

**NOTICE OF
COUNCIL ASSESSMENT PANEL MEETING**

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

Wednesday 01 November 2023

Commencing at 6.30 p.m.

Council Chamber

Council Administration Centre

245 Sturt Road, Sturt

A copy of the Agenda for the meeting is attached. Meetings are open to the public and interested members of the community are welcome to attend. Access to the CAP Meeting is via the main entrance to the Administration building, 245 Sturt Road, Sturt.



Alex Wright
ASSESSMENT MANAGER

25 October 2023

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**CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 01 NOVEMBER 2023
COMMENCING AT 6.30PM**



1. MEETING PROCEDURES

1.1 OPEN MEETING

1.2 PRESENT

1.3 APOLOGIES

1.4 IN ATTENDANCE

2. GENERAL OPERATIONS

No items listed for discussion.

3. DEVELOPMENT ACT 1993 APPLICATIONS

No items listed for discussion.

4. PDI ACT APPLICATIONS

4.1 DEVELOPMENT NO 23003166

1 EAGLE RISE, DARLINGTON

Two storey detached dwelling and a single storey building for ancillary accommodation, with associated outbuilding, earthworks, retaining walls and pedestrian access bridge

Report Reference: CAP011123 - 4.1.....3

5. APPEALS UPDATE

Verbal update provided.

6. POLICY OBSERVATIONS

No items listed for discussion.

7. OTHER BUSINESS

No items listed for discussion.

**8. CONFIRMATION OF THE COUNCIL DEVELOPMENT ASSESSMENT PANEL MEETING
HELD ON 01 NOVEMBER 2023**

9. MEETING CLOSURE

**2. GENERAL OPERATING PROCEDURES
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 01 NOVEMBER 2023**



No items listed for discussion.

**3. DEVELOPMENT ACT APPLICATIONS
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 01 NOVEMBER 2023**



No items listed for discussion.

REPORT REFERENCE: CAP011123 – 4.1
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 1 NOVEMBER 2023



Originating Officer:	Phil Mabbs Acting Senior Urban Planner
Applicant:	Inspire Design
Development Description:	Two storey detached dwelling and a single storey building for ancillary accommodation, with associated outbuilding, earthworks, retaining walls and pedestrian access bridge
Site Location:	1 Eagle Rise, Darlington
Zone:	Hills Neighbourhood Zone
Lodgement Date:	01/08/2023
Planning and Design Code:	20 Jul 2023 Version 2023.10
Referrals:	Nil
Application Type:	Performance Assessed
Delegations Policy:	Instrument of Delegation – CAP, Clause 5.1.1.1 <i>The delegation of the power to grant or refuse planning consent pursuant to Section 102(1)(a) of the Act is limited to applications in relation to which:</i> <i>Any Performance Assessed application that has undergone Public Notification where at least one representor has expressed opposition to the proposed development and has expressed their desire to be heard by the Panel.</i>
Public Notification	Public Notification required for <ul style="list-style-type: none"> - Detached dwelling - Retaining wall - Earthworks - Pedestrian access bridge
Application No:	23003166
Recommendation:	That Planning Consent be GRANTED subject to Conditions

Attachments

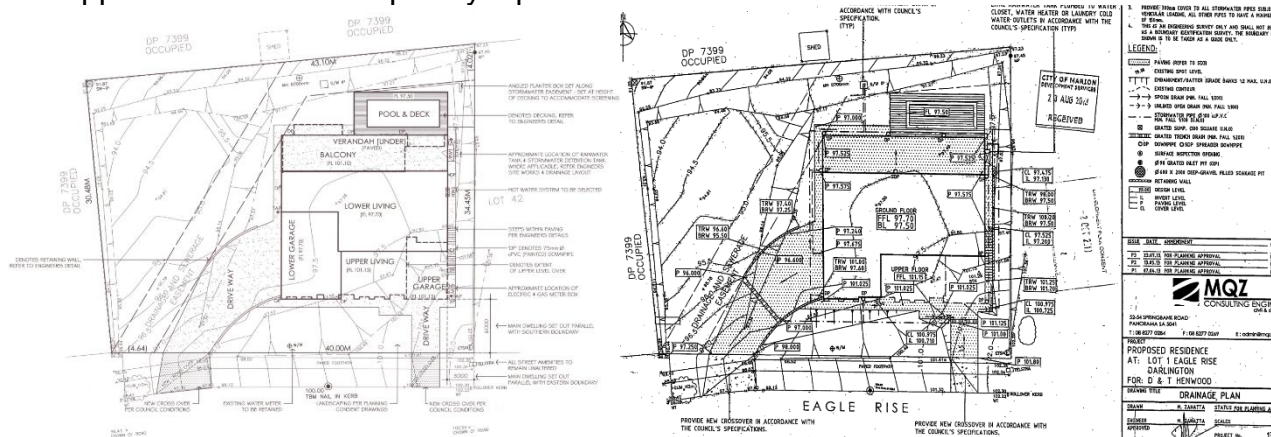
<i>Attachment I:</i>	<i>Proposal Plan and supporting documentation</i>
<i>Attachment II:</i>	<i>Statement of Representations</i>
<i>Attachment III:</i>	<i>Applicant's Response to Representations</i>

BACKGROUND

An application for a three storey detached dwelling incorporating a building height of 11.7 metres (100/2705/2009) was refused by Council, whilst an application for a two storey detached dwelling (100/49/2009) received Development Plan Consent but subsequently lapsed. Two further applications, each proposing a two storey detached dwelling, were lodged in 2006 and 2007; both were subsequently withdrawn.

The site has been subjected to extensive and unapproved earthworks by the previous owner of the land which have resulted in significant cutting to the centre and eastern side of the allotment and moderate filling to the west and northwest of the allotment. The extent of earth works related to Development Application No. 100/49/2009. As this application has lapsed, these earthworks have become unlawful. The design of the subject dwelling generally seeks to utilize the existing landform. This is discussed further in this report.

An application for a two storey detached dwelling with associated pool and deck was lodged in 2013 (100/577/2013) and was Granted Development Plan Consent by the DAP. This application also subsequently lapsed.



