

Notice of Council Assessment Panel Meeting



MEMBERSHIP

Mr M Adcock	Independent Member (Presiding Member)
Mr J Rutt	Independent Member
Mr A Mackenzie	Independent Member
Ms B Merrigan	Independent Member
Ms N Taylor	Deputy Independent Member
Mr D Wyld	Elected Member

NOTICE is given pursuant to Sections 87 and 88 of the Local Government Act 1999 that the next **COUNCIL ASSESSMENT PANEL MEETING** will be held in the Council Chambers, 571 Montague Road, Modbury on **TUESDAY 21 MARCH 2023** commencing at **10.00am**

A copy of the Agenda for the above meeting is supplied.

Members of the community are welcome to attend the meeting.

RYAN MCMAHON
CHIEF EXECUTIVE OFFICER

Dated: 16 March 2023

CITY OF TEA TREE GULLY
COUNCIL ASSESSMENT PANEL MEETING
21 MARCH 2023

AGENDA

1. Attendance Record:

- 1.1 Present
- 1.2 Apologies
 - Mr A Mackenzie (Independent Member)

2. Minutes of Previous Meeting

That the Minutes of the Council Assessment Panel Meeting held on 21 February 2023 be confirmed as a true and accurate record of proceedings.

3. Business Arising from Previous Minutes - Nil

4. Reports and Recommendations

- 4.1 22015404** - Application to CAP for Review of Assessment Manager decision at 29 Waltham Forrest Trail Golden Grove..... **5**

- 4.2 22032937** - Variation to Development Application 070/118655/2020 - Change in hours of operation (condition 2) and increase in guest numbers (condition 3) at 488-500 Yatala Vale Road Yatala Vale..... **99**

Recommended to Grant Planning Consent

- 4.3 22025727** - Three storey semi-detached dwellings, retaining wall, fencing, roof terrace, verandah, tree damaging activity, and partial demolition of gabion front fence at 26 Torton Road Holden Hill **139**

Recommended to Refuse Planning Consent

- 4.4 22036676** - Change of Use from office to indoor recreation facility (Group Fitness Studio) - Deferred from meeting held 21/2/2023..... **169**

Recommended to Grant Planning Consent

- 4.5 Council Assessment Panel - Meeting Operating Procedures 239**

5. Other Business

- 5.1 E.R.D. Court Matters Pending - Nil**

5.2 Policy Considerations

Planning policy considerations will be recorded in the minutes following discussion by members.

6. Information Reports - Nil

7. Date of Next Meeting

18 April 2023

REPORT NO: 22015404

RECORD NO: D23/13809

TO: COUNCIL ASSESSMENT PANEL MEETING - 21 MARCH 2023

FROM: Rhiya Singh
Planning Officer

SUBJECT: APPLICATION TO CAP FOR REVIEW OF ASSESSMENT MANAGER DECISION
AT 29 WALTHAM FORREST TRAIL GOLDEN GROVE

SUMMARY

DEVELOPMENT NO.	22015404
APPLICANT	Mr. David Clayton
ADDRESS	29 Waltham Forest Trail, Golden Grove SA 5125
NATURE OF DEVELOPMENT	Tree Damaging Activity – Removal of Significant Tree
ZONING INFORMATION	<p>Zones:</p> <ul style="list-style-type: none"> • General Neighbourhood Zone <p>Overlays:</p> <ul style="list-style-type: none"> • Affordable Housing • Defence Aviation Area (All structures over 15 metres) • Hazards (Flooding) • Hazards (Flooding - Evidence Required) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy
LODGEMENT DATE	24 May 2022
RELEVANT AUTHORITY	Council Assessment Panel at City of Tea Tree Gully
PLANNING & DESIGN CODE VERSION	2022.8
CODE RULES APPLICABLE AT LODGEMENT	Code Rules at Assessment Start

CATEGORY OF DEVELOPMENT	Code Assessed - Performance Assessed
NOTIFICATION	N/A
APPLICATION DECISION	Planning Consent refused 22 February 2023
RECOMMENDING OFFICER:	Rhiya Singh
APPLICATION FOR REVIEW LODGEMENT DATE	27 February 2023
ATTENDING	David and Sharon Clayton wish to appear to present to the Panel

DETAILED DESCRIPTION OF PROPOSAL

The applicant lodged a development application to remove a Significant River Red Gum (*Eucalyptus camaldulensis*) on 24 May 2022. Following an assessment of the proposal against the relevant provisions of the Planning and Design Code the application was refused by the Assessment Manager under delegation on 22 February 2023.

Pursuant to section 202(1)(b)(i)(A) of the *Planning, Development and Infrastructure Act 2016*, applicants have the right to apply to a Council Assessment Panel (CAP) for a review of an Assessment Manager's decision relating to a Prescribed Matter.

The particulars of the application and the assessment review process are covered in detail in this report.

BACKGROUND

The subject tree is located in the rear yard of the subject allotment. The tree has a circumference of 3.41m (1m above natural ground level), an approximate height of 20m, and an average crown diameter of 13m.

The tree was assessed as 'Significant' as defined in regulation 3F(2) of the *Planning, Development and Infrastructure (General) Regulations 2017*.

The applicant requested the removal of the tree for the following reasons:

- Risk to life and property
- Concerns over structural integrity
- Proximity to dwellings on 29 Waltham Forest Trail, Golden Grove
- Hindrance to future development of 29 Waltham Forest Trail, Golden Grove.

The application included an arborist report from Bob Schultz which advised the following:

- Tree is the incorrect species to be planted in the existing location.

- All the neighbours want the subject tree located. Concerns over the age of land owners and the neighbours and the risk of injury has been raised.
- Tree removal is warranted to allow for future development.

Application for Review

Following the assessment of the application against the Planning and Design Code, the Assessment Manager determined to refuse Planning Consent pursuant to Section 102 of the *Planning, Development and Infrastructure Act 2016*. The reasons for refusal were set out in the delegated assessment report and decision notification form as follows:

Reason for Refusal:

The proposal is not considered to meet the following provisions:

Regulated and Significant Tree Overlay DO 1 which seeks: *Conservation of regulated and significant trees to provide aesthetic and environmental benefits and mitigate tree loss.*

This Desired Outcome is informed by the following Performance Outcomes:

Performance Outcome 1.2 which states that: *Significant trees are retained where they:*

- Make an important contribution to the character or amenity of the local area*
- Are indigenous to the local area and are listed under the National Parks and Wildlife Act 1972 as a rare or endangered native species*
- Represent an important habitat for native fauna*
- Are part of a wildlife corridor or a remnant area of native vegetation*
- Are important to the maintenance of biodiversity in the local environment and/or*
- Form a notable visual element to the landscape of the local areas*

Performance Outcome 1.3 which states that: A tree damaging activity not in connection with other development satisfies (a) and (b):

- Tree damaging activity is only undertaken to:
 - Remove a diseased tree where its life expectancy is short
 - Mitigate an unacceptable risk or public private safety due to limb drop or the like
 - Rectify or prevent extensive damage to a building of value as comprising of any of the following:
 - A local heritage place
 - A state heritage place
 - A substantial building of value
 And there is no reasonable alternative to rectify or prevent such damage other than to undertake a tree damaging activity.
 - Treat disease or otherwise in general interests of the health of the tree and / or
 - Maintain the aesthetic appearance and structural integrity of the tree

- b. In relation to a significant tree, tree-damaging activity is avoided unless all reasonable remedial treatments and measures have been determined to be ineffective.

A detailed explanation of the assessment of the proposal against each of these criteria is contained in the delegated assessment report (refer **Attachment 3**).

The applicant has made an application to the Council Assessment Panel for a review of a decision of the Assessment Manager pursuant to Section 203 of the *Planning, Development and Infrastructure Act 2016*. The Application for Review was received within 1 month of the applicant receiving notification of the decision.

It is confirmed that this is a Prescribed Matter in accordance with section 201 of the *Planning, Development and Infrastructure Act 2016* allowing the option for review by the CAP.

