

**CITY OF MARION
GENERAL COUNCIL MEETING
10 JULY 2012**

**REPORT RELATING TO:
An Organisation of Excellence**

Originating Officer: Kate McKenzie, Manager Governance
Kathy Jarrett, Manager Strategy & Organisational
Excellence

Subject: Legal Advice

Ref No: GC100712F02

If the Council so determines, this matter may be considered in confidence under Section 90(2) and (3)(h) of the Local Government Act 1999 on the grounds that it relates to legal advice received by the Council.



Adrian Skull
Acting Chief Executive Officer

1. Pursuant to Section 90(2) and (3)(h) of the Local Government Act 1999 the Council orders that all persons present, with the exception of Kate McKenzie, Manager Governance, Kathy Jarrett, Manager Strategy and Organisational Excellence and Kaye Smith, EMA Legal be excluded from the meeting as the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep the receipt / discussion / consideration of the matter given it relates to the provision of legal advice.

STRATEGIC OBJECTIVES:

An organisation of excellence - Excellence in governance, Employer of choice

EXECUTIVE SUMMARY:

Mr and Mrs Lindner reside at 19 Whiteleaf Crescent, Glengowrie. For a number of years, they have pursued action against the City of Marion regarding the processing, consent and approval of the development at 21-23 Whiteleaf Crescent, Glengowrie.

Council has recently received correspondence from Mr and Mrs Lindner requesting Council to 'hire an independent private investigator' to look into the alleged misconduct of the Chief Executive Officer (CEO) regarding the management of this matter.

The CEO also received correspondence from Mr & Mrs Lindner alleging a number of criminal and conduct related issues. This correspondence was copied to the Hon. Minister Wortley MLC, Hon. Minister Darley MLC and Dr McFetridge MP.

On receipt of these letters, the follow steps were taken:

- Consultation with the Local Government Association Mutual Liability Scheme (LGAMLS).
- Consultation with the Ombudsman.
- Referral to the Anti-Corruption Branch of SAPOL.

Both the LGA MLS and the Ombudsman indicated that no new information had been raised by Mr & Mrs Lindner and their issues were substantially the same issues they had already dealt with. The Ombudsman further commented that an adequate share of public resources had been expended in dispute resolution on this matter.

The Anti-Corruption Branch responded via correspondence dated 31 June 2012 advising that there was no basis to consider a criminal investigation and in so far as 'conduct' issues are concerned, SAPOL was not the appropriate authority to address these.

Following this, legal advice was sought on the allegations relating to the CEO conduct and how council might progress the matter. Kaye Smith from EMA Legal has provided the legal advice which is attached in **Appendix 1**. Ms Smith has provided a number of recommendations for Council to consider. These are outlined below. Ms Smith will be present at the Council meeting on 10 July 2012 to provide any clarification or additional advice as required.

RECOMMENDATIONS:

That Council:

- 1) Receive and note the legal advice provided by EMA Legal.**
- 2) That Council, after reviewing the advice, acknowledges the investigations and determinations of the Ombudsman, the LGA Mutual Liability Scheme and the Anti-Corruption Branch of SAPOL. Such determinations indicated that no maladministration, malfeasance, breach of the Local Government Act (SA) 1999, or breach of the Criminal Law Consolidation Act has occurred in this matter.**
- 3) Further to the above, after reviewing the advice, Council resolves there is no basis for an assertion of a Code of Conduct breach, policy breach or other alleged negligent conduct by the CEO or any other employee of Council in this matter, and on this basis, resolves that no further action be taken to initiate an investigation (by private investigator or otherwise) into allegations raised by Mr and Mrs Lindner against the Chief Executive Officer, or any other employee of Council, as detailed in the two letters from Mr and Mrs Lindner of 24 April 2012.**

- 4) In resolving the above, the Council concurs with the Ombudsman's view that sufficient of the public resources have been expended in conflict resolution for this matter.
- 5) That Council communicate its decision to the Chief Executive Officer (and other staff impacted by Mr and Mrs Lindner's complaints) and provide the Chief Executive with such resources as he may require to minimize any or any further risks to the health or safety of any employee of Council who may receive, or be likely to receive, further correspondence or contact from Mr and/or Mrs Lindner.
- 6) The Council take such reasonable measures as it may be advised to take from time to time, to minimize any or any further risks to the health or safety of the Chief Executive Officer to the extent he may receive, or be likely to receive, further correspondence or contact from Mr and/or Mrs Lindner.
- 7) That the Mayor write to Mr and Mrs Lindner advising:
 - a. that the matters the subject of their complaint, as concerns everything aside from the Code of Conduct issues have been the subject of complete and independent investigation by the Ombudsman, the LGA Mutual Liability Scheme and the Anti-Corruption Branch of SAPOL. Each of these investigations have determined no further action would be taken.
 - b. Following a further review of their complaint, and relevant documents and circumstances to which they have referred, there is no reasonable basis to assert a Code of Conduct breach, policy breach or other alleged negligent conduct by the CEO or any other employee of Council.
 - c. On this basis, no further public resources will be expended in investigating this matter by private investigator or otherwise.
 - d. That Mr and Mrs Lindner exercise caution and restraint in the tone of their correspondence with any employee of Council, including the Chief Executive Officer which on any reading, is inflammatory Marking the letters 'without prejudice' and premising assertions with the word 'alleged' does not of itself overcome the defamatory imputations of their correspondence.
 - e. That Council is unable to engage with Mr and Mrs Lindner any further regarding the development at 21-23 Whiteleaf Crescent Glengowrie and that if any further correspondence of this nature is received, it will be reviewed as to whether it is vexatious or not.
- 8) In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(h) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2012.