SUBJECT LAND

The subject land comprises a roughly rectangular shaped allotment with a slightly shorter front boundary and slightly longer rear boundary. It has a site area measuring 1346 square metres and a frontage to Eagle Rise of 40.02 metres in total. The site is currently vacant, with a retaining wall adjacent to the eastern boundary of the site, and there is no crossover or driveway to or within the site. A drainage & sewerage easement runs through the land diagonally to the north east from the south-western corner and runs parallel to the southern boundary of 5 & 7 Ridgecrest Avenue.

The site is located on the northern side of Eagle Rise and falls away from the road, falling toward the north. The site comprises a significant gradient, rising from south-east to north-west (front to rear) by approximately 10 metres.

Whilst no crossovers currently exist along the street boundary, the entire length of kerb consists of rollover kerb which would facilitate appropriate vehicular access if required. Furthermore, Council's road reserve is free of above ground infrastructure and consists of a single tree to the western edge of the allotment.

It is noted that there is a protective water pipeline easement on the site. (Additional comment on this easement is provided later on in the report)

The site is devoid of any Regulated or Significant Trees.



Figure 1: Subject land

LOCALITY

The immediate locality includes the dwellings on Eagle Rise and extending up Harrier Court. The wider locality includes the streets and dwellings surrounding the hill that the dwelling is situated on which extends from Harrier Court to James Street, falling from south to the north, with the gradient of the area decreasing in both north and north-easterly directions facing the municipality.

Dwellings in the immediate locality are typically sited at road level with garaging predominantly addressing and being in line or behind the building line of the dwelling. Dwellings in the surrounding locality generally maintain an outlook towards the north & north-west, each benefitting from views over other properties as the land falls to the north. Existing dwellings are placed in a north-south orientation, taking advantage of the solar access provided by the topography of the land. More recent dwelling stock have been designed to capture views towards the city and coast.

Dwellings within the locality are generally single and two-storey (including split-level) detached dwellings on large allotments, comprising generous, albeit somewhat inconsistent, setbacks from front boundaries. Dwellings on Eagle Rise and Harrier Court are constructed on larger allotments, often with reduced front setbacks, to maximise POS and allow for unobstructed views. The locality comprises generous levels of vegetation including numerous large trees.

The Seaview High School is located 500 metres to the north-west of the subject land, and the Mostyn Road Reserve is located 50 metres to the north-west. A pedestrian walkway is located alongside the road reserve of the site, connecting the site to the local public open space and the O'Halloran Hill Recreation Park.

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



Figure 2: Locality

HOME

PROPOSED DEVELOPMENT

The proposed development seeks the construction of a two (2) storey detached dwelling and a single storey building to be used for ancillary accommodation, with associated outbuilding, earthworks, retaining walls and pedestrian access bridge. The dwelling will have a constant FFL, maintaining a two storey built form when viewed from all sides/adjoining lots.

The dwelling proposes a contemporary built form, with a flat roof, and sheer walls, and generous boundary setbacks. The dwelling will be constructed from a timber frame with hebel panels and will be clad in a combination of facebrick, exposed steel, timber, stone, corrugated steel, aluminium and concrete.

The north-western corner of the subject land, at 92.5, is almost 6 metres below the lower-level FFL of the dwelling (98.05 AHD), while the proposed ancillary accommodation FFL will have a height of 95.10.

The lower floor of the dwelling will contain three bedrooms (two will have associated ensuites), a rumpus room, laundry, kitchen, shared bathroom, kitchen and meals area, three car garage, and outdoor entertaining area (including the alfresco, pool, and outdoor shower/toilet/pool equipment building).

The upper floor of the dwelling includes two bedrooms (each with their own ensuite), an office, retreat area (with a kitchenette) and a pedestrian walkway.

The proposed ancillary accommodation will have a similar built form to the dwelling and will be constructed from a timber frame with hebel panelling. The cladding material includes a texture coat to the panelling, aluminium, and colorbond corrugated roofing. The floor plan of the outbuilding includes a bedroom, bathroom, and living/kitchen room with a kitchenette.

The proposed retaining walls achieve a height maximum height of 3 metres and incorporate a stepped design. The existing retaining wall, adjacent to the eastern retaining wall, has an overall height of 3.72 metres. An exposed concrete sleeper finisher is proposed.

PROCEDURAL MATTERS

Classification

The subject land is in the Hills Neighbourhood Zone of the Planning & Design Code (the Code) as of June 2023.

The proposed development is not prescribed as 'accepted', 'deemed to satisfy' or 'restricted' development in the Zone. The proposal is therefore 'performance assessed' pursuant to Section 107 the Planning, Development and Infrastructure Act 2016 and will be assessed on its merits against the various provisions of the Code.

Notification

The proposal is for a Detached Dwelling, Retaining Walls & Earthworks within the Hills Neighbourhood Zone which fail to satisfy Zone DTS/DPF 4.1 relating to maximum building height, DTS/DPF 11.3 relating to Retaining Wall height, and hence the proposal required notification in accordance with the HNZ, Table 5, Clause 3(b) exception 1, Table 5, Clause 8(b) and Earthworks, which are not listed and not considered minor.

The proposed Ancillary Accommodation and Outbuilding satisfied the relevant clauses of Table 5 of the Hills Neighbourhood Zone, and are exempt from public notification.

As such, the development was processed in accordance with the Act.