The applicant has stated the following reasons for the review:

The TTG Council appointed assessment provider was not thorough in their assessment and did not understand the application reasons as provided by the original documentation as he had never seen these documents. The person just took photos, measured the circumference. The planned house extension to cater for expanding family has not been given any weight to the application. The tree is currently 4m from the property. Both persons who have inspected the tree have commented to us it does not belong in a small courtyard property and would severely damage the surrounding houses if a branch / tree fell. As responsible home owners we wish to remove the risk to lives and property now whilst the tree can be accessed. The arborists have acknowledged that to try and cut down the tree in the future would be near impossible as access equipment required would not be able to access the rear yard, where it can be safely climbed at present. The tree is growing at a fast rate and requires removal to save damage to property and lives (ours and our neighbours). Additionally, there is also a split in the tree which has not been identified by the council appointed contractor"

A copy of the application for review on the prescribed form is enclosed in **Attachment 4**.

Materials for Review

The application form, plans and other associated information that form part of the development application are enclosed in **Attachment 2**.

The delegated assessment report and decision notification form produced during the assessment process are provided in **Attachment 3**.

Internal Horticultural review- **Attachment 5**.

Independent External Tree Report from Symatree- **Attachment 6**.

Review Hearing

The applicant has requested to be heard by the Panel as stated on their application form.

It is noted that the application form for review of an Assessment Manager decision is a statutory form specified by the Minister for Planning in accordance with Regulation 116 of the *Planning, Development and Infrastructure (General) Regulations 2017*.

Review of Decision

The Draft Resolutions presented in this report for the Panel's consideration reflect the range of options the Panel may consider in its deliberations.

This application for a review of the Assessment Manager's decision is presented to the Panel for its consideration in accordance with the requirements expressed in the *PDI Act 2016* and associated *PDI (General) Regulations 2017*.

RECOMMENDATION

In accordance with the requirements of the *PDI Act 2016* and associated *Regulations*, the CAP must select from one of the following three (3) decision options;

1. The Council Assessment Panel resolves to affirm the decision of the Assessment Manager: That the application is not seriously at variance with the Planning and Design Code, and that DA 22014549 does not warrant planning consent for the following reasons:

Regulated and Significant Tree Overlay DO 1 which seeks: *Conservation of regulated and significant trees to provide aesthetic and environmental benefits and mitigate tree loss.*

This Objective is informed by the following Performance Outcomes:

Performance Outcome 1.2 which states that: *Significant trees are retained where they:*

- a. Make an important contribution to the character or amenity of the local area
- b. are indigenous to the local area and are listed under the *National Parks and Wildlife Act 1972* as a rare or endangered native species
- c. Represent an important habitat for native fauna
- d. Are part of a wildlife corridor of a remnant area of native vegetation
- e. Are important to the maintenance of biodiversity in the local environment and/or
- f. Form a notable visual element to the landscape of the local areas

Performance Outcome 1.3 which states that: A tree damaging activity not in connection with other development satisfies (a) and (b):

- a. Tree damaging activity is only undertaken to:
 - i. Remove a diseased tree where its life expectancy is short
 - ii. Mitigate an unacceptable risk or public private safety due to limb drop or the like
 - iii. Rectify or prevent extensive damage to a building of value as comprising of any of the following:
 - A. A local heritage place
 - B. A state heritage place
 - C. A substantial building of value
 And there is no reasonable alternative to rectify or prevent such damage other than to undertake a tree damaging activity.
 - v. Treat disease or otherwise in general interests of the health of the tree and / or
 - vi. Maintain the aesthetic appearance and structural integrity of the tree

- b. In relation to a significant tree, tree-damaging activity is avoided unless all reasonable remedial treatments and measures have been determined to be ineffective.

OR

2. The Council Assessment Panel resolves to vary the decision of the Assessment Manager:
 - that the application is not seriously at variance with the Planning and Design Code, but that that DA 22014549 does not warrant planning consent for the following reasons:

[Reasons to be added by CAP]

OR

3. The Council Assessment Panel resolves to **set aside** the decision of the Assessment Manager to refuse planning consent for DA 22014549 and substitute the following decision:
 - DA 22014549 is not seriously at variance with the Planning and Design Code and that planning consent and development approval is granted to the application subject to the following conditions:

[Conditions to be added by CAP]

Attachments

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Report Authorisers

Rhiya Singh Planning Officer	8397 7244
Nathan Grainger Manager City Development	8397 7200
Michael Pereira General Manager Community Services	8397 7377

REPORT NO: 23006887

RECORD NO: D23/7117

TO: COUNCIL ASSESSMENT PANEL MEETING - 21 MARCH 2023

FROM: Blake O'Neil
Senior Planning Officer

SUBJECT: VARIATION TO DEVELOPMENT APPLICATION 070/118655/2020 - CHANGE IN HOURS OF OPERATION (CONDITION 2) AND INCREASE IN GUEST NUMBERS (CONDITION 3) AT 488-500 YATALA VALE ROAD YATALA VALE

SUMMARY

DEVELOPMENT NO.	23006887
APPLICANT	Gary Williams
ADDRESS	488-500 Yatala Vale Road, Yatala Vale SA 5126
NATURE OF DEVELOPMENT	Variation to Development Application 070/118655/2020 - Change in hours of operation (condition 2) and increase in guest numbers (condition 3)
ZONING INFORMATION	<p>Zones:</p> <ul style="list-style-type: none"> • Rural Living Zone <p>Overlays:</p> <ul style="list-style-type: none"> • Defence Aviation Area (All structures over 15 metres) • Hazards (Flooding) • Hazards (Flooding – Evidence Required) • Prescribed Wells Area • Regulated and Significant Tree • Water Resources
LODGEMENT DATE	10 March 2023
RELEVANT AUTHORITY	Council Assessment Panel at City of Tea Tree Gully
PLANNING & DESIGN CODE VERSION	2023.3 (16 February 2023)
CODE RULES APPLICABLE AT LODGEMENT	Code Rules at Assessment Start

CATEGORY OF DEVELOPMENT	Code Assessed - Performance Assessed
NOTIFICATION PERIOD	N/A
RECOMMENDING OFFICER:	Blake O'Neil
REFERRALS STATUTORY	Nil
REFERRALS NON-STATUTORY:	Traffic – Joshua Leong
RECOMMENDATION	Grant Planning Consent

1. DETAILED DESCRIPTION OF PROPOSAL

In 2020 a development authorisation was granted for a change in use to permit wedding ceremonies and church picnics where an existing residential use exists (Development Application number 070/118655/2020). The authorisation was granted with various conditions including guest limits and hours of operation. The existing building operates as an Airbnb with individual rooms available and the owners residing on site.

This proposal seeks to alter two conditions of approval. The first is to allow an increase from a maximum of 50 to 100 wedding guests (excluding bridal party and staff).

The second is to widen the approved hours of operation for weddings from 3:00pm – 5:00pm to the following:

Thursdays Ceremonies from 2:30pm – 6:00pm
 Fridays Ceremonies from 11:00am – 2:00pm, plus guest overnight stays (bridal party, maximum 8 guests) from 4:00pm
 Saturdays Ceremonies plus garden cocktail events from 2:30pm – 10:00pm
 Sundays Ceremonies plus cocktail events from 2:30pm – 8:00pm

No changes are proposed for the church picnic component of the authorisation, and no physical or built form changes are proposed.

2. SUBJECT LAND & LOCALITY

2.1 Site Description:

Location reference: 488-500 Yatala Vale Road, Yatala Vale

Title Reference:
5475/590

Plan Parcel:
F132681 L90

Council:
CITY OF TEA TREE GULLY

The subject land has an area of approximately 29.1 hectares, a frontage of 161m to Yatala Vale Road and a depth of 181m.

The subject land is located along the northern side of Yatala Vale Road. All residential properties to the south of the subject site are significantly smaller in density. The northern side of Yatala Vale Road is located in the Rural Living Zone, while the southern half of Yatala Vale Road is the Residential Zone.

The residential properties on the southern side of the Yatala Vale Road are significantly smaller in density and would be described as more typical suburban residential properties. At the rear of the site is a large resource extraction site.

The subject land currently features a dwelling, a car park and a large storage building with significant private open space areas and extensive landscaping throughout the site. There is an existing driveway that has access from Yatala Vale Road and connects to the dwelling and the location of the existing car parking spaces to the west of the dwelling. The subject land is therefore considered to be fairly unique when compared with other sites in the immediate locality.



