours of operation would be 6.30 am until 6.30 pm, Monday to Friday.

17 The Developer's revised proposal that was considered by the ERD Court comprised a 108-place pre-school, together with on-site car parking for 27 vehicles, retaining walls, fencing, landscaping and advertising.

18 A landscape buffer, grading in width between 5.9m - 5.0m, is proposed across the front of the site and the building and car park would be located behind a 1.5m high fence.

19 In terms of setbacks, the building is proposed to be sited approximately 43m - 48.5m from the front boundary, and approximately 900mm from the southern boundary for a distance of 15.6m, beyond which the building would step away to allow for an outdoor play space 8.5m wide. This play area would follow around to the rear of the building where the south-eastern corner, at 3.3m, would form the closest rear setback. Forward of the building on the southern side would be an area of open space, further play area, and a screened service area.

20 The 27-space car park positioned behind the landscape buffer would be setback 900mm off the northern boundary. Vehicle access to the car park would be via a dual direction, and a pedestrian access path would run along the car park's southern edge.

21 East of the car park the building would be variously setback from the northern boundary. For 9.2m the setback is proposed at 1m, beyond which it would increase to provide for play space. The setback would be 8.2m wide for a length of 7.7m, stepping in to 7m with the building ending 5m from the rear boundary. The perimeter is proposed to be fenced at the rear and side.

The site and locality

22 The site is located at the edge of the Hills Neighbourhood Zone (HNZ) where it meets the General Neighbourhood Zone (GNZ). The land currently has a residential dwelling, shed, driveway and garden, which will be demolished for the development.

The locality

23 It was not disputed that the locality comprises low density residential development, typically setback 10-15m from the front boundary. In terms of

trending change to the broader area, it was also agreed that infill development is increasing, entailing smaller allotments with greater site coverage by buildings and more retaining on sites.

24 The experts engaged for the purposes of the ERD Court proceedings described slightly different localities for the purpose of assessment, and the Commissioner ultimately chose a different set of boundaries to describe the locality for the purposes of planning assessment.

25 The Commissioner modified the experts' combined locality to include all the properties on the southern side of Taylor Avenue up to and including 19 Taylor Avenue along with 14 Birt Avenue, and to remove the area north of the northern boundary of 73 Stanford Road. No issue has been taken with that approach on the appeal.

26 The Commissioner observed that Stanford Road is a connector road that carries an average of 3415 vehicles per day.

27 In her written reasons, the Commissioner provided a detailed description of the locality that has not been challenged. She said,

Overall the locality can be characterised as a residential area comprising largely (although not exclusively) single storey detached dwellings on individual allotments. There is increasing evidence of recent redevelopment and slight increases in density; notwithstanding density remains low. It is suburban, as distinct from urban or rural. It is relatively quiet. Dwellings are typically set back behind established gardens with both dwellings and gardens generally well maintained. Driveways lead to carports or garages. Stanford Road provides for through traffic and traffic collected from the surrounding local road network. The amenity is pleasant. It is typical of what one would expect of a residential area influenced by a collector road at the edge of a zone.⁷

The policies relevant to the appeal

28 Whilst there were numerous policies applicable to the proposal, only the application of a few of them are relevant to the grounds of appeal. Those policies relate to the HNZ Performance Outcomes as follows:

P.O. 1.1 Predominantly low density residential development with complementary non-residential land uses compatible with the natural land forms and a low density residential character.

P.O. 1.4 Non-residential development sited and designated to complement the residential character and amenity of the neighbourhood.

P.O. 8.1 Buildings are set back from side boundaries to provide (a) separation between dwellings in a way that complements the established character of the locality;

P.O. 3.1 Building footprints [are] consistent with the character and pattern of a low density suburban neighbourhood.

⁷ *Development Holdings Pty Ltd v City of Salisbury Assessment Panel & Anor* (n. 4), [33].