PUBLIC NOTIFICATION

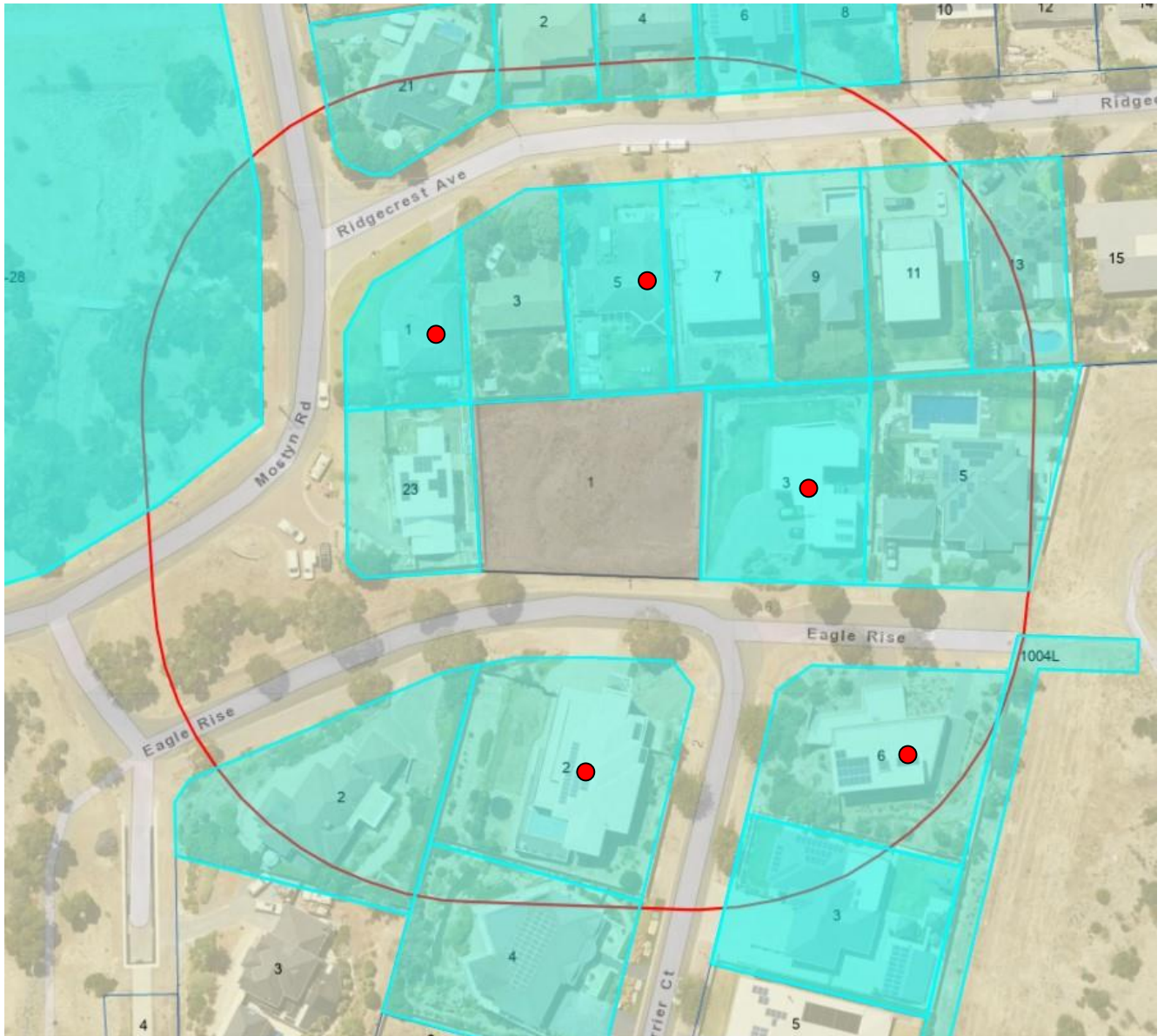


Figure 3: Public Notification Map

Summary of Representations

Properties Notified: 21

Representations Received: 5 (from 5 properties)

No.	Name	Affected property	Position	Wish to be heard:
1	Hartley Masters	6 Eagle Rise	Support, with concerns	No
2	Catherine Ahern	3 Eagle Rise	Oppose	No
3	Natalie Petrizza	1 Ridgecrest	Oppose	No
4	Natasha Kolb	2 Harrier Court	Oppose	Yes
5	Darren Bestt	5 Ridgecrest Avenue	Oppose	Yes

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

Approach to Assessment

Part 1 – Rules of Interpretation of the Planning and Design Code (the Code) provides clarity on how to interpret the policies in the Code. Of particular note ‘Designated Performance Features’ (DPF) assist Councils to interpret Performance Outcomes (PO).

The Rules of Interpretation clearly state that a DPF provides a guide but does not need to necessarily be satisfied in order for a certain development to meet the PO, i.e. the outcome can be met in another way:

In order to assist a relevant authority to interpret the performance outcomes, in some cases the policy includes a standard outcome which will generally meet the corresponding performance outcome (a designated performance feature or DPF). A DPF provides a guide to a relevant authority as to what is generally considered to satisfy the corresponding performance outcome but does not need to necessarily be satisfied to meet the performance outcome, and does not derogate from the discretion to determine that the outcome is met in another way, or from the need to assess development on its merits against all relevant policies. (My underlining added)

A DPF provision should not be interpreted as quantitative requirements, instead they simply present one way in achieving the corresponding PO. There can be variation from DPF policies, and not just in a minor way. Emphasis should be placed on satisfying the qualitative Performance Outcome in the circumstances where a specified DPF is not met.

It is with the above approach in mind that I have assessed this development.

ASSESSMENT

Part 1 - Rules of Interpretation of the Code advises that for each Zone Table 3 specifies the policies and rules that apply to classes of development within the zone. I note:

The policies specified in Table 3 constitute the policies applicable to the particular class of development within the zone to the exclusion of all other policies within the Code, and no other policies are applicable. For the avoidance of doubt, the relevant authority may determine that one or more of the listed policies are not relevant to a particular development.

The proposal comprised six (6) ‘elements’, with the following assessment criteria assigned;

- | | |
|----------------------------|---|
| • Detached dwelling | <i>Applicable policies assigned by Zone Table 3</i> |
| • Retaining wall | <i>Applicable policies assigned by Zone Table 3</i> |
| • Earthworks | <i>All Code Assessed</i> |
| • Pedestrian access bridge | <i>All Code Assessed</i> |
| • Ancillary Accommodation | <i>Applicable policies assigned by Zone Table 3</i> |
| • Outbuilding | <i>Applicable policies assigned by Zone Table 3</i> |