Figure 1 – Locality Map

Figure 2 demonstrates the Locality Map for the assessment. This has primarily been determined by potential amenity impacts. The immediate locality is predominantly residential built forms and land uses.

3. CATEGORY OF DEVELOPMENT

PER ELEMENT

Nil

OVERALL APPLICATION CATEGORY

Code Assessed - Performance Assessed

REASON

Planning and Design Code

4. PUBLIC NOTIFICATION

The application does not require public notification.

5. AGENCY REFERRALS

No agency referrals triggered.

6. INTERNAL REFERRALS**6.1 Department Name**

Civil Assets – Traffic: The existing driveways meets requirements for the increase in guests. Sight lines for entry to Yatala Vale Road are adequate.

7. PLANNING ASSESSMENT

The application has been assessed against the relevant provisions of the Planning & Design Code, which are contained in Section 10 of this report, and are available on the Council's website as a supplementary document.

It is important to note that this assessment is limited to the hours of use and the increase in guest numbers only, and the resultant impacts these changes may have on the locality.

7.1 Land use

The existing land use is undefined in the Code and has been approved with application 070/118655/2020. The application seeks to change two conditions of approval to vary the hours of operation and increase the guests.

7.2 Traffic Impact, Access and Parking

As an undefined land use there is no specific rate of car parking in **Transport, Access and Parking Table 1**. The applicant has used Concert hall/theatre as a similar land use at 0.2 spaces per seat. Another listed use that is similar would be Hall/Meeting hall at 0.2 spaces per seat.

The application exceeds the minimum parking requirement with 100 seats requiring 20 parking spaces. The site provides 32 spaces, there is also potential for any overflow parking to be contained on the site.

Council Traffic Engineer has reviewed the plans and confirms the parking provisions and driveway is acceptable.

The existing approval allows for 400 guests at 'church picnics', these are limited to twice per year. Council has not received any car parking complaints or complaints relating to traffic generated by the site.

7.3 Noise, hours of operation

The approved hours of operation for the site are as follows:

Wedding ceremonies – 3.00pm-5.00pm daily with 50 guests

Church Picnics 1.00pm-10.00pm, restricted to twice per year with 400 guests.

The application seeks to vary the existing hours for the wedding ceremonies with the proposed hours:

Thursdays Ceremonies from 2:30pm – 6:00pm

Fridays Ceremonies from 11:00am – 2:00pm

Saturdays Ceremonies plus garden cocktail events from 2:30pm – 10:00pm

Sundays Ceremonies plus cocktail events from 2:30pm – 8:00pm

Whilst the size of the subject site continues to have capacity to cater for outdoor events, the increase in wedding patron numbers and hours of use should continue to ensure the amenity of the adjoining properties will not be unreasonably impacted by the intensification of the use **Rural Living Zone PO1.4**.

In support of the application the applicant has provided an acoustic report from a qualified acoustic engineer, Attachment 7. This report covered anticipated noise impacts from patrons and vehicles and considered noise levels at nearby, existing residences. The report concluded that the increased hours of use and patron numbers could meet the relevant Code provisions by achieving the Environment Protection (Noise) Policy 2007 subject to:

- Partially upgrading a portion of boundary fencing to 2.4m in height and steel construction (marked in red below); and
- Ensuring a maximum of 50 patrons use a particular location on the site (marked Location A below).



Figure 2 – Wedding reception locations and acoustic treatments.

The locations marked in figure 2 are currently used for wedding receptions under the existing approval for which Council has received one complaint in late 2019 just after approval was granted.

General Development Policies – Interface between Land Uses includes the following provisions relevant to this assessment:

Desired Outcome	
D01	Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
General Land Use Compatibility	
PO 1.2 Development adjacent to a site containing a sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers is designed to minimise adverse impacts.	DTS/DPF 1.1 None are applicable.
Activities Generating Noise or Vibration	
PO 4.1 Development that emits noise (other than music) does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers).	DTS/DPF 4.1 Noise that affects sensitive receivers achieves the relevant Environment Protection (Noise) Policy criteria.

It is noted that there are four areas where wedding ceremonies are held. With the acoustic report recommending that Location A be limited to 50 patrons, alternative locations for ceremonies remain available should weddings have more than 50 patrons in attendance.

Adequate separation is considered to exist between the nearest, neighbouring dwelling to the east (approximately 28m from the nearest ceremony location (location A), and the acoustic report is considered sufficient to demonstrate that the above provisions have been adequately addressed. **Interface between Land Uses PO1.2 and PO4.1** have been met.

Interface between Land Uses PO 2.1 is concerned with hours of operation, and seeks that non-residential development does not unreasonably impact the amenity of sensitive receivers or an adjacent zone for sensitive receivers through hours of operation.

8. CONCLUSION

The application proposes to change two conditions of an existing Development Approval to increase the number of guest and expand the hours of operation. The existing operation commenced in 2020. The planning concerns raised relate, in large part, to the impact of noise and vehicles to the locality. This should be considered in relation to the existing land use to the north with quarrying operations and Yatala Vale Road being classified as a Collector Road.

The supporting acoustic report which includes the restriction on guest numbers closest to the adjoining dwelling. The proposed operating hours can be considered reasonable for the Zone with finishing time of 10pm on a Saturday for an operation that will not be generating excessive noise with loud music and the like. With appropriate conditions the changes to the conditions can be supported.

9. PLANNING & DESIGN CODE POLICIES

Rural Living Zone
PO1.4
Interface between Land Uses
PO1.2, PO 2.1, PO4.1
Transport, Access and Parking
PO5.1

10. RECOMMENDATION

It is recommended that the Council Assessment Panel resolve that:

- A. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and

- B. Development Application Number 23006887, by Gary Williams is granted Planning Consent subject to the following reasons/conditions/reserved matters:

CONDITIONS

- (1) The development shall be undertaken, completed and maintained in accordance with the plan(s) and information detailed in Application No. 070/118655/2020 except where varied by any condition(s) listed below.

- (2) The hours of operation for the wedding ceremonies herein approved are as follows:

Thursdays Ceremonies from 2:30pm – 6:00pm

Fridays Ceremonies from 11:00am – 2:00pm

Saturdays Ceremonies plus garden cocktail events from 2:30pm – 10:00pm

Sundays Ceremonies plus cocktail events from 2:30pm – 8:00pm

Any variation to these hours of operation will require a further consent.

Reason: To minimise the impact on adjoining properties.

- (3) The capacity of the wedding ceremonies shall be limited to:
50 guests per ceremony at location A marked on the site plan.
100 guests per ceremony at locations B, C and D.

Any increase in capacity will require a further development approval.

Reason: To ensure adequate carparking is available on the site and reduce amenity impact to adjoining properties.

- (4) Wedding Ceremonies are to only be undertaken at locations A, B, C and D as marked on the site plan.

Reason: To minimise the impact on adjoining properties.

- (5) The acoustic treatments outlined on page 7 of the report prepared by Sonus, reference S7561C2 are completed prior to any wedding ceremonies are conducted on the site.

Reason: To minimise the impact of noise on adjoining properties.