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6 July 2012

City of Marion
245 Sturt Road
STURT SA 5047

Attention: [REDACTED]

Dear [REDACTED]

Complaint – Residents Mr and Mrs Lindner

1. You have requested that I provide advice in relation to certain matters arising from complaints made by residents within the City of Marion, Mr and Mrs Lindner. Specifically, the residents have made allegations in writing about the CEO, and certain employees of Council, arising from particular developments which Mr and Mrs Lindner assert took place without approvals.

Preliminary Issues

2. Please note that this advice is protected by client (legal) privilege. It is important that Council's client privilege is not inadvertently waived by any employee of Council or Elected Member, and that this document be kept in the strictest of confidence. It advises upon and discusses:
 - a. various allegations made by Mr and Mrs Lindner, in circumstances where litigation may be taken by them against Council; and
 - b. various provisions of the CEO's employment agreement. Pursuant to clause 15 of the CEO's agreement, its terms must be kept confidential unless written consent to disclosure is given by both parties. I am not aware of any such consent having been provided by either party.

General

3. It is important that I summarise the lengthy but relevant history to the complaints. I have had regard to the papers identified at **Attachment 1**.
4. The complaints leveled by Mr and Mrs Lindner are long-standing. They have been the subject of investigation and determination by the Ombudsman of South Australia in May 2009 and again in

"Liability limited by a scheme approved under the Professional Standards Legislation"

August 2009. Those complaints concerned Council's handling of the development at 21 – 23 Whiteleaf Crescent Glengowrie. The Ombudsman (on an 'own initiative' basis) raised certain matters for clarification with Council about the approach to assessing development applications. Those matters which were clarified did not impact upon Mr and Mrs Lindners' complaint or the relevant assessments of the developments. In every other respect, the Lindners' complaint as to alleged administrative errors was reviewed, and closed with no action taken.

5. Subsequent to this, Mr and Mrs Lindner lodged a claim for compensation with the LGA Mutual Liability Scheme (LGAMLS). That claim was the subject of an inquiry. The LGAMLS disputed the assertion of failures (or breach of statutory or other duty) by Council by letter of 9 September 2010. It found (among other things) that Council acted in accordance with the *Development Act 1993* (and Regulations), that there was no negligence in its assessment, and that it complied at all times with its statutory obligations to provide information. There were certain matters into which the LGAMLS (rightly) did not enquire. They were the allegations of a breach of the Code of Conduct, and allegations of criminal behaviour which the LGAMLS suggested be directed to SAPOL. In the end, the claim of negligence was rejected. The Lindners disputed that outcome, and made an additional allegation of an alteration of documents that had been sent to the Ombudsman. That was also investigated by LGAMLS and denied.
6. The Lindners have been advised by the LGAMLS of other avenues to air their complaints, namely by challenge to the development decisions through the Environment and Resource Development Court, or Judicial Review proceedings. It is my understanding that the Lindners remain aggrieved, but have not yet taken steps to initiate civil action. They could still do so.
7. Their complaints have also been the subject of consideration by the Anti-Corruption Branch (ACB) of SAPOL. Those complaints were referred to the ACB by Council. SAPOL's determination was not to initiate a criminal investigation. There was no basis for an assertion of a breach of the *Criminal Law Consolidation Act*. SAPOL took note that the Ombudsman had already considered certain complaints and determined not to take action, and made it clear ACB did not act as a review body. It (rightly) declined to involve itself in alleged Code of Conduct issues.
8. This then leaves a number of outstanding issues. You have requested my advice as to how Council should best approach those outstanding issues, which are identified in two written communications:
 - a. letter to the CEO dated 24 April 2012 – copied to various others; and
 - b. letter to Mayor Lewis dated 24 April 2012 enclosing (a) above which has not been provided to the CEO.
9. I note that both letters are marked by the Lindners without prejudice. That is a misunderstanding of the purpose and utility of the phrase. None of the communications are without prejudice to any (legal) position and certainly not in circumstances where they have been circulated to third parties.