Zone Considerations

Hills Neighbourhood Zone

DO1

Land Use and Intensity- PO 1.1

Site Coverage- PO 3.1

Building Height- PO 4.1

Primary Street Setback- PO 5.1

Side Boundary Setback- PO 8.1

Rear Boundary Setback- PO 9.1

Built Form and Character- PO 10.2

Earthworks and Retaining- PO's 11.1, 11.2, 11.3

Ancillary Buildings and Structures 12.1, 12.2

Overlay Considerations

Airport Building Heights (Regulated) Overlay- DO 1, PO 1.1

Stormwater Management Overlay – DO1, PO 1.1

Urban Tree Canopy Overlay – DO1, PO 1.1

General Development Policies Considerations

Clearance from Overhead Powerlines- DO 1, PO 1.1

Design in Urban Areas

DO 1

Earthworks and sloping land- PO 8.1, 8.2

Fences and walls- PO 9.1, 9.2

Overlooking/Visual Privacy- PO 10.1, 10.2

Front elevations and passive surveillance- PO's 17.1, 17.2

Outlook and Amenity- PO 18.1

External Appearance- PO's 20.1, 20.2, 20.3

Private Open Space- PO's 21.1, 21.2

Landscaping- PO 22.1

Car parking, access and manoeuvrability- PO's 23.1, 23.2, 23.3, 23.4, 23.5, 23.6

Infrastructure and Renewable Energy Facilities

DO 1, PO 11.2, 12.1, 12.2

Interface between Land Uses

DO 1

Overshadowing- PO's 3.1, 3.2, 3.3

Transport, Access and Parking

DO 1

Vehicle Parking Rates- PO 5.1

Quantitative snapshot

Existing site dimensions		
Site area	1346m ²	
Frontage width	40.02m	
Site depth	30.48m- 34.45m	
Proposed Development		
Element	Desired	Proposed
Site coverage	50%	31% (417m ²)
Building height	2 levels < 9m	2 levels – 8.53m
Front setback	5 m	6.3m
Eastern side setback	Dwelling - 2.41m	Pool House: 1.992m Dwelling: 2.932m
Western side setback	Dwelling - 3.09m	Dwelling: 11.77m Ancillary Accommodation: 1m
Rear setback	Ground: 4m Upper: 6m	Pool House: 5.905m Dwelling: 9.943m Ancillary Accommodation: 10.536m
Private open space	60m ²	480m ²
Soft landscaping	25%	43%
On-site car parking	2 spaces (1 covered)	3 Spaces (3 Covered)
Stormwater	4,000L	6,000L
Urban Tree Canopy	2 Small Trees	2 Laurus Nobilis and 18 Screening plans

Assessment Discussion

In my view, the most pertinent planning considerations for this assessment relate to;

- Bulk/scale and sitting
- Views
- Overlooking

The following discussion considers the development against provisions of the Planning and Design Code.

The proposed building footprint (including front, northern, side and rear setbacks) are consistent with the character and pattern of a low-density suburban neighbourhood as sought by Hills Neighbourhood Zone PO 3.1 and the POS remains of a suitable size in accordance with Design in Urban Areas PO 21.1. The amount of soft landscaping and on-site car parking provided in the proposal exceeds the requirement of the Code.

While the proposed development results in a dwelling which is comprised of two building levels with an overall building height of 8.67 metres. It is further noted that the eastern wall of the upper floor extends 3.55m above ground level at the corresponding point of the frontage, when viewed from the front (southern) elevation. The proposal adequately satisfies Hills Neighbourhood Zone PO 4.1 in contributing to a low-rise suburban character, given there are multiple examples of three storey development in the immediate area (11 Ridgecrest Avenue, 6 Eagle Rise and 2 Harrier Court), given that the dwelling is most readily perceived from façade/southern elevation, to which it presents as a two-storey dwelling (due to the topography of Eagle Rise).

In my view, the most significant impact of the proposal relates to the visual impact arising from the northern elevation upon the appearance of O'Halloran Hill and when viewed from the adjoining allotments 1 to 7 Ridgecrest Avenue. It is noted that the design of the dwelling, ancillary accommodation and outbuilding have been organised/located on the site in a layout which follows the fall of the site. It is also considered that, due to the fall of the site any development on the subject site will be extremely visible from all of the surrounding allotments and will have an impact on the northern face of O'Halloran Hill. In terms of immediate impacts on the adjoining lots, the combination of position of the subject land, the topography and the built form all combine to have an impressing impact.

While the proposal satisfies Design in Urban Areas PO 20.2 which seeks for dwelling elevations facing public streets to make a positive contribution to the streetscape, and PO 20.3, which outlines that the visual mass of larger buildings to be reduced when viewed from adjoining allotments of public streets, has been satisfied. In regard to Hills Neighbourhood Zone PO 10.2, which promotes stepping its design in accordance with the slope of the land and providing greater setbacks to boundaries than that of the lower level of the dwelling, the lack of visual interest/fenestration provided to the northern elevation of the upper-level addition results in a considerable amount of walling, facing the adjoining dwellings to the north, which is only broken up by windows.

However, it is noted that other dwellings also exhibit overlooking as a common design characteristic, and have ultimately normalised that, due to the topography of the site, overlooking, to some degree is unavoidable. To this end, while the northern elevation lacks visual interest which exacerbates the bulk of the upper level, the proposal seeks to locate the proposed buildings as far south as practicable, to maximise the building separation from the northern boundary and take advantage of the cut which has occurred on the site, reducing the overall height of the buildings. When considering these design elements and responses to the site and surrounds, the resulting visual impact when viewed from the adjoining lots is not considered to warrant refusal of the application.

Bulk/scale and sitting

The Hills Neighbourhood Zone (HNZ) seeks to encourage development which provides a complementary transition between the natural and rural landscapes whilst using the surrounding environment to limit/reduce the visibility of buildings. The Desired Outcome of the Zone seeks a minimalist approach to development, to protect a rural appearance of steep, sloped sites, and to retain an undeveloped landscape appearance, when viewed from lower plains/coastal areas. Whilst the proposal does not fully respond to what is sought by the Desired Outcome, it is respectfully suggested that the wording of the DO does not speak to development that occurs within the Zone, and the DO has been constructed to only contemplate development on the urban periphery or adjacent existing natural features.

Performance Outcome (PO) 1.1 seeks that development of land in this area be of a low density which is compatible with natural landforms and low-density residential character. The HNZ was introduced/applied to areas with steep topography, and was designed to act as a buffer zone which adjoins the Hills Face Zone. The Zone does not specifically reflect this in this area. Further up the slope, to the south of the site, is a Conservation Zone (it is acknowledged that four [4] properties in Harrier Court are both Hills Neighbourhood Zone and Hills Face Zone). From contour mapping of the site, the nearest parts of the Hills Face Zone are on the eastern and western slopes of O'Halloran Hill. The area of the slope where the site is located only reasonably interfaces with the Conservation Zone.