Attachments

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Report Authorisers

Blake O'Neil Senior Planning Officer	8397 7331
Nathan Grainger Manager City Development	8397 7200
Michael Pereira General Manager Community Services	8397 7377

REPORT NO: 22025727

RECORD NO: D23/15258

TO: COUNCIL ASSESSMENT PANEL MEETING - 21 MARCH 2023

FROM: Blake O'Neil
Planning Officer

SUBJECT: THREE STOREY SEMI-DETACHED DWELLINGS, RETAINING WALL, FENCING, ROOF TERRACE, VERANDAH, TREE DAMAGING ACTIVITY, AND PARTIAL DEMOLITION OF GABION FRONT FENCE AT 26 TARTON ROAD HOLDEN HILL

SUMMARY

DEVELOPMENT NO.	22025727
APPLICANT	Malgorzatata Zebrowska Bogusz
ADDRESS	26 Tarton Road, Holden Hill SA 5088
NATURE OF DEVELOPMENT	Three storey semi-detached dwellings, retaining wall, fencing, roof terrace, verandah, tree damaging activity, and partial demolition of gabion front fence.
ZONING INFORMATION	<p>Zones:</p> <ul style="list-style-type: none"> • General Neighbourhood Zone <p>Overlays:</p> <ul style="list-style-type: none"> • Airport Building Heights (Regulated) • Affordable Housing Hazards (Flooding - Evidence Required) • Prescribed Wells Area • Regulated and Significant Tree • Stormwater Management • Urban Tree Canopy
LODGEMENT DATE	19 August 2022
RELEVANT AUTHORITY	Council Assessment Panel at City of Tea Tree Gully
PLANNING & DESIGN CODE VERSION	2022.15

CODE RULES APPLICABLE AT LODGEMENT	Code Rules at Assessment Start
CATEGORY OF DEVELOPMENT	Code Assessed - Performance Assessed
NOTIFICATION	Yes – Notification Period 1 December 2022 to 21 December 2022
NUMBER OF PROPERTIES NOTIFIED	41
REPRESENTATIONS RECEIVED	1
REPRESENTATIONS TO BE HEARD	0
RECOMMENDING OFFICER:	Blake O’Neil
REFERRALS STATUTORY	None
REFERRALS NON-STATUTORY:	None
RECOMMENDATION	Refuse Planning Consent

1. DETAILED DESCRIPTION OF PROPOSAL

The application proposes construction of a 3 storey semi-detached dwelling including a roof terrace, verandah, retaining walls and fencing. The existing gabion wall is to be partially demolished. The site area is 652m² with Allotment 741 being 741m² with residence one and allotment 742 with residence 2 being 331m². The land is level with and east/west alignment and a 22m front boundary.

The ground floor of residence 1 comprises a garage for two vehicles living area and kitchen with an alfresco area at the rear. The first floor has 3 bedrooms and two bathrooms. A roofed landing provides access to the terrace on the third floor. Residence 2 has a similar layout with an extra bedroom on the ground floor.

There is a regulated tree at the rear of lot 741 that is to remain as part of this application. The development is outside of the Structural Root Zone. The development does impact the Tree Protection Zone, however the arborist report indicates the tree will not be adversely impacted by the development. The report was supported by the Council Arboriculture team.

The site is surrounded by residential development in an east/west alignment with the exception of the three allotments to the south that have a north/south alignment and the Private Open Space to the north.

2. BACKGROUND

The subject site has an existing residential land use with a single storey detached dwelling on the land.

The dwelling has extensive fire damage and will be removed if this application is approved. A one into two land division application was approved 17 June 2022 where an assessment of a regulated tree at the rear of the allotment was undertaken. An arborist report was provided supporting the retention of the tree based on indicative dwelling plans, the plans provided a replicated in this application.

The land division application was referred to Council's Arboriculture team who agreed with the findings of the independent arborist report.

Clearance of the land division has not been sought and the titles have not been issued at 6 March 2023.

3. SUBJECT LAND & LOCALITY

3.1 Site Description:

Location reference: 26 TARTON RD HOLDEN HILL SA 5088

Title Reference:	Plan Parcel:	Council:
5218/668	D7684 A71	CITY OF TEA TREE GULLY

The subject site comprises a single allotment commonly known as 26 Tarton Road, Holden Hill. The site has a 21.3m frontage to Tarton Road that narrows to 15.24m at the rear. The northern side boundary is perpendicular to the road and the southern side boundary angles inward. The land is level with a single existing crossover on the northern boundary. The subject land is serviced by mains sewer and has no easements or encumbrances.

A gabion wall with a sliding gate is located on the front boundary and a single storey detached dwelling is located centrally on the site. To the rear is a regulated tree identified as a 'swamp mallot' by the arborist report.

3.2 Locality

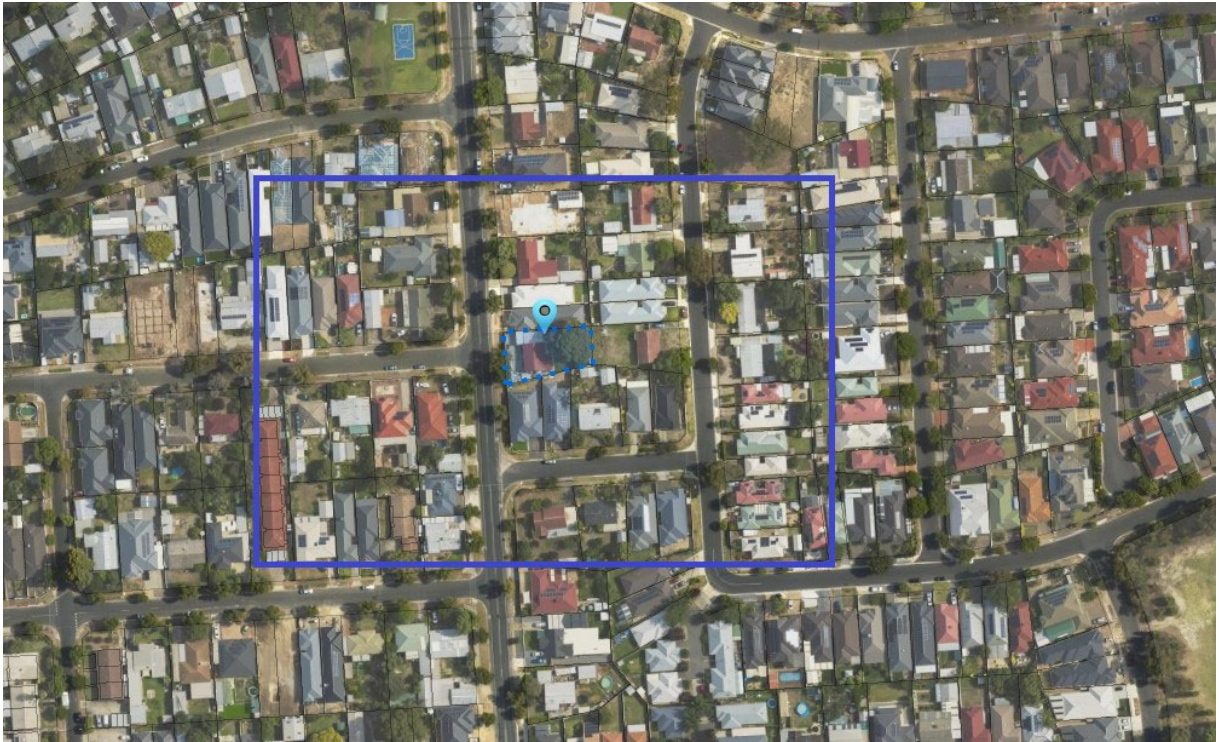


Figure 1: Locality Map and Subject Site in blue

The locality extends approximately 70m from the subject land. The land opposite Tarton Road to the west is part of the City of Port Adelaide Enfield. Tarton Road is the responsibility of the City of Tea Tree Gully and is classified as a collector road.

The General Neighbourhood Zone encompasses the locality with the existing pattern of development being large allotments of 6-700m² and single storey detached dwellings with large front setbacks.

The emerging pattern of development is allotments of 3-400m² with single storey dwellings that have 4-5m front setbacks and high rates of site coverage.

4. CATEGORY OF DEVELOPMENT

PER ELEMENT

Semi-Detached Dwelling – Performance Assessed
 Partial demolition of a building or structure - Performance Assessed
 Fences and Walls – Performance Assessed
 Roof Terrace - Performance Assessed
 Tree Damaging activity - Performance Assessed
 Verandah - Performance Assessed

OVERALL APPLICATION CATEGORY

Code Assessed - Performance Assessed

REASON

Planning and Design Code

5. PUBLIC NOTIFICATION**REASON**

General Neighbourhood Zone Table 5 lists dwellings in Column A as a type of development that is excluded from public notification. The exclusions in Column B lists development that does not satisfy General Neighbourhood Zone DTS/DPF 4.1 which stipulates:

Building height (excluding garages, carports and outbuildings) no greater than:

1. 2 building levels and 9m
and
2. wall height that is no greater than 7m except in the case of a gable end.

The access to the rooftop terrace has a roofed structure and comprises a third building level, the overall height is 9.3m and the wall height, excluding the terrace, is 7.65m. As the dwelling does not satisfy Zone DTS/DPF 4.1 the application was publicly notified.