P.O. 8.1 Buildings are set back from side boundaries to provide

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

P.O. 9.1 Buildings [are] set back from rear boundaries to provide

- (a) Separation between dwellings in a way that complements the established character of the locality;
- (b) access to natural light and ventilation for neighbours
- (c) Private open space
- (d) Space for landscaping and vegetation.

The ERD Court Decision

29 The Assessment Panel's decision to refuse planning consent was made within the context of the HNZ Desired Outcomes. The first of these does not expressly contemplate non-residential development within the zone. Further, HNZ Designated Performance Feature 1.1 does not include "pre-school" in its list of uses, whereas the General NZ and the SNZ both expressly contemplate such services being provided within those areas.

30 The Assessment Panel argued before the ERD Court that the proposal was not contemplated. The Commissioner rejected that contention and said that the lack of an express reference to a pre-school was not fatal to the application. The Commissioner said:⁸

Pre-schools, and indeed schools and places of worship are all land uses that support a residential community and within the doctrines of good town planning are exactly the type of non-residential land uses that should be encouraged to locate within residential areas.

...

I find as a genus the pre-school land use is an appropriate complementary non-residential land use within the HNZ and in particular in this locality because it is a land use that would suit or go well with the existing residential development.

31 The Commissioner then considered whether, as a non-residential land use, the proposal was compatible with the locality's character. She found the character to be guided by Performance Outcomes 1.1, 4.1 and 3.1. She said:⁹

HNZ PO1.1 requires non-residential land uses to be compatible with "a low density residential character," HNZ PO4.1 requires buildings to contribute to "a low rise suburban

⁸ Ibid, at [134]-[139].

⁹ Ibid, from [93].

character” and HNZ PO3.1 requires building footprints to be consistent with the character and pattern of an undefined “low-density suburban neighbourhood.”

These policies do not necessarily relate to the specific locality; it must be the generic character elements that are of importance.

I would describe a generic low density residential character (HNZ PO1.1) to comprise mainly detached dwellings at densities of less than 35 dwellings per hectare (net). Dwellings would be single or double storey in the main and would likely have a separate driveway entrance and be set back from the street behind a front garden and possibly a fence. It may have outbuildings. I cannot be more specific.

HNZ PO3.1 modifies the character by adding the concept of “suburban.” The area would be remote from the CBD and might include its own facilities.

The low-rise reference included in HNZ PO4.1 would reinforce a building height of up to and including two building levels.

For the purposes of the assessment at bar, the character of the locality sufficiently exhibits all of these generic characteristics and is sufficiently residential for the purposes of HNZ PO1.4 such that my decision does not turn on whether HNZ POs1.1, 3.1 and 4.1 are interpreted in the generic or the specific. (footnotes omitted)

- 32 The Assessment Panel had reached the conclusion that the “scale and intensity” of the development was incompatible with the character of the locality. On this issue, the Commissioner’s reasoning is to be found at paragraphs [112]–[116] as follows:

Scale is a common planning term used to reflect size including tests of height, length, width, bulk and massing.

Intensity, also commonly used in planning, is more nebulous; often a reflection of impact. For the purposes of this assessment, I adopt the Macquarie dictionary definitions as follow:

“Intensity” “(1) the quality of or condition of being intense” or “(4) the degree to which something is intense;”

“Intense” “(1) existing or occurring in a high or extreme degree”, “(5) having or exhibiting some characteristic quality in a high degree”.

The assessment of intensity is therefore one of impact. The determining factor is whether that impact is reasonable (with or without management) or unreasonable. (footnotes omitted)

- 33 Scale is associated with the extent of setbacks of the building associated with the proposal. At [159] the Commissioner found that the front setback was acceptable. She said,

I accept there would be cases where an excessive setback might be equally disruptive to the streetscape. In this case both of the experts said that the landscaping to the front of the Land is reminiscent of a domestic garden and will largely obscure all but the closest of views. It will not be obvious other than from above.

34 The side setbacks were considered ample and as to the rear setback the Court said,

The rear setback is not overly generous and is partially less than the minimum established in DPF 9.1(a). A larger setback may well be desirable. However, it is not for this Court to assess what might be desirable, it is for this Court to assess the Proposal before it.