In the context of the locality, the proposed dwelling represents an acceptable response to the existing built environment and is in keeping with the existing character of the locality. The DO & PO of the zone encourage built form that is low density and land uses which are compatible with the natural landforms and a low density residential character. Given that the dwelling is proposed to be constructed on a lot which is in excess of 1,300 square metres in area (as envisaged by PO1.1), the proposal seeks consent for the construction of a dwelling and associated buildings on the site, with a density that is envisaged by the Zone.

PO1.1 speaks to development complimenting natural landforms. The proposed dwelling is considered to appropriately respond to these outcomes, through its use of upper floor articulation and layout. This articulation and layout has reduced the overall bulk of the buildings and follows the fall of the site. A site visit and aerial imaging of the site and the surrounds demonstrate that the predominant built form of the area is consistent of detached dwellings on large, rectangular allotments. PO 3.1 of the Hills Neighbourhood Zone further affirms that building footprints should be 'consistent with the character and pattern of a low-density suburban neighbourhood and provide sufficient space around buildings to limit visual impact, provide an attractive outlook and access to light and ventilation'. As this PO specifies 'Buildings', I interpret this provision to apply to both the subject development, as well as surrounding properties.

The overall height of the dwelling meets the requirements of the zone, and is considered to be within the suggested building height envelope on the site, with a maximum building height of 8.53m. The preferred building heights in the zone encourages development which is no higher than nine (9) metres from the relevant ground level and to be no more than two (2) storeys. The proposed development accords with this preference. It is worth considering that in the surrounding Eagle Rise & Harrier Court environs, there are multiple dwellings which have three (3) storeys and would be in excess of the nine (9) metre building height. The dwelling's façade (southern elevation) has been designed to follow the built form of other dwellings in the locality, especially those on the western side of Harriers Court, which present as single storey at the highest point of the interface, though will increase in height/appearance as the site falls away. This built form has also been used at 3 Eagle Rise.

The buildings forming part of the assessment all have a contemporary built form, which compliment the other dwellings on Eagle Rise, in addition to more recently developed dwellings in the surrounding locality. Due to the topography of the site and the views available to the north and west, towards the

Adelaide CBD & coast, houses have been designed and constructed to provide views over surrounding properties, to these vistas. As such, the built form of these dwellings include floor-to-ceiling windows and flat elevations, to minimize the visual interruption from within the respective dwelling. Dwellings in the surrounding locality are a combination of original, remnant dwellings and more recent, contemporary dwellings.

The built form of the dwelling takes inspiration from the dwellings at 2 Eagle Rise, 3 Harrier Court and 7 Ridgecrest Avenue. The proposal has incorporated the flat roof built form, rendered walls and multi-entrance design which can be seen at 3 Eagle Rise. The proposed glass balustrading and floor to ceiling window design mimics that which can be seen at 2 Eagle Rise, to the south of the site. These floor to ceiling windows can also be seen at sites to the south, at 9 & 11 Ridgecrest Avenue.

The built form, façade materials and colours/finishes of the dwellings are diverse, considering the age of some of the dwellings. Original housing stock is typically single storey, with hipped and gabled tiled roofs, whilst contemporary dwellings are typically 2-3 storeys, with varied roof forms and cladding materials. While many dwellings in the area incorporate hipped or gabled roof forms, a flat roof is proposed to minimize the proposed building height.

To support lower finished floor levels for the dwelling, five (5) retaining walls are to be used (four associated with the dwelling, and one with the ancillary accommodation). One of the retaining walls associated with the dwelling is the existing, existing structure from the previous development (now lapsed). To confirm, the structural integrity of the existing retaining wall is not within the scope of the planning assessment. Due to its approval under the previous DA, this level of detail is to be considered by the Building Surveyor and Civil Structural Engineer as part of the building consent process.

Given the locality and the topography of the site, the retaining walls are appropriate. A site visit and Google Streetview images show that retaining walls are a common design feature and are not a departure from the norm when developing on Eagle Rise, Harrier Court and Ridgecrest Avenue. The retaining walls are not considered to result in a negative impact on the amenity of the area and will their structure integrity will be fit for purpose and considered under the appropriate legislation by the responsible/relevant authority.

Concerns have been further raised with the proposed landscaping, citing concerns that the proposed landscaping trees won't be able to tolerate the wind speeds endured by the site and that the roots will lead to long term issues with driveways on adjoining lots. It is suggested that, should Planning consent be issued, a condition be attached ensuring the future owners maintain the landscaping in accordance with the approved plans and, should the trees fail in the short term, be replaced. Once established, the trees will need to be maintained by the landowner and impacts on adjoining allotments will be considered as they occur.

The proposed landscaping plan is reflective of the surrounding locality, where lots have one tree per allotment and the soft landscaping areas either contain retaining walls, rocks or grass. The applicant has elected to include additional screening vegetation, which would form part of the consent (should it be granted). The proposed landscaping is in keeping with this development style, the character envisaged by the DO and does not represent a departure from the norm.

The proposed site layout has concentrated all vehicle access and parking to one area site via one access point. There is no separate parking or vehicle access to the ancillary accommodation. The buildings are all considered to function as a single property and the associated amenities (pool, ancillary accommodation, and garage/car parking) are reliant on the dwelling's presence to function.

The proposed outbuilding to the rear of the dwelling is to contain a toilet/washroom and an area for housing of pool maintenance equipment. The proposed outbuilding is to have acoustically shielded cladding to ensure that the amenity of the adjoining allotments is not negatively affected by this

machinery/equipment. A future pool application will consider the appropriateness of the pool equipment location and the need for any further sound reducing measures.

The applicant has provided three (3) undercover/enclosed car parking spaces, which meet the applicable spatial design requirements. It is considered that there is additional open air car parking space available in the front setback/driveway of the site, which can accommodate additional vehicles, if necessary. The amount of car parking provided on-site is considered appropriate and will not result in an unreasonable impact on the local traffic network.