LIST OF REPRESENTATIONS

Name	Address	Position	Wishes to be Heard
Gennaro Morgillo	24a Tarton Road, Holden Hill SA 5088	Oppose	No

SUMMARY

41 owners or occupiers of the adjacent land were directly notified and a sign detailing the proposal was placed on the subject site for the duration of the notification period.

One representation was received that does not support the development and does not wish to be heard. A copy of the representation received can be found in Attachment 6.

The representor had concerns about the partial demolition of the gabion wall and the impact to the regulated tree from the proposed development. A response to representation can be found in attachment 7

6. AGENCY REFERRALS

No agency referrals were required

7. INTERNAL REFERRALS

No internal referrals were required

8. PLANNING ASSESSMENT

The application has been assessed against the relevant provisions of the Planning & Design Code, which are available on Council's website as a supplementary document.

8.1 Quantitative Provisions

General Neighbourhood Zone – Quantitative Provisions.

DPF	Provision	Requirement	Provided	Complies
3.1	Site Coverage	60% Maximum	R1-43% R2-50%	Yes
4.1(a)	Height	2 Building Levels	3	No
4.1(b)	Height	Wall height maximum 7m	7.6m	No
5.1	Font setback	1m forward of neighbouring dwelling = 5.3m	5.5m	Yes
8.1	Side Setback	1/3 of the height above 3m. Add 1.9m for southern boundary otherwise 0.9m. LHS = 2.4m RHS = 3.4m	R1-2.1m R2- 0.9m	No
9.1	Rear Setback	4m ground floor, 6m any other building level	R1-13m R2-8.7m	Yes

8.2 Land Use

Proposal is for residential land use in the General Neighbourhood Zone. **General Neighbourhood Zone PO1.1** speaks to *predominantly residential development* with the **General Neighbourhood Zone DO1** providing *low-rise, low and medium density housing that supports a range of needs and lifestyles*. The code defines low rise as development up to and including two building levels. The residential land use proposed does not comply with the **General Neighbourhood Zone DO 1 & PO 1.1**.

8.3 Building Height

General Neighbourhood Zone DPF4.1 stipulates a maximum of two building levels and a maximum overall height of 9m with a maximum wall height of 7m. The proposed dwelling comprises three building levels being ground, first floor and the roof terrace. The overall building height is 9.3m to the top of the pergola on the rooftop terrace and 9.9m to the roof of the landing. The proposal does not meet the provisions of **General Neighbourhood Zone DPF4.1** with regard to Height limitations.

General Neighbourhood Zone PO4.1 Refers to dwellings contributing to a low rise suburban character. As discussed above the definition of low rise is development up to and including two building levels. As the proposed development is three building levels it does not meet **General Neighbourhood Zone PO4.1**.

8.4 Setbacks, Design & Appearance

As shown in the quantitative provisions table the proposed dwelling meets the front and rear setback provisions of the code being **General Neighbourhood Zone PO5.1 & PO9.1**

The proposal fails the side setback provisions of the General Neighbourhood Zone and the Height limitations.

The code has specific side setback provisions for southern side boundaries where **General Neighbourhood Zone DPF8.1** states the side setback is to be *at least 1900mm plus 1/3 of the wall height above 3m for walls facing a southern side boundary*. The first floor of the proposed dwelling is not parallel with the side boundary and provides a minimum side setback of 1.6m expanding to 3.4m with the corresponding wall heights at 7.05m and 7.6m respectively. This would require side setbacks of 3.2m and 3.4m. The height of screening for the rooftop terrace is 9.6m which requires a 3.97m side setback to the southern boundary. The proposed setback is 3.8m, also a shortfall.

General Neighbourhood Zone PO8.1 states the setback is, in part, to allow *access to natural light and ventilation for neighbours*. Reduced southern side setbacks can reduce the access to natural light, in this case the height of the dwelling further impacts the access to natural light for the adjoining allotments to the south. The applicant has provided shadow diagrams which demonstrate the impact to the southern allotments. There are three allotments that abut the southern boundary of the subject land. The middle allotment, 2a Falcon street will have the Private Open Space in shadow for most of the day. 26 Tarton Street has roof mounted, north facing solar panels and Private Open Space both of which will be fully shaded at 0900 on 21 June to approximately 50% shaded by 1200.

The height and proximity of the proposed dwelling to the side boundaries reduces the access to *natural light and ventilation for neighbours* per **General Neighbourhood Zone PO8.1** and is not acceptable in this instance.

The proposal covers three building levels with the potential for overlooking. **Design in Urban Areas PO10.1** refers to overlooking from windows with the associated **DPF10.1** providing the guidance that a minimum sill height of 1.5m will mitigate overlooking from upper level windows. The side and rear upper level windows have sill heights of at least 1.7m or obscure glazing at lower heights and is in keeping with the Performance Outcome.

The roof terrace has potential overlooking due to the elevation. **Design in Urban Areas PO10.1** states *development mitigates direct overlooking from balconies to habitable rooms and private open space of adjoining residential uses in neighbourhood type zones*. The view to the western side will not have views to the Private Open Space of residential uses and the setback from the edge of the first floor at the front and rear will assist to mitigate the overlooking. The southern side has a 1.7m screen to prevent overlooking to the Private Open Space of the adjoining allotments and the northern side has 1.5m high screening to mitigate overlooking to the side of the dwelling on the adjacent allotment. The mitigation of the overlooking is in keeping with the code provisions and **Design in Urban Areas PO10.1** is met.

8.5 Traffic Impact, Access and Parking

Each dwelling has undercover parking that exceeds the **Design in Urban Areas DPF23.1** for double width car parking spaces with further carparking in the driveway of each residence that complies with **Design in Urban Areas DPF23.2**.

Transport, Access and Parking P05.1 Table 1 requires a minimum of 2 carparking spaces with one being undercover for a dwelling of this nature. The application proposes a minimum of three spaces per dwelling with each having two spaces undercover to satisfy the performance outcome.

On street carparking is available between the two crossovers that are proposed in keeping with **Design in Urban Areas DPF23.6**. The driveways are generally level and allow for safe access to the street. The Access and parking arrangements meet **Design in Urban Areas P023.1, P023.2 and PO 23.6**

8.6 Interface between Land Uses

The applicant has provided shadow diagrams to establish the impact to the adjoining allotments to the south.

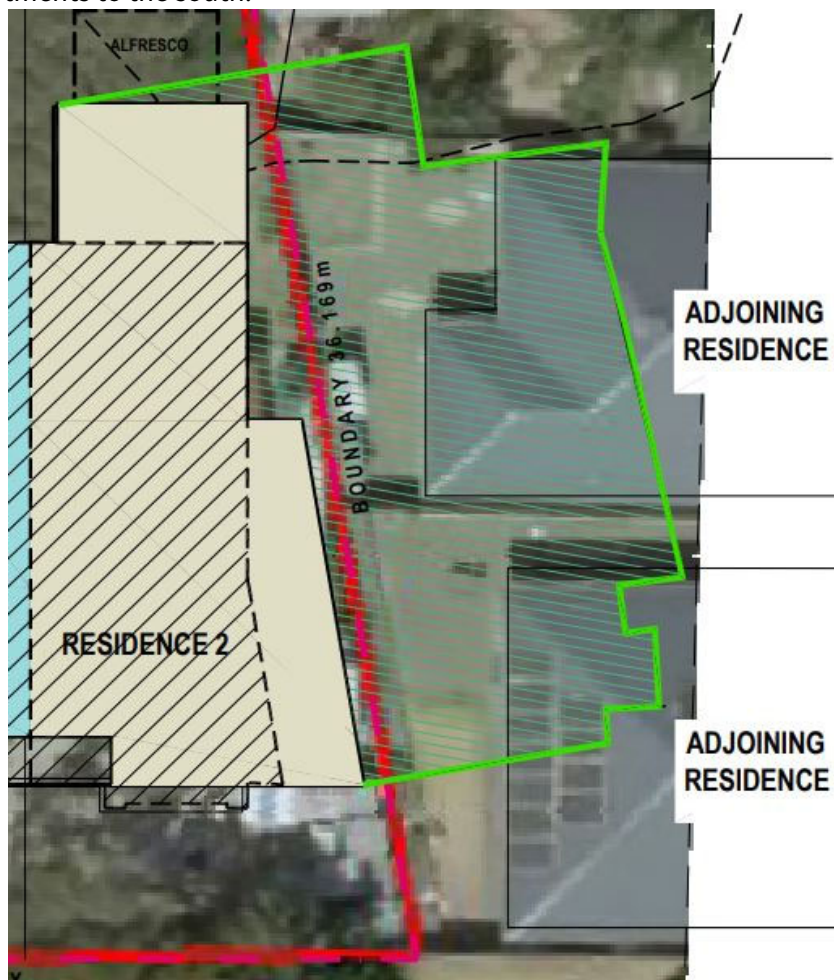


Figure 2: Adjoining allotments to the south – overshadowing.