The variance from HNZ DPF9.1(a) is limited and will be without significant impact...I consider HNZ PO9.1(a) and (b) to be satisfactorily met.

35 The Court went on to consider footprint and retaining walls and concluded¹⁰,

Overall I find the size and scale of the Proposal enables an appropriate design response to satisfactorily fit with the prevailing character in the locality.

36 The car park was found to fit in with and suit the surrounding street scape.¹¹ Given the traffic load on Stanford Road, the intensity of traffic anticipated in connection with the proposal was found to be compatible with the character of the locality.¹²

37 The Commissioner also considered the effect of the proposal on amenity. The ERD Court heard evidence from the neighbour who described the history of development in the street and anticipated that the proposal would intrude on the serenity of her back garden and create additional noise in the use of the premises and the additional traffic.

38 In relation to amenity, the Court found that consideration had to be given to whether the proposal was complementary to the locality.¹³ She said:¹⁴

For the purposes of this assessment I consider the term “complement” to mean “to suit or go well with; enhance the good qualities of.”

However, it would be as unreasonable to expect every development to raise to a higher degree (enhance) the character or amenity of an area as it would be to approve a development that unreasonably (negatively) impacts the same. It is for this reason; I place the emphasis on the more neutral “to suit or go well with” and determine this to be the most appropriate test in relation to the complementarity of a development proposal.

The Macquarie Dictionary defines “consistent” as “(1) agreeing or accordant; compatible; not self-opposed or self-contradictory”.

Out of interest it is worth noting “(3) holding firmly together; cohering” and “(4) fixed; firm; solid” are definitions listed as obsolete.

¹⁰ *Development Holdings Pty Ltd v City of Salisbury Assessment Panel & Anor* (n. 4), [221].

¹¹ *Ibid*, [226].

¹² *Ibid*, [237].

¹³ *Ibid*, [242].

¹⁴ *Ibid*, from [105].

In town planning parlance, a definition comprising “agreeing or accordant” and “compatible” makes sense. It adds consistency to the interpretation of the Code provisions as sought by s12, (2) (a) of the PDI Act.

I also defer to the Macquarie Dictionary definitions of “contribute” – “(1) to give in common with others: give to a common stock or for a common purpose” and “(3) to make a contribution; furnish a contribution”

Following this approach, complementation equally does not require the development to be without effect. The residential amenity will be found to be complemented if, upon an overall assessment, the effects (impacts) of the Proposal can be considered to suit and go well with the amenity of the locality. If overall, the impacts detract from the amenity then it cannot be said to be complementary. (footnotes omitted)

39 The Commissioner concluded on the issue of scale and intensity and their relationship with the locality with the following:¹⁵

The intensity of the Proposal is suitable. It has not reached the tipping point as evidenced by the lack of off-site impacts all of which have been reasonably and suitably managed.

40 The Commissioner also considered, though in less detail, the impact of traffic, noise, and the proposed hours of operation of the business, and found that the impact of the proposal on amenity was acceptable.¹⁶

41 The Commissioner summarised her conclusions as follows:¹⁷

On the matter of land use, I find a pre-school is an appropriate land use within the HNZ. It is a land use specifically contemplated as appropriate by HNZ PO 1.3(b) and is a land use that supports residential populations. It is a land use routinely located within residential areas.

On the matter of character, I find that the Proposal has been designed and sited to fit into the locality. It will be single storey. The front façade, series of roof gables and materials will be complementary to the residential vernacular. The landscaping will obscure the car park and complement the setting in the streetscape. The car park is to be entered by one double width crossover only.

From a character perspective the levels of activity generated on the Land will be consistent with the general levels of activity associated with the location of the Land on a collector road, and with a non-residential land use in a residential setting.

The setbacks are appropriate for a non-residential land use in the context of the surrounding residential development. Fencing will appear domestic.