The Outstanding Issues

10. The Lindners allege:

- a breach of the "How We Work Together" policy
 - failure by the CEO in the performance of his duties resulting in a breach of the Code of Conduct
 - misconduct on the part of the CEO;
11. So far as it has been alleged that there are failures in the performance of duties in breach of the *Local Government Act* (ss99 (1)(a)(b)(h) and (j)), these administrative acts (or failures to act) and assertions of 'malfeasance' have been the subject of enquiry, review and determination by the LGAMLS and the Ombudsman already. The Ombudsman has in my view, exhausted its jurisdiction in the investigation of the complaints, having conducted those previous enquiries and deciding upon them. The Ombudsman's decision not to further investigate Mr and Mrs Lindner's complaints advised by letter to the CEO on 30 August 2010 was the correct decision in my view.
12. There is no justification for further attention by Council to these matters that have been the subject of enquiry by LGAMLS or the Ombudsman. If there were any areas of concern, these would have been identified for action or rectification by one or other of these authorities. There is no new information that can be identified which would justify a further review. The same can be said of the alleged CLCA breaches.
13. The Lindners now request, through their letter to Mayor Lewis dated 24 April 2012, an independent private investigator investigate the alleged misconduct of the CEO.

Particulars of the Outstanding Issues

14. Whilst not easy to decipher, the following generally summarises the particulars of each outstanding complaint.
15. The alleged breach of the "How We Work Together" policy:
- by providing misleading and inaccurate advice to Council in December 2010 in stating that there was an active claim before LGAMLS which the Lindners assert was not correct information and which led to the termination of a pre-arranged meeting with Council (page 5 of the Lindners' complaint).
16. The alleged Code of Conduct Breach:
- by 'concealing offences' by Mr Papalia;
 - for failing to take action against Mr Papalia;
 - 'negligence';
 - lack of honesty and integrity/deception and dishonesty by allowing the absence of approvals;
 - controlling the LGAMLS investigation of their tort claim;
 - covertly distributing a copy of the CEO's letter to the Lindners dated 19 October 2010 to Elected Members, which included parts of 'confidential' communications from the Lindners to LGAMLS (stated to be immoral and unethical).

Breach of the "How we work Together" Policy

17. At the time of the alleged breach, this policy was not in existence, nor adopted by Council. Assuming for the moment that there was any misleading of Council, the CEO cannot be held to a policy that was not in existence at the time.
18. Regardless of this, the Lindners describe the letter from LGAMLS as a 'final rejection' of their claim with the implication that there were no other recourse available to them. The LGAMLS' letter clearly stated that, whilst the LGAMLS was not prepared to accept or negotiate the claim, there were still options open to the Lindners (ERD Court/Judicial Review). In any event, the position of the LGAMLS would not prevent the Lindners from proceeding to make a civil claim irrespective of the insurer's position (which Mr and Mrs Lindner may still do). To describe this state of affairs as an 'active' claim is correct. The Lindners remain aggrieved. It was appropriate to alert the Elected Members to the ongoing risk of litigation (which still exists).
19. There is no basis to deal with (by investigation or otherwise) this allegation.

The alleged Code of Conduct Breach

20. I will deal with each of the particulars in turn.

'Concealing offences' by Mr Papalia

21. There is no evidence of any concealment of the conduct of Mr Papalia. That would require deliberate and dishonest behaviour which is contradictory to the assertion of "failed performance" and "negligence". This is a serious allegation to make and one which I cannot see is made out on the Lindners' own documentation.
22. The actions and decisions (and the manner in which they were implemented) have been the subject of investigation and enquiry by the Ombudsman. There was no basis to take action then (other than to seek certain information be provided by Council as a matter of clarification) and none, in my view, now. There is no new information, on the basis of the papers I have seen, to justify further inquiry.

Failing to take action against Mr Papalia

23. Despite what has been asserted, Council has in fact taken enforcement action against Mr Papalia. That is not evident from the letter from Mr and Mrs Lindner. That action has included an enforcement notice issued by Council in September 2008 to Five Star Housing (a company controlled by Mr Papalia) as concerned the illegal building work at 23A Whiteleaf Crescent. That notice was the subject of appeal proceedings, and three compromise applications submitted for assessment by the Council's Development Assessment Panel. Two of those applications were subsequently appealed by Five Star Housing and the Lindners, and heard by the ERD Court. Council succeeded in respect of both appeals. The enforcement notices were eventually resolved with Mr Papalia receiving approvals for a revised (retrospective) approval, and subsequent modifications to the building works.

24. The failure to take action (in the form of prosecution) is not, of itself, a Code of Conduct breach. There are many reasons for not doing so, the most obvious being the costs of doing so, when balanced with the wider public interest. The Code requires employees to “efficiently and effectively utilize resources ... for the public benefit” which must be “sustainable and justifiable”.
25. In any event, all previous enquiries have consistently returned the view that there was no breach of the *Development Act* and Regulations. Further, no applications were made to review that decision to the ERD Court any time subsequent to the development.
26. Having considered the terms of the Code of Conduct applicable to employees, I am not of the view that there is any justification for an investigation into this allegation, where there is no identifiable breach.