The PO seeks for buildings to complement the height of others nearby. The dwelling has been setback from the rear & western boundaries. The design has taken into account the adjoining dwellings, which are situated on lower allotments, and located the dwelling away from those sites. The height of nearby dwellings vary (due to the topography of the area), but are generally single and double-storey, typically from the late 1970's and 1980's reflecting the era of subdivision, with more contemporary dwellings within the immediate locality. Due to the slope of the site, the dwelling will present as either single or double storey. At the southern and eastern boundaries of the site, the dwelling will present as single storey. To the northern and western boundaries, it will present as double. The proposed dwelling seeks consent for an overall building height of 8.675 metres, which is measured from the lowest point of the retaining walls to the two storeys of dwelling. The ancillary accommodation is designed to be a subservient structure, in terms of location, access and built form, by having a lower overall height to the adjoining dwellings.

The PO also seeks for buildings to contribute to a low-rise suburban character, with 'low-rise' defined by the Planning and Design Code as up to and including 2 building levels. Figure 4 demonstrates how the dwelling is located within the already cut area of the site, as a method of maintaining a lower overall building height. The adjoining dwellings are either single or double storey, which lend themselves to the proposed number of storeys. There are multiple examples in the surrounding locality (as previously discussed) where dwellings have been constructed to be three (3) storeys and in excess of nine (9) metres in height. Given the fall of the land and the height of the adjoining dwellings, the proposed dwelling has taken a measured approach to the site and designed the dwelling to have a lower profile than it would have if the site were undeveloped.

This low rise design aesthetic has been further considered in the development/design of the walkway, which will have balustrades and an open top, allowing clear viewlines when entering and existing the site from the upper floor. The proposed walkway will be offset from the eastern boundary by 7.91m. Based on the annotated fall of the street, the eastern side of the walkway will have a floor height of 1.1m below the eastern boundary's ground level.

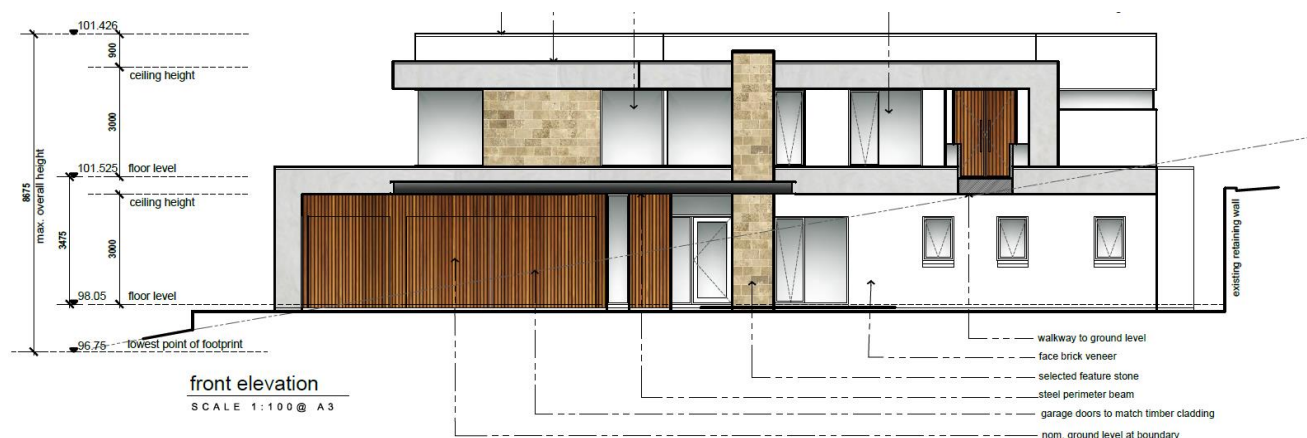


Figure 4: Continuous 2 building levels will have a single storey appearance for the eastern portion of the frontage when viewed from the front elevation.



Figure 5: View towards the subject land from the northern boundary of 2 Harrier Court



Figure 6: View towards the subject land from the northern boundary of 2 Harrier Court



Figure 7: An image looking north, taken from Harrier Court, on the western side of 2 Harrier Court.

The applicant has provided a Stormwater Management Plan which is considered to appropriately capture any additional stormwater runoff which will result from the development. The landowner will be required to maintain this system and ensure that the development does not result in stormwater from the site draining into adjoining lots.

Amenity Impacts

Views

While the relevant Planning and Design Code criteria does not explicitly refer to view loss, it is acknowledged that PO 3.1 of the Hills Neighbourhood Zone seeks for 'building footprints... [to] provide sufficient space around buildings to... provide an attractive outlook'. As such, a site inspection was undertaken to assess impacts upon the outlook from properties at:

- 1-7 Ridgecrest Avenue,
- 2 Harrier Court and
- 3 & 6 Eagle Rise.

These properties were considered most likely to experience a changed outlook as a result of the proposed development.

In assessing potential loss of views, it is of value to recognise that the subject allotment is a private parcel of land, of which the owners have a right to undertake development in general accordance with the Planning and Design Code. Given the fact that adjacent dwellings to the south to south-east of the subject land take advantage of an outlook over the subject land due to the topography of the locality, it is inevitable that any increase to the building height of the dwelling on this land will have an impact upon the outlook of these adjacent properties.

In assessing the loss of views, I have not only had regard to the Planning & Design Code, but also the Supreme Court judgment of *Hutchens v City of Holdfast Bay*, whereby Justice Debelle stated that, when determining whether to grant consent to a new building which will obstruct views enjoyed by existing developments, regard “must be had to the nature and extent of the view, the extent to which the view will be obstructed by the proposed development, and the reasonableness of the proposal as determined by reference to planning controls”.

In assessing the potential loss of view, in my opinion, the dwelling most potentially affected by the proposed development is located at 2 Harrier Court, Darlington (south of the dwelling). In my opinion, the dwelling at No. 3 Eagle rise will not be impacted by potential loss of views as the dwelling does not incorporate windows on the western facades and therefore no western views are currently being achieved.

Given the intensity and direction of the slope in the surrounding locality, dwellings in the immediate area have been designed to have higher ground/first floor levels and have incorporated a split or multi-storey design. An example of this is the dwelling at 2 Harrier Court, which is 3 storeys. This dwelling includes a garage at the lower level, kitchen/meals/living on the second level and bedrooms and rumpus on the third level. The northern and western elevations of the dwelling have balconies to the second and third stories, to take advantage/capture the views to the coast and the Adelaide CBD.