On the matter of amenity, I find that the amenity will change. Change in amenity is permissible but must not be unreasonable. The offsite impacts of noise and traffic have been appropriately addressed as part of the application and the activity generated on the site will be during hours most compatible with domestic activities. The changes to amenity

¹⁵ Ibid, [268].

¹⁶ Ibid, [270].

¹⁷ Ibid, [275].

arising as a result of the Proposal will be consistent with and in keeping with what one could reasonably expect within a residential locality.

- 42 In light of the conclusions, the Court allowed the appeal, set aside the decision and granted planning consent for the development.

The appeal

- 43 There were six grounds of appeal but these were able to be considered as incidents of two overarching objections.

- 44 The first of these was that the Court had not assessed the proposal as against the requirements of the Code in respect of the impact of the proposal on the character and amenity of the locality.

- 45 This was said to sound in four specific errors: with respect to the Commissioner's use of the concept of "generic character", her reliance on low net residential density, her analysis of the proposal's scale and intensity, and her analysis of the implications of the proposed building's footprint.

- 46 The second overarching objection concerned the Commissioner's approach to the proper construction of "complement" in the Code in the context of development complementing existing character, amenity and locality. It was contended by the applicant that the concept of "complement" in the Code is properly understood to connote something positive as opposed to something negative or merely neutral. The applicant argued that the Commissioner had failed to apply the concept of complementary development in accordance with its proper construction and had allowed a negative or neutral proposal to be considered to be compliant, or at least not seriously at variance, with the Code. This led to two specific errors, described in grounds 5 and 6.

- 47 The appellant contends that the errors require the decision to be set aside and that the decision be remitted to the ERD Court for determination according to law.

- 48 The respondent maintains that no error has been demonstrated and that the appeal should be dismissed.

Consideration – character and amenity of the locality

- 49 It is convenient to address grounds 1 – 4 as a group.

Generic character

- 50 The Commissioner's reasoning was criticised by the appellant for construing the task as the assessment of the proposal against generic elements of character in HNZ Performance Outcomes 1.1, 3.1 and 4.1 rather than the specific elements of character for the particular locality.

51 The appellant submitted that, in so doing, the Commissioner had wrongly assessed the impact of the proposal on the locality's character at a general, superficial level rather than in its particular immediate context.

52 The respondent contended that the Commissioner had not erred and had approached the task in a manner that gave coherence to the distinction in the Code between principles of general application which are denoted by indefinite articles and those in relation to which particular application is required which use the definite article.

53 "Character" in this context should be understood to refer to the multi-dimensional concept that results from the "synthesis of land use, the appearance of buildings and spaces, the intensity of development and the scale of operation of such development."¹⁸

54 The purpose of determining the locality is precisely to provide a means of ascertaining the group of characteristics that the proposal should be assessed against. If the locality is too small, then development will necessarily be limited to replicating the *status quo*. There could be no incremental change response to desire or need. On the other hand, if the locality is too large, development that is irregular, disjointed and incongruous could occur because a proposal could likely satisfy some of the greater number of characteristics that the larger area would demonstrate.

Low net residual density

55 The Commissioner described 'low density residential character' for the purposes of HNZ Performance Outcome 1.1 in a manner that considered the character across the locality. She described it as comprising "mainly detached dwellings at densities of less than 35 dwellings per hectare (net). Dwellings would be single or double storey in the main and would likely have a separate driveway entrance and be set back from the street behind a front garden and possibly a fence. It may have outbuildings. I cannot be more specific."¹⁹ The appellant argued that the Commissioner conflated the expression "low density residential character" with an expression defined elsewhere in the Code, "low net residential density". Mr Roder KC argued that the Commissioner erred in her importation of the definition in her reasoning as to what informed the meaning of "low density residential character".

56 I reject the contention that the Commissioner erred in her approach to what was relevant to a consideration of "low density residential character". The Commissioner did not conflate two expressions but merely referred to the definition given to "low net residential density" to as a matter that "reinforced" her account of what the Code intended by "low density residential character". As is

¹⁸ *Rocco Ciancio & The District Council of East Torrens*, PAT Nos 316 and 557 of 1989, as endorsed by *Villaplex P/L v Council of Norwood, Payneham and St Peters & Ors* [2000] SAERDC 10 per Judge Bowering, Commissioner Hutchings and Commissioner Mosel.