Negligence

27. There are no real particulars of this allegation. It was the subject of investigation and review by LGAMLS, who determined no case for negligence on the part of Council or its employees. The allegation is not one of dishonesty, but rather of incompetence. In this respect the Code (and the *Local Government Act*) requires that employees act with reasonable care and diligence – not necessarily with perfection. On the information available, there is no evidence or basis to suggest a lack of good faith on the part of any employee, or a lack of reasonable care and diligence.

Lack of honesty and integrity/deception and dishonesty by allowing the absence of approvals

28. As noted above, the evidence is that the development was correctly categorised, and otherwise in accordance with the relevant legislation. Indeed, I note that the ERD Court confirmed that Council categorized the development correctly when it dismissed an appeal lodged by residents (including Mr & Mrs Lindner) to have the categorization reviewed. Council took appropriate steps in the circumstances to revise the relevant applications for development, noting that the property could have accommodated either row or semi-detached dwellings. Dishonesty/deception was not the reason for the absence of any approvals. Likewise, the decision to implement retrospective approvals was not an unlawful or deceitful exercise on the part of any employee. It was a decision open to the Council to make in the circumstances.
29. It is my understanding that there are various (legitimate) reasons as to why developments might be absent approvals. The *Development Act* has been drafted to allow for rectification of any breach where possible. Enforcement proceedings do not operate upon Council or its officers as a duty, but rather as a power to be exercised appropriately. The appropriate exercise of power will depend upon many factors, but would include the need to ensure safety, or prevent a nuisance. It is not a mandatory obligation to rectify every ‘breach’ by enforcement.
30. It is also worth noting that enforcement proceedings can also be initiated by third parties (such as the Lindners) pursuant to section 85 of the Act.

Controlling the LGAMLS' investigation of their tort claim

31. Council is a member of the Scheme which is a discretionary indemnity fund. It operates for and on behalf of local government. Its role is to manage the scheme and the risks of civil liability claims. It is not within the power of any CEO to control the mind, decisions or outcomes of the LGAMLS. The Scheme undoubtedly has reference to, and verifies information with, any member as concerns any claim. In ascertaining any claim, the insurer would have taken whatever instructions and sought whatever information was necessary to form a view about the risk of any successful claim. Seeking that information from Council does not mean Council (or the CEO) is in control of the enquiry. It is a leap to suggest that because the CEO knew the LGAMLS' decision before it was communicated to the Lindners that he controlled the manner of the enquiry and the outcome. If the decision had been otherwise (and in the Lindner's favour) I expect the same notification to the CEO to have occurred.
32. There is no basis to initiate an investigation to determine whether or if, the Council was in control of the LGAMLS' decision on the particulars identified by the Lindners' letter of 24 April 2012.

Covertly distributing a copy of the CEO's letter to the Lindners dated 19 October 2010 to Elected Members, which included parts of 'confidential' communications from the Lindners to LGAMLS (stated to be immoral and unethical)

33. The CEO is under an obligation to keep Elected Members apprised of any significant risks which I assume would extend to a claim for \$4million, no matter what the facts giving rise to the claim may be. The risk is significant, and ought to have been brought to Council's attention.
34. As part of their claim, any letter by the Lindners is not 'confidential'. It was not inappropriate to have extracted relevant parts of it for the Elected Members' attention. I assume no Elected Member called for the whole of the Lindners' correspondence of 2 August 2010 to be produced and that if it had been called for, it would have been produced.
35. The correspondence from the CEO was not, as asserted, made public. It was circulated to the Elected Members of Council (which as a body is the CEO's employer), and no further. If the complaint is really that the whole of the Lindners' letter of 2 August 2010 was not produced and that this was a misrepresentation, it is easily corrected. It can be produced now, and reconsidered to determine if any critical information was omitted for the attention of Council. But otherwise, the act of a 'bcc' to Council is not a breach of the Code or any aspect of the CEO's employment obligation.

Support for Employees

36. I assume from the tone and volume of correspondence from the Lindners that employees of Council and not simply the CEO, have been the subject and target of various allegations. The CEO needs to ensure appropriate controls are put into place to protect the Council's employees from unnecessary harassment, and Elected Members should seek confirmation of the implementation of those controls. Likewise the Elected Members need to ensure appropriate controls are put into place to protect the CEO (its only direct employee) from unnecessary harassment.