As can be seen in figure 2 the middle of the three allotments to the south receives the greatest overshadowing impact from the proposed dwelling. **Interface between Land Uses P03.2** refers to the overshadowing of Private Open Space where in a neighbourhood type zone the *overshadowing is minimised to maintain access to direct winter sunlight*. **Interface between Land Uses DPF3.2** provides the guidance that 2 hours of direct sunlight is available between 9am and 3pm on the 21st of June. The direct sunlight is to be the smaller of have the ground level open space or 35m² of ground level open space.

The middle adjoining allotment, 2a Falcon Street, receives a maximum of 16m² of direct sunlight to the open space and which equates to 29% of the area. This does not satisfy **Interface between Land Uses P03.2 or DPF3.2**.

The western most adjoining allotment at 28 Tarton Road will receive 28m² of direct sunlight at 3pm on the 21st of June which equates to 50% of the ground level open space. This does meet the minimum requirement of **Interface between Land Uses DPF3.2** While arguably not meeting **P03.2**.

28 Tarton Road also has north facing roof mounted solar panels as part of the array for the dwelling. The shadow diagrams show they are in full sun by 3pm and approximately 50% shadow at 12pm. **Interface between Land Uses P03.3** states:

Development does not unduly reduce the generating capacity of adjacent rooftop solar energy facilities taking into account:

- a) the form of development contemplated in the zone
- b) the orientation of the solar energy facilities
- c) the extent to which the solar energy facilities are already overshadowed

There are no applicable DPF provisions. The proposed form of development is not envisaged in the General Neighbourhood Zone as noted above and the application was publicly notified for the height and building levels of the dwellings. The north facing array of solar panels is the desired location to capture the sunlight in the middle of the day and the solar panels would not be overshadowed with the current state of development. **Interface between Land Uses P03.3** has not been met.

Interface between Land Uses D01 states *Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses*. Given the extent of overshadowing to open space and solar panels the proposed development does not meet **Interface between Land Uses D01**.

9. CONCLUSION

The proposed dwelling has architectural merit and meets many provisions of the Planning and Design Code. The definition of the third building level has been met only for the enclosed landing to access the rooftop terrace. This has also triggered public notification as the same landing is above 9m in height as measured from the ground.

The argument could be made that the wall height above 7m is only for a portion of the dwelling that will also add to the architectural detail in the design. The side setbacks also fall short for a portion of the dwelling.

The impact to the adjoining allotments, in particular 28 Tarton Street and 2a Falcon Street cannot be deemed minor. 2a Falcon Street will receive minimal sunlight to their open space through the winter months. The proposed development does not meet any provisions or the desired outcome of the Interface between Land Uses Section of the Code.

The impact on the adjoining allotments due to the height and setback of the dwelling are sufficient grounds to recommend refusal of this application.

10. PLANNING & DESIGN CODE POLICIES

General Neighbourhood Zone

PO1.1, PO3.1, PO4.1, PO5.1, PO7.1, PO8.1, PO9.1

Airport Building Heights (Regulated) Overlay

PO1.1

Hazards (Flooding - Evidence Required) Overlay

PO1.1

Stormwater Management Overlay

PO1.1

Urban Tree Canopy Overlay

PO1.1

Clearance from Overhead Powerlines

PO1.1

Design in Urban Areas

PO8.1, PO10.1, PO10.2, PO12.1, PO12.2, PO12.3, PO12.4, PO13.1, PO13.2, PO16.1, PO17.1, PO17.2, PO18.1, PO20.1, PO21.1, PO21.2, PO22.1 PO23.1, PO23.2, PO24.1

Infrastructure and Renewable Energy Facilities

PO11.2, PO12.1

PO3.1, PO3.2, PO3.3

Transport, Access and Parking

PO5.1

11. RECOMMENDATION

It is recommended that the Council Assessment Panel/SCAP resolve that:

- A. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
- B. Development Application Number 22025727, by Malgorzatata Zebrowska Bogusz is refused Planning Consent subject to the following reasons/conditions/reserved matters:

REFUSAL REASON

1. Proposed dwellings do not meet the following provisions of the Planning and Design Code:
 - a. General Neighbourhood Zone DO 1
 - b. General Neighbourhood Zone PO1.1, PO4.1 and 8.1
 - c. Interface between Land Uses DO1
 - d. Interface between Land Uses PO3.2 and PO3.3

ADVISORY NOTES

GENERAL NOTES

1. No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.
2. Appeal rights – General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.
3. A decision of the Commission in respect of a development classified as restricted development in respect of which representations have been made under section 110 of the Act does not operate—
 - a. until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or
 - b. if an appeal is commenced—
 - i. until the appeal is dismissed, struck out or withdrawn; or
 - ii. until the questions raised by the appeal have been finally determined (other than any question as to costs).

Attachments

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Report Authorisers

Item 4.3

Blake O'Neil Senior Planning Officer	8397 7331
Nathan Grainger Manager City Development	8397 7200
Michael Pereira General Manager Community Services	8397 7377

REPORT NO: 22036676

RECORD NO: D23/16829

TO: COUNCIL ASSESSMENT PANEL MEETING - 21 MARCH 2023

FROM: Nathan Grainger
Manager City Development

SUBJECT: CHANGE OF USE FROM OFFICE TO INDOOR RECREATION FACILITY
(GROUP FITNESS STUDIO) - DEFERRED FROM MEETING HELD 21/2/2023

SUMMARY

DEVELOPMENT NO.	22036676
APPLICANT	Lee Harris
ADDRESS	8 Sandstock Boulevard, Golden Grove
NATURE OF DEVELOPMENT	Change of use from office to indoor recreation facility (group fitness studio) (retrospective)
ZONING INFORMATION	<p>Zones:</p> <ul style="list-style-type: none"> • General Neighbourhood Zone • Suburban Activity Centre Zone <p>Overlays:</p> <ul style="list-style-type: none"> • Affordable Housing • Defence Aviation Area • Hazards (Flooding) • Hazards (Bushfire – Urban Interface) • Prescribed Water Resources Area • Regulated and Significant Tree • State Heritage Place • Stormwater Management • Urban Tree Canopy • Water Resources
LODGEMENT DATE	1 November 2022

RELEVANT AUTHORITY	Council Assessment Panel at City of Tea Tree Gully
PLANNING & DESIGN CODE VERSION	2022.20 (27 October 2022)
CODE RULES APPLICABLE AT LODGEMENT	Code Rules at Assessment Start
CATEGORY OF DEVELOPMENT	Code Assessed - Performance Assessed
NOTIFICATION	Yes – Notification Period 22 December 2022 to 19 January 2023
NUMBER OF PROPERTIES NOTIFIED	44
REPRESENTATIONS RECEIVED	26
REPRESENTATIONS TO BE HEARD	0
RECOMMENDING OFFICER:	Nathan Grainger
REFERRALS STATUTORY	Nil
REFERRALS NON-STATUTORY:	Traffic – Wahid Yousafzai
RECOMMENDATION	Grant Planning Consent

1. BACKGROUND

This application was previously presented to the Council Assessment Panel (CAP) meeting on 21 February 2023. Following the hearing of representors and a response by the applicant, the CAP resolved to defer the item to allow the applicant to obtain a suitably qualified Acoustic Engineer who can address the concerns relating to noise created by gym classes prior to 7.00am and any associated acoustic treatments.

The minutes of the 21 February 2023 CAP meeting can be found in Attachment 2 of this report.