¹⁹ *Development Holdings Pty Ltd v City of Salisbury Assessment Panel & Anor* (n. 4), [95].

discussed further below, the Commissioner's approach is consistent with seeking coherence between the expressions in the Code.

Scale and intensity

57 The appellant contended that at paragraph [140] *et seq*, the Commissioner confined her consideration of the development's impact upon amenity to scale and intensity, and overlooked the significance of other impacts which were required to be considered together with scale and intensity.

58 This, too, is an unfair reading of the Commissioner's reasons. She commences the relevant paragraph with the words, "Although the matter at bar largely turns on a question of scale and intensity ...". However, after addressing the submissions of the parties on that issue, the Commissioner canvassed other impacts on amenity, particularly at paragraphs [260] and [261]. What is evident is that the manner in which the matter was argued before her by both the Assessment Panel and Mrs Jenzen, was that amenity and character attracted the most focused and sustained objections to the proposal.

59 In any event, a fair reading of the decision does not reveal that the task was reduced to one of examining the proposal's effect on amenity merely by reference to scale or intensity. The ERD Court referred to other matters including:

- The effect and design of the car park; [223], [226], [237]
- The landscaping at the front of the property; [159]
- The proposal's land use, being a community service rather than a commercial enterprise, complementing the residential amenity; [245] – [249]
- The noise likely produced at the site and the mitigatory action; [260]
- The hours of operation and their alignment with residents' activities; [261] and
- The effect of the proposal on traffic. [265]

60 The ERD Court correctly identified that the gravamen of the objection from the second respondent and the focus of the Panel's decision was the scale and intensity of the proposed development. Accordingly, the Commissioner focused greater attention on these as matters that had been identified as revealing tension between competing principles. That did not constitute erroneous focus but appropriate attention to the issues that required the greatest effort in judgement and most taxing of balancing exercises.

Footprint

61 The appellant argued that the Commissioner failed to give proper regard to the effect of the proposed building's footprint on character and amenity. This

complaint may be disposed of briefly. The evidence before the ERD Court established that the footprint did not exceed that which might have been approved for a residential dwelling. Further, the building was proposed for two storeys only and could not have been argued to create an imposing presence in the streetscape. Finally, the evidence indicated that the setbacks, though not all compliant with the desirable outcome HN3 PO3.1,²⁰ and retaining and landscaping, had the effect that the footprint was only appreciable from overhead.

- 62 No error in respect of the assessment of the impact of the building arising from its footprint was established.

Consideration of grounds 1-4

- 63 There is no basis, as was argued by the appellant and was consistent with the second respondent's position, that amenity was to be determined with greater emphasis to the immediate neighbours and street than was undertaken by the ERD Court. It is evident that the Commissioner made a careful assessment before determining locality. There was a site visit. The ERD Court rejected both of the experts' proposals and crafted a bespoke locality. The characteristics of the locality were then identified and described.

Grounds 5 and 6 – complementary development

- 64 HN3 Performance Outcomes 1.1 and 1.4 use the term "complement". Performance Outcome 1.1 describes "predominantly low density residential development with *complementary* non-residential uses...". Performance Outcome 1.4 refers to "Non-residential development sited and designed to *complement* the residential character and amenity of the neighbourhood".

- 65 Both before the ERD Court and this Court, the parties were at odds as to whether on a proper reading of the Code, "complement" should be understood as requiring an element of enhancement or might be met even where that which is being complemented is not improved, but is merely added to.

- 66 Following argument on the issue, the Commissioner went to some lengths to consider what the word was intended to convey within the Code, before settling on a definition that embraced development that was neutral in terms of impact on amenity.