Justice Debelle endorsed the following four-part test for the assessment of a development which proposed to obstruct the views of existing developments. An outline of the process has been provided below.

- The first step in the assessment is to assess the views to be affected, i.e. water, land, coast etc. In this regard, iconic views are valued more highly than views without icons and whole views are valued more highly than partial views.
- The second step is to consider from which part of the property the views were being obtained – taking into account that views across side boundaries are harder to protect than those over the front or rear boundaries, and sitting views are harder to protect than standing views. Whether a view is considered to be “hard” to protect will be relevant to whether the loss of the view is acceptable or not.
- The third step is to assess the extent of impact of the loss of views.
- The fourth step to assess the reasonableness of the development proposal, which will cause the impact on the views from existing developments.

Though there is no legal right to a view, the four-part test was considered for 2 Harrier Court, to determine whether the proposal will result in an unreasonable impact/loss of views on nearby properties.

It is considered that, at present, the dwelling receives an uninterrupted panoramic view from the Adelaide Hills & CBD (to the northeast) through to Brighton (to the west). The floor plans of this dwelling will be available to the Panel at this meeting. The views discussed are enjoyed from both the second and third storey balconies, as well as the internal rooms of the dwelling. In taking the approach of Justice DeBelle, whilst the landscape features are not specifically listed, it is considered that view of “icons” such as Glenelg, and the city, are valued more importantly than other views towards non-descript landscape features (residential areas along the coast or between the site and the CBD).

The proposed roof form of the dwelling will result in a measured impact to the northerly views currently enjoyed from the second/middle storey of this dwelling. Given the location of the upper floor of the proposed dwelling, it is considered that the views north, currently enjoyed from the second storey of the dwelling, (towards the Adelaide CBD and southern Adelaide Plains) will result in a minor view loss. The upper most floor (third storey) balcony and habitable (bedroom) rooms of the dwelling are considered to be subject to a far lesser impact. Currently, these views (from the upper most/third storey) can be achieved from both a standing and sitting position. Views of the Adelaide Plains west of the city through to Brighton (therefore including Glenelg) will be unaffected. It is considered however, that a flat or minimal pitched roof will have the lowest impact possible on the views enjoyed over the site.

The fourth and final stage in the assessment process is to assess the reasonableness of the proposal causing the impact. Two storey dwellings are an anticipated form of development within the Residential Zone Hills Policy Area 11.

Within the HNZ, the applicable standard allows for the construction of a dwelling which is double storey. Considering that the proposed dwelling does not exceed this measure, the design is considered to be reasonable and the impacts associated with the construction of the upper floor are not sufficient grounds to refuse the proposal. It is reiterated that, whilst the northern views from the middle floor of 2 Harrier Court will be impacted by the proposal, the north-western and western views from this part of the dwelling, as well as the northerly views from the third storey, will be retained.

As discussed throughout this report, the proposal is considered to satisfy a majority of the applicable Performance Outcomes. As previously discussed, the lower floor levels of 2 Harrier Court will have their northerly views affected, though this was not unexpected when the dwelling (at 2 Harrier Court) was being designed, hence the third storey. Given the foresight employed to justify that dwelling, it was previously anticipated that 1 Eagle Rise would be developed with a multi-storey dwelling, and there would be an impact to the views which are currently being enjoyed. I am of the perspective that the proposed dwelling’s design will not result in an unreasonable development and does not create an outcome which is worthy of refusal.

From this assessment, the height, bulk and scale resulting from this proposal will result in an acceptable impact to the views currently enjoyed. Having regard to the relevant considerations of the ERD Court and the Code as a whole, I have considered the extent of view loss by the occupants of 2 Harrier Court acceptable in this instance.

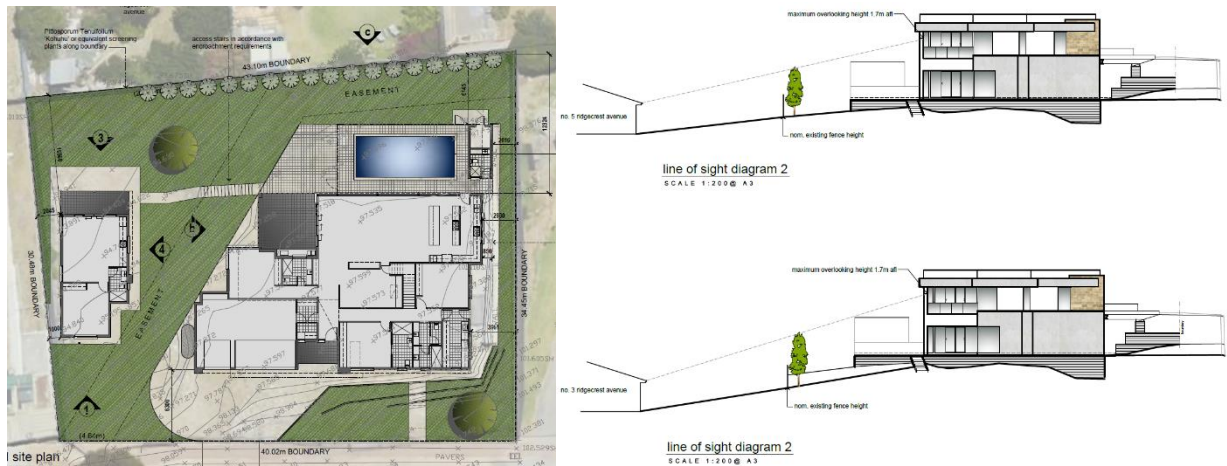
Overlooking

As previously discussed, a characteristic of the locality is overlooking and the extent to which it can be considered a normality. Due to the topography of the area, and the desire of occupants to achieve coastal and city views, there is an acceptable that some degree of overlooking is inevitable. Images taken on a site visit, across the site (from the Eagle Rise public realm) illustrate extensive views of adjacent dwelling’s habitable rooms and private open space areas.

Given the prevalence and acceptable of overlooking within the locality, and considering the Code seeks to mitigate overlooking (not eliminate it), it is considered that there is no reasonable method to completely negate the potential for overlooking as part of this proposal. The extent of potential

overlooking has somewhat been normalised through previous developments, which have sought to capitalise on the views available. The site incorporates existing cut, which facilitates the current design to provide a lower floor level than the natural ground level that was present previously.