37. The letter from the Lindners to Mr Searle is highly inflammatory and in my view, more than likely defamatory. The correspondence has been circulated to third parties in writing and in that sense, is published material. Premising (almost) every assertion of dishonesty or misconduct with the word 'alleged' does not overcome the act of defamation. A review of the correspondence does not readily identify a defence to the defamatory imputations. Those defences extend, for example, to:
- justification (where the imputations are substantially true);
 - absolute privilege - it is not a matter published in parliament or a court;
 - honest opinion - particularly in relation to the assertion of dishonesty and deception as concerns the absence of approvals;
 - triviality - particularly where it has been circulated to the Minister.
38. The CEO may, on his own initiative, determine to take civil action against the Lindners as a result of the communication. The process of initiating a defamation action begins with a 'concerns notice' sent to the author (perhaps the Lindner's in this case) setting out the particulars of the defamation. Within 28 days the author may respond with an offer to make amends, which must at least offer to publish a correction, take back the defamatory material and offer to pay expenses reasonably incurred. If that offer to make amends is accepted, and carried out, there is no longer a cause of action. If not accepted and (among other things) the offer was reasonable, the offer will be a defence against any defamation action brought. It is possible that this is a matter which the CEO will consider initiating, and in this respect Council needs to consider its position.
39. Regrettably, Elected Members will have the difficult task of balancing the obvious frustration and discontent on the part of the Lindners, with the health and safety of their CEO and employees like [REDACTED] who each have the right to work in an environment free of harassment. In this context, it is important to keep the following in mind:
- the Lindners feel aggrieved because there has been no practical outcome to their grievance from their perspective;
 - they may genuinely believe, even though this is not a reasonable position to take on a proper review of papers, that there has been a conspiracy set by Council employees to prevent their access to proper remedies of financial compensation;
 - the CEO, and other employees [REDACTED] (in particular) have been the subject of repeated enquiries and reviews since 2009, as well as attempts at mediation;
 - the CEO and other employees [REDACTED] (in particular) have been the subject of unkind, repeated direct and accusing correspondence without any ability to control the timing or content of that correspondence.
40. In making a decision about future courses of action, Elected Members need to ensure that:
- the decision made is in keeping with the Elected Members Code of Conduct, to avoid accusations from Mr and Mrs Lindner that there has been a breach from any decision now made;
 - appropriate protections/controls are put into place to avoid any ongoing harassment of the CEO and delegate to him the responsibility of ensuring the same for any identifiable employees in Council. There is no indication that the Lindners will stop their

correspondence which is escalating in its tone. Indeed, I note that the retrospective nature of the Independent Commissioner Against Corruption Bill (ICAC Bill) will provide further opportunity for Mr and Mrs Lindner to agitate these issues that have been investigated by other external parties and have been determined to have no basis;

- there is a supportive position on the part of Council in the event that the CEO is independently advised to take his own action against the Lindners, for defamation. It would be appropriate for Council to consider contributing (to a maximum limit) to the CEO's legal costs if he chooses to prepare an appropriate response to the Lindners as a control measure to avert further correspondence of this kind. Furthermore, I recommend that Council write to the Lindners in response to their correspondence advising their position and requesting that they immediately stop the tone and accusations of their letters in future. At the very least, it would be appropriate and prudent in my view to ask this language and approach stop, so as to discharge Council's own duty of care toward the CEO and [REDACTED]

41. In my view, there is no basis for an assertion of a Code of Conduct breach on the materials to hand. The only outstanding matter(s) which could be argued need further attention are the production of the whole of the letter of 2 August 2010 to Council, in the event that a decision or failure not to produce the whole of the letter is argued to be, or was withheld, for improper reasons.
42. I am not in a position to determine whether the complaints at this time by the Lindners are in the category of being vexatious. The Code of Conduct allegations which have to this point not been the subject of dealing probably mean this part of the complaint is not vexatious.
43. There is no basis at this time to warrant the time, inconvenience and (further) expense of an investigation on the information I have to hand.

Proposed resolutions

44. On the basis of the advice set out herein, the following resolutions are recommended:
"XXX
 - a. The legal advice provided by EMA Legal is received and noted.
 - b. That Council, after reviewing the advice, acknowledges the investigations and determinations of the Ombudsman, the LGA Mutual Liability Scheme and the Anti Corruption Branch of SAPOL. Such determinations indicated that no maladministration, malfeasance, breach of the *Local Government Act (SA) 1999*, or breach of the *Criminal Law Consolidation Act* has occurred in this matter.
 - c. Further to the above, after reviewing the advice, Council resolves there is no basis for an assertion of a Code of Conduct breach, policy breach or other alleged negligent conduct by the CEO or any other employee of Council in this matter, and on this basis, resolves that no further action be taken to initiate an investigation (by private investigator or otherwise) into allegations raised by Mr and Mrs Lindner against the Chief Executive Officer, or any other employee of Council, as detailed in the two letters from Mr and Mrs Lindner of 24 April 2012.
 - d. In resolving the above, the Council concurs with the Ombudsman's view that sufficient of the public resources have been expended in conflict resolution for this matter.
 - e. That Council communicate its decision to the Chief Executive Officer (and other staff impacted by Mr and Mrs Lindner's complaints) and provide the Chief Executive with such

resources as he may require to minimize any or any further risks to the health or safety of any employee of Council who may receive, or be likely to receive, further correspondence or contact from Mr and/or Mrs Lindner.