The applicant (Mr Lee Harris) engaged the services of Marshall Day Acoustics (MDA) to report on noise levels created by the unauthorised Fitness Studio before 7 am. In particular if the proposed classes prior to 7.00am would create noise that would exceed the maximum requirements identified in the *Environment Protection (Noise) Policy 2007*, and if any additional acoustic treatments are required to ensure that noise created from the gym classes does not exceed the requirements

Marshall Day Acoustics (MDA) undertook a survey of environmental noise levels on Thursday 2 March 2023, between 5 am and 7 am. The survey comprised measurements of noise levels within the fitness studio and extending to the external boundary of the nearest residents.

The maximum noise level that can be created by a land use activity during the hours of 10.00pm – 7.00am is 45Db in the Neighbourhood Centre Zone and 50 Db in the Suburban activity centre/General neighbourhood (Commercial/ Residential) the following results were provided.

Summary of measurements found by Marshall Day		Measured noise level, dB LAeq
Class 1 5:15 am – 6 am		Class 2 6:15 am – 7 am
R1	40	42
R2	40	44
R3	39	46
R4	41	Site noise not measurable above traffic noise

In summary, Marshall Day's report stated that the Environmental noise levels associated with the Five Star Fitness Hub premises have been measured in accordance with the *Environmental Protection (Noise) Policy 2007*. The measured noise levels were below the relevant objective noise criteria during the period 5 am – 7 am. The report does not provide any recommendations of internal acoustic treatments to deal with noise complaints from the residential properties facing Hallett Road given the close proximity to the Fitness Centre. A copy of the Marshall Day Acoustic Report can be found in attachment 3.

This item has been referred back to CAP to consider the information provided by Marshall Day Acoustics. Given all other matters were considered by the panel at the meeting on 21 February 2023, the emphasis of this assessment is only on the noise associated with classes prior to 7.00am.

2. Review of Interface between Land Uses- Post Acoustic Report.

The Desired Outcome of this General Development Policy module states:

Desired Outcome (DO)

Desired Outcome	
DO 1	Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.

The proposed indoor recreation facility is located in a portion of an existing commercial (office) building that is positioned approximately 10m from the closest neighbouring dwelling to the east. These dwellings are considered the sensitive receivers for this purpose.

The question of how the use is designed to minimise adverse impacts on sensitive receivers via general provisions PO 1.1 and 1.2 is partially answered by the applicant in his response to representations. The applicant has installed sound-absorbing flooring material and this has been visually confirmed through a site inspection. It is also noted however that there are no additional acoustic treatments proposed to the inside of the building (e.g. windows, doors, ceiling or walls).

Since the CAP meeting on 21 February 2023 the applicants have engaged an acoustic engineer to provide a detailed acoustic report. In reviewing the report, it states that the measured noise levels were below the relevant objective noise criteria during the period 5 am – 7 am. However, the report does not address the representors concerns relating to noise created prior to 7.00am.

In particular if any associated acoustic treatments inside of the building (e.g. on windows, doors, ceiling or walls) could be adopted to further mitigate the adverse impacts on the adjoining residential allotments.

The performance outcome of this module is concerning is the noise impact from the hours of operation:

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature								
General Land Use Compatibility									
PO 1.1 Sensitive receivers are designed and sited to protect residents and occupants from adverse impacts generated by lawfully existing land uses (or lawfully approved land uses) and land uses desired in the zone.	DTS/DPF 1.1 None are applicable.								
PO 1.2 Development adjacent to a <u>site</u> containing a <u>sensitive receiver</u> (or lawfully approved <u>sensitive receiver</u>) or zone primarily intended to accommodate sensitive receivers is designed to minimise adverse impacts.	DTS/DPF 1.2 None are applicable.								
Hours of Operation									
PO 2.1 Non-residential development does not unreasonably impact the amenity of sensitive receivers (or lawfully approved sensitive receivers) or an adjacent zone primarily for sensitive receivers through its <u>hours of operation</u> having regard to: <ul style="list-style-type: none"> (a) the nature of the development (b) measures to mitigate off-<u>site</u> impacts (c) the extent to which the development is desired in the zone (d) measures that might be taken in an adjacent zone primarily for sensitive receivers that mitigate adverse impacts without unreasonably compromising the intended use of that land. 	DTS/DPF 2.1 Development operating within the following hours: <table border="1"> <thead> <tr> <th>Class of Development</th><th>Hours of operation</th></tr> </thead> <tbody> <tr> <td><u>Consulting room</u></td><td>7am to 9pm, Monday to Friday 8am to 5pm, Saturday</td></tr> <tr> <td><u>Office</u></td><td>7am to 9pm, Monday to Friday 8am to 5pm, Saturday</td></tr> <tr> <td> <u>Shop</u>, other than any one or combination of the following: <ul style="list-style-type: none"> (a) <u>restaurant</u> (b) cellar door in the Productive Rural Landscape Zone, Rural Zone or Rural <u>Horticulture</u> Zone </td><td>7am to 9pm, Monday to Friday 8am to 5pm, Saturday and Sunday</td></tr> </tbody> </table>	Class of Development	Hours of operation	<u>Consulting room</u>	7am to 9pm, Monday to Friday 8am to 5pm, Saturday	<u>Office</u>	7am to 9pm, Monday to Friday 8am to 5pm, Saturday	<u>Shop</u> , other than any one or combination of the following: <ul style="list-style-type: none"> (a) <u>restaurant</u> (b) cellar door in the Productive Rural Landscape Zone, Rural Zone or Rural <u>Horticulture</u> Zone 	7am to 9pm, Monday to Friday 8am to 5pm, Saturday and Sunday
Class of Development	Hours of operation								
<u>Consulting room</u>	7am to 9pm, Monday to Friday 8am to 5pm, Saturday								
<u>Office</u>	7am to 9pm, Monday to Friday 8am to 5pm, Saturday								
<u>Shop</u> , other than any one or combination of the following: <ul style="list-style-type: none"> (a) <u>restaurant</u> (b) cellar door in the Productive Rural Landscape Zone, Rural Zone or Rural <u>Horticulture</u> Zone 	7am to 9pm, Monday to Friday 8am to 5pm, Saturday and Sunday								

The primary concern of representations received during the notification process revolved around early morning noise from music playing inside the building. In particular the 5.00am classes.

PO 4.6 talks about development (such as this proposed use) incorporating music achieving suitable acoustic amenity measured from allotment boundaries of adjacent sensitive receivers.

PO 4.6 Development incorporating music achieves suitable acoustic amenity when measured at the boundary of an adjacent sensitive receiver (or lawfully approved sensitive receiver) or zone primarily intended to accommodate sensitive receivers.	DTS/DPF 4.6 Development incorporating music includes noise attenuation measures that will achieve the following noise levels:				
	<table> <tr> <th>Assessment location</th><th>Music noise level</th></tr> <tr> <td>Externally at the nearest existing or envisaged noise sensitive location</td><td>Less than 8dB above the level of background noise ($L_{90,15min}$) in any octave band of the sound spectrum ($LOCT_{10,15} < LOCT_{90,15} + 8dB$)</td></tr> </table>	Assessment location	Music noise level	Externally at the nearest existing or envisaged noise sensitive location	Less than 8dB above the level of background noise ($L_{90,15min}$) in any octave band of the sound spectrum ($LOCT_{10,15} < LOCT_{90,15} + 8dB$)
Assessment location	Music noise level				
Externally at the nearest existing or envisaged noise sensitive location	Less than 8dB above the level of background noise ($L_{90,15min}$) in any octave band of the sound spectrum ($LOCT_{10,15} < LOCT_{90,15} + 8dB$)				

Associated Designated Performance Feature (DPF) 4.6 suggests a noise level of less than 8dB above the level of background noise ($L_{90,15min}$) in any octave band of the sound spectrum ($LOCT_{10,15} < LOCT_{90,15} + 8dB$). The applicants acoustic report has not made any reference to whether the noise levels meet (DPF) 4.6, therefore it cannot be determined if (DPF) 4.6 has been satisfied.