To assist in providing some mitigation of direct downward overlooking, the applicant elected to revise the landscaping plan to include additional screening in the form of vegetation along the northern boundary of the site. The proposed plants nominated are *Pittosporum Tenuifolium* 'Kohuhu' or equivalent.



Figures 8 (left) & 9 (right): The revised lower level site plan (left) and the overlooking diagram (right)

CONCLUSION

The application seeks the construction of a dwelling, ancillary accommodation, outbuilding and associated retaining wall and earthworks. The proposed building footprint (including front, northern, side and rear setbacks) are consistent with the character and pattern of a low-density suburban neighbourhood as sought by Hills Neighbourhood Zone PO 3.1 and the POS remains of a suitable size in accordance with Design in Urban Areas PO 21.1. The amount of soft landscaping and on-site car parking provided in the proposal exceeds the requirement of the Code.

While the proposed development results in a dwelling which is comprised of two building levels with an overall building height of 8.67 metres. It is further noted that the eastern wall of the upper floor extends 3.55m above ground level at the corresponding point of the frontage, when viewed from the front (southern) elevation. The proposal adequately satisfies Hills Neighbourhood Zone PO 4.1 in contributing to a low-rise suburban character, given there are multiple examples of three storey development in the immediate area (11 Ridgecrest Avenue, 6 Eagle Rise and 2 Harrier Court), given that the dwelling is most readily perceived from façade/southern elevation, to which it presents as a two-storey dwelling (due to the topography of Eagle Rise). While the proposed building height is not consistent with that of the original dwellings, it nonetheless remains complementary to those dwellings as well as the emerging building height of newer dwellings and additions of the wider locality.

The impact upon the outlook/views of nearby dwellings vary. For the most part, the proposed development represents a change to the current outlook of the surrounding dwellings but does not result in any meaningful view loss. The outlook of 2 Eagle Rise is most impacted by the proposed development, and even in that case, the impact as a whole is considered moderate due to the extent of the views which will still be enjoyed. It is considered and accepted that the topography of the locality has fostered a neighbourhood character trait, where dwellings are entirely designed and oriented to address the plains and coast. This has resulted in a higher than normal allowance for potential overlooking between allotments, which is accepted by residents.

Following consideration of matters pertinent to the application, I am ultimately of the view that the proposal tips the scale in favour of granting Planning Consent, subject to the conditions and notes recommended.

RECOMMENDATION

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

- (a) The Panel notes this report and concur with the findings and reasons for the recommendation;
- (b) The Panel concurs that the proposed development is not seriously at variance¹ to the Planning and Design Code, in accordance with Section 126(1) of the Planning, Development and Infrastructure Act 2016; and
- (c) That Planning Consent for Development Application ID: 23003166 for Two storey detached dwelling and a single storey building for ancillary accommodation, with associated outbuilding, earthworks, retaining walls and pedestrian access bridge at 1 Eagle Rise, Darlington be GRANTED subject to the following Conditions & Notes.

CONDITIONS

- 1. The development granted Planning Consent shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below (if any).¹
- 2. Prior to the use and/or occupation of the structure(s), all stormwater from buildings and paved areas shall be disposed of in accordance with the approved plans and details.
- 3. All car parking areas, driveways and vehicle manoeuvring areas must be constructed in accordance with the approved plans and recognised engineering practices prior to the occupation of the premises or the use of the development herein approved and maintained in a good condition at all times.
- 4. Tree(s) must be planted and/or retained in accordance with DTS/DPF 1.1 of the Urban Tree Canopy Overlay in the Planning and Design Code (as at the date of lodgement of the application). New trees must be planted within 12 months of occupation of the dwelling(s) and maintained.
- 5. Rainwater tank(s) must be installed in accordance with DTS/DPF 1.1 of the Stormwater Management Overlay in the Planning and Design Code (as at the date of lodgement of the application) within 12 months of occupation of the dwelling(s).
- 6. Landscaping shall be planted and maintained in accordance with the plans and details forming part of the development authorisation, with diseased or dying (or dead) plants replaced.

¹ Pursuant to Section 107(2)(c) of the *Planning, Development and Infrastructure Act 2016* (or Section 35(2) of the *Development Act 1993* for applications under that Act), a "development must not be granted planning consent if it is, in the opinion of the relevant authority, seriously at variance with the Planning and Design Code" (or the Development Plan if under the *Development Act*).

What is 'seriously at variance' is not a defined legislative term and is not synonymous with a proposal that is merely 'at variance' with certain provisions of the Code (or Plan), which many applications will be. Instead, it has been interpreted to be an important or grave departure in either quantity or degree from the Code (or Plan) and accordingly not worthy of consent under any circumstances and having the potential to undermine the objectives of the Code (or Plan) for the land or the Zone.

7. **All car parking areas, driveways and vehicle manoeuvring areas must be constructed in accordance with the approved plans and recognised engineering practices prior to the occupation of the premises or the use of the development herein approved and maintained in a good condition at all times.**

NOTES

1. **Any existing driveway crossovers that become redundant as a result of a development must be reinstated to match the existing kerb profile along the road frontage of the property.**
2. **Any portion of Council's infrastructure damaged as a result of work undertaken on the allotment or associated with the allotment must be repaired/reinstated to Council's satisfaction at the developer's expense.**
3. **As the proposal involves work on or near the boundary, it is recommended that the boundaries are clearly defined by a Licensed Surveyor prior to the commencement of any building work.**

**5. APPEALS UPDATE
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 01 NOVEMBER 2023**



APPEALS AGAINST PANEL DECISIONS

New Appeals

DA No.	Address	Appeal Lodged	Recommendation	Decision	Current Status
Nil					

On-going Appeals

DA No.	Address	Appeal Lodged	Recommendation	Decision	Current Status
Nil					

**6. POLICY OBSERVATIONS
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 01 NOVEMBER 2023**



No items listed for discussion.

7. OTHER BUSINESS
CITY OF MARION
COUNCIL ASSESSMENT PANEL AGENDA
FOR MEETING TO BE HELD ON
WEDNESDAY 01 NOVEMBER 2023



No items listed for discussion.