- f. The Council take such reasonable measures as it may be advised to take from time to time, to minimize any or any further risks to the health or safety of the Chief Executive Officer to the extent he may receive, or be likely to receive, further correspondence or contact from Mr and/or Mrs Lindner.
- g. That the Mayor write to Mr and Mrs Lindner advising:
 - i. that the matters the subject of their complaint, as concerns everything aside from the Code of Conduct issues have been the subject of complete and independent investigation by the Ombudsman, the LGA Mutual Liability Scheme and the Anti Corruption Branch of SAPOL. Each of these investigations have determined no further action would be taken.
 - ii. Following a further review of their complaint, and relevant documents and circumstances to which they have referred, there is no reasonable basis to assert a Code of Conduct breach, policy breach or other alleged negligent conduct by the CEO or any other employee of Council.
 - iii. On this basis, no further public resources will be expended in investigating this matter by private investigator or otherwise.
 - iv. That Mr and Mrs Lindner exercise caution and restraint in the tone of their correspondence with any employee of Council, including the Chief Executive Officer which on any reading, is inflammatory Marking the letters 'without prejudice' and premising assertions with the word 'alleged' does not of itself overcome the defamatory imputations of their correspondence.
 - v. That Council is unable to engage with Mr and Mrs Lindner any further regarding the development at 19-23 Whiteleaf Crescent Glengowrie and that if any further correspondence of this nature is received, it will be reviewed as to whether it is vexatious or not.

45. I will prepare suggested wording for the return correspondence to Mr and Mrs Lindner and present this at Council's meeting on 10 July 2012.

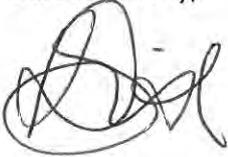
If an Investigation is determined to be appropriate

46. If, for whatever reason, Council determined to initiate an investigation of the outstanding issues (as particularized above) then Council may wish to consider the following:
 - a. Whether the investigation will be conducted by a third party (recommended);
 - b. Who that investigator will be;
 - c. The benefit of commissioning that investigation for the purposes of obtaining legal advice as to the actions, if any, that should be taken as a consequence, and the repercussions of any findings both internal and external to Council;
 - d. The terms of reference to be given to the investigator;
 - e. Whether the investigation might be commissioned in steps, and subject to revision by Council, the first step being the identification of new issues or materials that have not previously been raised by the Lindners in any jurisdiction, or any correspondence, before. Further investigation would depend upon this threshold being met.

Conclusions

47. The tone of the correspondence from the Lindners is not appropriate and should not be condoned. In my view, Council should use its best endeavours to control that means of communication by requesting it stop, or considering other control measures.
48. There is no reasonable basis to initiate an investigation into the outstanding issues, other than to seek the production and perhaps consider, the full correspondence of the Lindners dated 2 August 2010, with any follow on action to be taken as appropriate.
49. All other matters raised by the Lindners have been the subject of review and determination by other authorities. The Ombudsman for example, has exhausted its jurisdiction to make or conduct any further enquiries in the matter.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Kaye Smith', written in a cursive style.

Kaye Smith

Attachment 1

Documents assessed:

1. Letter addressed to Mayor Lewis dated 24 April 2012 (attached)
2. Letter addressed to the CEO with attachments dated 24 April 2012 (attached)
3. CEOs Employment Agreement
4. Letter from the Ombudsman dated 28 May 2009 (attached)
5. Letter from Mark Searle to Ken McPherson, Acting State Ombudsman dated 16 June 2009 (attached)
6. Letter from the Ombudsman dated 30 August 2010 (attached)
7. Letter from LGAMLS to Mr and Mrs Lindner dated 9 September 2010 (attached)
8. Letter from Mr and Mrs Lindner to Mark Searle dated 27 September 2010 (attached)
9. Letter from Mark Searle to Mr and Mrs Lindner dated 19 October 2010 (attached)
10. Letter from LGAMLS to Mr and Mrs Lindner dated 25 October 2010 (attached)
11. Letter from SAPOL dated 31 June 2012 (attached)
12. Addressing Employee Performance and/or Conduct - Procedure
13. Performance Management Matrix

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Received
24-4-12
Front Counter

Leona & Glen Lindner
19 Whiteleaf Crescent
GLENGOWRIE SA 5044
Ph: 0419 830 351

24 April 2012

Mayor Lewis
City of Marion
PO Box 21
OAKLANDS PARK SA 5046

Dear Ms Lewis
Without Prejudice

Please find attached a copy of a letter sent to Mr Mark Searle, CEO at the City of Marion.

It contains numerous acute issues regarding his alleged failed performance in the lawful discharge of his duties involving alleged breaches of his Code of Conduct, the *Local Government Act 1999* and the *Criminal Law Consolidation Act 1935* pertaining to alleged negligence thereby failing the residents and ratepayers of the Council he is accountable to. Responses provided by Mr Searle to various people during the course of the previous 4½ years are inconsistent with documented evidence evincing his alleged complicity in the concealment of wrongdoings at the City of Marion.