With respect to PO 2.1 the applicants have provided an acoustic report from a suitably qualified engineer which states the Environmental noise levels associated with the Five Star Fitness Hub premises have been measured in accordance with the *Environmental Protection (Noise) Policy 2007*. The measured noise levels were below the relevant objective noise criteria during the period 5 am – 7 am.

The opinion of the administration is that the main concern of the proposed development has always been how the start time of 5am unreasonably impacts the amenity of sensitive receivers, in particular those living adjacent the eastern boundary facing Hallett Road. However, following the EPA guidelines it would be unreasonable to argue that the proposed land use unreasonably impacts on adjoining properties given they meet the requirements of the *Environmental Protection (Noise) Policy 2007*. It would have been more encouraging if the acoustic report did provide some recommendations of additional acoustic treatments proposed to the inside of the building (e.g. windows, doors, ceiling or walls).

9. CONCLUSION

The proposal seeks to change the use of a portion of an existing building from office to an indoor recreation facility in the form of a group fitness studio within both the Suburban Activity Centre and General Neighbourhood Zone.

The proposed land use is considered appropriate as it satisfies the desired outcome of both Zones by being a neighbourhood-scale/small-scale business in a convenient location adjacent to an activity centre in the form of The Stables shopping centre.

The development will have minimal impacts on the locality and nearby residential properties with no physical alterations to the building, trees, signage, heritage and has suitable car parking provisions.

Whilst the applicant has offered no additional acoustic treatments to the inside of the building (e.g. windows, doors, ceiling or walls) to address the concerns raised by the representor, it does meet the EPA noise guidelines. Therefore, on balance, meets the requirements of the relevant Desired Outcomes and Performance Objectives of the Planning and Design Code.

Consent is warranted, subject to conditions and notes as set out in the recommendation below.

10. PLANNING & DESIGN CODE POLICIES

Suburban Activity Centre Zone

DO 1, PO 1.1, PO 1.2, PO 1.6

General Neighbourhood Zone

DO 1, PO 1.1, PO 1.2, PO 1.3, PO 1.4

Hazards (Flooding) Overlay

PO 2.1

State Heritage Place Overlay

DO 1

General Development Policies - Interface between Land Uses

DO 1, PO 1.1, PO 1.2, PO 4.1, PO 4.6,

General Development Policies - Transport, Access and Parking

PO 3.1, PO 4.1, PO 5.1

RECOMMENDATION

It is recommended that the Council Assessment Panel/SCAP resolve that:

- A. Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and
- B. Development Application Number 22036676, by Lee Harris is granted Planning Consent subject to the following reasons/conditions/reserved matters:

CONDITIONS

1. The development must be undertaken, completed and maintained in accordance with the plan(s) and information detailed in the application herein approved, except where varied by any condition(s) listed below.
2. The hours of operation of the indoor recreation centre are limited to the following:
Monday to Friday – 5:00am – 7:30pm
Saturday – 7:00am – 5.00pm

Reason: To minimise impacts on adjoining properties.

3. The maximum number of clients is limited to 16 per lesson.

Reason: To ensure adequate car parking is available onsite.

4. The development must not at any time emit noise that exceeds 45Db between 10.00pm and 7.00am as required by the *Environmental (Noise) Policy 2007 for noise effected premises*.

Reason: To ensure noise levels are limited to the maximum noise levels, minimise impacts on adjoining residential properties and preserve the amenity of the locality.

5. Music from the indoor recreation facility must not exceed the following noise level when measured at the noise source.

Table 1: Indicative noise levels

Item	Land Zoning (refer Appendix A4)	Land Use Category (EPP)	Indicative noise factor, dB	
			Day (7 am – 10 pm)	Night (10 pm – 7 am)
Noise source	Suburban activity centre/General neighbourhood	Commercial/Residential	57	50
Noise-affected premise	General neighbourhood	Residential	52	45
Indicative noise level, dB $L_{Aeq,15\text{ min}}$			55	48

Reason: To minimise the impact on the adjoining residential properties.

ADVISORY NOTES

PLANNING CONSENT NOTES

1. The cost of rectifying any damage or conflict with any existing services or infrastructure arising out of this development will be borne by the applicant.

2. This consent does not obviate the need to obtain any other necessary approvals from any/all parties with an interest in the land.
3. The development must not at any time emit noise that exceeds the relevant levels derived from the Environmental (Noise) Policy 2007.

GENERAL NOTES

1. No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.
2. Appeal rights – General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.
3. A decision of the Commission in respect of a development classified as restricted development in respect of which representations have been made under section 110 of the Act does not operate—
 - a. until the time within which any person who made any such representation may appeal against a decision to grant the development authorisation has expired; or
 - b. if an appeal is commenced—
 - i. until the appeal is dismissed, struck out or withdrawn; or
 - ii. until the questions raised by the appeal have been finally determined (other than any question as to costs).

Attachments

1.	Original report and attachments.....	177
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3.	Applicant's noise monitoring report	231

Report Authorisers

Nathan Grainger Manager City Development	8397 7200
Michael Pereira General Manager Community Services	8397 7377

RECORD NO: D23/13889

TO: COUNCIL ASSESSMENT PANEL MEETING - 21 MARCH 2023

FROM: Nathan Grainger
Manager City Development

SUBJECT: COUNCIL ASSESSMENT PANEL - MEETING OPERATING PROCEDURES

SUMMARY

Under the Planning Development and Infrastructure Act (Act), the Council Assessment Panel (CAP) as a relevant authority must operate in accordance with the Act and the Regulations and within the ambit of other relevant delegations, policies, and operating procedures which are relevant to the CAP. Notwithstanding, and subject to the Act, the operating procedures are to be observed in relation to the conduct of the business of the CAP and will be determined by the CAP members.

This report allows the CAP members to review and adopt these meeting operating procedures so that they can be recorded and available for public inspection in the interest of transparency.

1. BACKGROUND

Council Assessment Panels are required to conduct meetings in accordance with a set of documented procedures, which are reviewed from time-to-time to maintain relevance and consistency with legislative amendments. The Assessment manager is required to ensure that the Council Assessment Panel meeting operating procedures are reviewed regularly and are to be read in conjunction with the meeting procedures contained within the Planning, Development and Infrastructure (General) Regulations 2017 (Regulations) and the Assessment Panel Members - Code of Conduct.

The meeting procedures have been amended by Norman Waterhouse Lawyers to conform with the LGA templates, and to address issues which have arisen from Assessment Panels across metropolitan Adelaide since the drafting of the templates.

These items include:

- An optional clause has been included to allow for a situation where for example the Assessment Manager has recommended that an application is refused and the applicant seeks to make amendments to the application. This clause allows at the written request of the applicant, them to remove from the agenda their item which was to be considered at the meeting to which the agenda relates (including after notice of the agenda has been given to CAP Members).
- the CAP may exclude the public from attendance at a meeting in accordance with regulation 13(2) of the Regulations.
- the time allowed to representatives of multiple representors to make representations. This is optional and has been added to prevent a representative of multiple representors from speaking uninterrupted for a cumulative time in excess of five minutes.

- Additional material to be considered by the CAP pursuant to clause must, to the extent practicable, be provided to the applicant and/or representor(s) (as the case may be) and those parties are to be provided with an opportunity to respond either in writing or verbally, at the discretion of the Presiding Member. Noting there is no legal obligation on the CAP to provide this information to representor(s).
- The CAP's Policy for Assessment Panel Review of Decision of Assessment Manager;
- Access to documents during and after the public notification has concluded.
- A clause has been included to provide for situations where the Assessment Manager may be on annual or personal leave. The Assessment Manager may nominate another person to undertake the powers and function of the Assessment manager.

The draft Council Assessment Panel Meeting Procedures can be found in Attachment 1.

2. CONCLUSION

The amendments to the CAP Meeting Procedures will ensure all the functions of the CAP under the PDI Act conform with the LGA templates, and address issues which have arisen from CAPs across metropolitan Adelaide since the drafting of the templates.

3. RECOMMENDATION

That pursuant to the authority delegated to the Council Assessment Panel by Council, the Council Assessment Panel:
adopt the revised Meeting Procedures provided in Attachment 1.

Attachments

1. Draft City of Tea Tree Gully Council Assessment Panel Meeting Procedures..... 241
2. Draft CAP Meeting Operating Procedures - With tracked changes 251

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