Consideration – grounds 5 and 6 – "complementary development"

- 67 The starting point in respect of the interpretation issue is that the Code, though delegated legislation, is not part of the statute-book and its construction cannot be undertaken by slavish adherence to principles of statutory interpretation.²¹ It adopts the language of planning objectives and principles, not legal mandates.²² It contains its own rules of interpretation. Nevertheless, a proper

²⁰ Ibid, [189].

²¹ *Lakshmanan & Anor v City of Norwood, Payneham and St Peters & Anor* [2010] SASCF 15 at [6].

²² *Town of Walkerville v Adelaide Clinic Holdings Pty Ltd* (1985) 38 SASR 161 per King CJ at 187.

construction of the instrument assumes that there has been an aim for internal consistency of language and structure, adherence to ordinary meanings of words unless other meanings are expressly provided for, and coherence with other documents that the drafters expect will be read in conjunction with the policy. Words cannot be inserted, nor read into it.²³ In this case, those other documents include the PDI Act and the authorities that have determined how certain planning language and principle is to be understood.

68 Despite the use of the terms ‘rules’ and ‘policies’ in s 57 of the PDI Act and in the interpretation provisions of the Code, compliance or otherwise with any individual provision of the Code is not determinative of whether planning consent should be granted or refused. Where there is variation from the Code, such variation must nevertheless be considered by the relevant authority as to how it bears upon the decision that has been vested in it to make.

69 In *Lakshmanan & Anor v City of Norwood, Payneham and St Peters & Anor*,²⁴ Kourakis J (as he then was) said:

It is well accepted that principles of development control are guidelines. An application for development must be assessed against those principles. On occasions, perhaps even commonly, developments will advance the objects of some parts of a development plan but be inconsistent with others. In that case, a planning judgment must be made as to the merits of the proposed development. Only if the development is seriously at variance with the Development Plan in the opinion of the planning authority is it necessary to refuse approval.

70 As I observed in *Rymill Park Apartments Pty Ltd v Rymill House Foundation Pty Ltd & Anor*,²⁵ the task of determining whether or not to grant planning consent “is not a mechanical assessment of a development, *seriatim*, against each performance outcome without consideration of other overlapping or competing performance outcomes. Rather, it remains for the decision-maker an iterative weighing and balancing exercise guided by the Code.”

71 Whilst in ordinary usage, “complement” may more frequently be used to connote that which enhances, there is significant difficulty with applying that definition to the use of the word in the Code. That difficulty arises because of the evident object of the PDI and Code to authorise change to a locality in an incremental fashion to reflect the wishes and needs of the community. To attach a meaning to “complement” as sought by the appellant, namely that development must be enhancing of the locality’s amenity or character to be compliant with particular provisions of the Code, would be to relegate the class of proposals that is neutral to amenity or character to the scrapheap. It would place upon individual developers to bear the responsibility of enhancing a locality. Such a responsibility is nowhere evident in the objects of the Act or in the provisions of the Code.

²³ *Ditara Pty Ltd v City of Norwood, Payneham and St Peters* [2001] SASC 236 per Debelle J at [16].

²⁴ *Lakshmanan & Anor v City of Norwood, Payneham and St Peters & Anor* (n. 21), [45].

²⁵ [2023] SASC 107, [67].

72 Further, I accept the respondent's contention that this conclusion is also more consistent with an orthodox construction approach. The term "complement" is used on other occasions in the Code in circumstances in which it cannot be understood to be a synonym for "enhance" because it is used alongside the word "enhance". For example, the Business Neighbourhood Zone Performance Outcome 1.2 uses the phrase "complement and enhance" which is strongly suggestive of two separate concepts. In other places, "enhance" is used alone, as are the words "consistent with" and "maintain and enhance". The use of these other words inform the meaning to be given to "complement" and support the Commissioner's conclusion that the term embraces a class of effects that include neutral effects as well as those that are improving.

73 Accordingly, grounds 5 and 6 are rejected.

Conclusion

74 The appellant has not established that the Commissioner erred in her reasoning and the challenge to the orders that were made is unsuccessful.

75 The appeal is dismissed.