Mr Searle is the authority under which the alleged illegal demolition of 4 houses, the illegal construction at the rear of 23a Whiteleaf Crescent, Glengowrie and the alleged illegal construction of 3 verandahs at the rear of 21, 21a & 23 Whiteleaf Crescent, which currently still have no approvals, has occurred.

The retrospective approvals that have now been obtained for 23a Whiteleaf Crescent may now render the development lawful but does not revoke the alleged criminal offence that was committed by building this structure without an approval. The offence committed is a separate issue to that of attaining retrospective Development Approval and needs to be dealt with pursuant to the *Criminal Law Consolidation Act 1935*, which is believed to be part of Mr Searle's obligations as CEO.

Mr Searle claims that all breaches of the Development Act 1993 "*...have been resolved to Council's satisfaction*", however there appears to be no evidence of any action pursued. Would you kindly pursue on behalf of all residents and ratepayers exactly what action he has taken in relation to the **eight** abovementioned alleged offences that are not of a minor nature. Would you kindly advise us of Mr Searle's reply?

As you are our advocates and the employers of Mr Searle to whom he is accountable, in the context of Mr Searle's alleged misconduct contained herein, it may be suggested prudent of the Elected Members to "***also hire an independent private investigator to look into the alleged misconduct of the CEO***". Mr Chris Russell, strategic adviser to the

Local Government Association states this is "*common practice for Councils*" and is fully supported by the LGA, therefore it would be expected that an investigation by the Members into this serious matter would also be supported by the LGA, to do otherwise could be seen as one of bias.

It has been recently publicly portrayed that 'all is not well' within the City of Marion thereby creating a negative public image. It is imperative that action on this serious matter be taken to avoid further degradation of the Council's image, also to retain the confidence of residents and ratepayers that their Council upholds and performs as a model citizen.

We ask that you intervene in this grave matter to ensure that in the interests of open and accountable governance, justice is done for all residents and ratepayers in the City of Marion.

Yours faithfully

 L. Lindner G.B. Lindner

Leona and Glen Lindner

CONFIDENTIAL

Leona & Glen Lindner
19 Whiteleaf Crescent
GLENGOWRIE SA 5044
Ph: 0419 830 351

24 April 2012

Mr Mark Searle
Chief Executive Officer
City of Marion
PO Box 21
OAKLANDS PARK SA 5046

Dear Mr Searle
Without Prejudice

We write in relation to your obligations as CEO of the City of Marion regarding your due diligence in the lawful discharge of your duties.

We note that the Environment Protection Authority has exercised their due diligence in the recent prosecution and successful conviction of Mr Pasquale Papalia over the illegal dumping of excavated soil at Seacliff.

Likewise it would be expected that you exercise the powers that have been delegated to you especially when a report of numerous alleged criminal offences is brought to your attention, as explained below in this document. You have allegedly failed to take action as well as conceal every single offence allegedly committed by Mr Papalia who has been riding roughshod in the Marion Council area for some 6 years. **Why haven't you taken any action?**

Councils delegate wide powers, functions and duties to the CEO who are required to act honestly and with reasonable care and diligence in performing their duties and comply with Codes of Conduct adopted by Councils. A Code of Conduct assists staff to act in a way that promotes a positive public image of the Council. These criteria forming the qualities in a CEO are a clear and legitimate expectation of the community.

With reference to your Code of Conduct it is a requirement that you maintain impeccable levels of honesty and integrity and that the Council, of which you are a part of, acts within the law. Pursuant to Section 99 (1)(a)(b)(h)(j) of the *Local Government Act 1999* it is your responsibility to exercise, perform or discharge powers, functions or duties conferred to you under this or other Acts. You must ensure that the policies and lawful decisions of the Council are implemented, also undertake responsibility for the day-to-day operations of the Council. It is your responsibility to ensure that records required under this or another Act are properly kept and maintained. Where a report is made to you and there are clearly no legal records on file (as were required in this case) it should have raised alarm bells triggering you to investigate the matter and subsequently take action if necessary.

It is alleged that you have failed to fulfil these requirements, as portrayed below.

We turn again to the 14 alleged criminal offences committed by Mr Papalia in your Council area, which constitute significant breaches of the *Development Act 1993*.

The 6 most salient being –

- 1) Demolition of a house with no council approvals at 38 Hardy Avenue
GLENOWRIE.....Maximum Penalty \$120,000
- 2) Demolition of a house with no council approvals at 37 Ranelagh Street
GLENOWRIE.....Maximum Penalty \$120,000
- 3) Demolition of a house with no council approvals at 19 Hardy Avenue
GLENOWRIE.....Maximum Penalty \$120,000
- 4) Demolition of a house with no council approvals at 21 Hardy Avenue
GLENOWRIE.....Maximum Penalty \$120,000
- 5) Constructed 3 verandahs at 21, 21a, 23 Whiteleaf Crescent with no approvals and still today there are NO APPROVALS.....Maximum Penalty \$120,000
- 6) Constructed a fully enclosed building at the rear of 23a Whiteleaf Crescent with no approvals.....Maximum Penalty \$120,000

Pursuant to s32 of the *Development Act 1993* a person must not undertake development in the absence of a lawful Development Approval. The penalties named above are the maximum that a Court has the jurisdiction to impose for each offence, as prescribed in s44 of the *Development Act 1993*.

We brought these issues to your attention almost 3½ years ago, which have all occurred under your authority and it is alleged that you have failed to exercise due diligence in the discharge of your duties to undertake to enlist action against Mr Papalia.

We turn specifically to the demolition of 4 houses in Glengowrie which was undertaken by Mr Papalia without Council approvals. We met with you on Wednesday 10 June 2009 to advise that Mr Papalia had demolished 2 houses without Council approvals, those being 38 Hardy Avenue and 37 Ranelagh Street, both in Glengowrie, and that [REDACTED] had been advised, but he failed to instigate any action.

At that meeting you stated that you would investigate the matter and take action, in particular by notifying the Police if our allegations were correct, however you have since responded that all breaches of the *Development Act 1993* have been dealt with to the satisfaction of Council.

It is apparent that nobody other than yourself is aware of how you have “resolved” these breaches. Would you kindly explain to us and the Elected Members exactly what action you have taken to “resolve” these breaches?

In a letter to us dated 3 February 2010 you state: “Thank you for your correspondence received 2 February 2010, regarding 19 and 21 Hardy Avenue, Glengowrie. I can advise that Demolition formed part of the Development Application 100/1320/2009; therefore the necessary approvals are in place for the above property” however this is not correct. Neither the application nor

approval (**Attachment 1**) «12 pages» contains any reference to Demolition, which is a legal requirement pursuant to the *Development Act 1993*. The same applies to 38 Hardy Avenue DA No: 100/1343/2006 (**Attachment 2**) «11 pages» and 37 Ranelagh Street DA No: 100/1013/2008 (**Attachments 3**) «12 pages»

There are no separate approvals for any of these demolitions in Council's Public Register files, which is a requirement pursuant to s98 of the *Development Regulations 2008*.

(**Attachment 4**) «5 pages» exhibits an example of a lawful Application and Demolition Approval, indicating that Council is fully aware of its legal obligations. This documentation is a mandatory requirement for all house demolitions under the *Development Act 1993*.

On 27 August 2009 Mr John McEhinney (acting as a mediator) requested that Council provide copies of "*The applications and approvals for demolition at 38 Hardy Avenue and 37 Ranelagh Street both in Glengowrie*" On 17 September 2009 (**Attachment 5**) «1 page» which depicts a demolition plan for the old house at 37 Ranelagh Street, Glengowrie, was the only document received by Mr McEhinney.

This document has been stamped by Project Building Certifiers; however [REDACTED] admits in other documentation that it has not been the subject of a Development Approval granted by Council. A Demolition Plan does not constitute a Development Approval as required by the *Development Act 1993*. You may also wish to explain why the Council has stamped the plan as being received on 20 May 2008 when the Building Certifier only stamped the plan with Building Rules Consent on 8 September 2008. This suggests that strangely the Council received this document some 3½ months before the Certifier had stamped the plan, how did the Certification stamp '*magically appear*'?

In a letter to us dated 19 October 2010 you state: "*The verandah's to the rear of residence 2, 3 and 4, 21-23 Whiteleaf Crescent, Glengowrie were approved under the original development approval for the four dwellings. I note that these plans have been shown to you as part of the mediation process.*" This statement is not correct. It can be clearly seen in (**Attachment 6**) «9 pages» DA No: 100/1768/2007 that this legally required approval documentation does not contain any reference to verandahs. The Building Certification document also does not contain a reference to any verandahs which would have been assigned to a class 10a had they been certified. The Planning Assessment Checklist reveals that the verandahs were not taken into consideration during the assessment. **Note-** the rear setback states "*6 metres*" when the verandahs as built are only 1.5 metres from the rear boundary at the closest point. **Note also-** the site coverage has not been assessed.

Verandahs depicted on plans alone are not a legal substitute for an approval.

In direct contradiction to your statement above, we are in possession of other Council documentation which clearly states: "*...the officer assessing the application has also correctly identified that no verandahs formed part of the application.*"

It is understood that Council as the Relevant Authority must process development applications that are put before them with due diligence and according to the law. It is also incumbent on Council that where breaches of the law occur, that as the Relevant Authority they also actively pursue any breaches to the full extent of the law.

It is alleged that the conduct evinced by yourself and certain officers at the City of Marion does not demonstrate the attributes of a model corporate citizen.

Mr Papalia also completely enclosed his rear yard at 23a Whiteleaf Crescent, Glengowrie without Council approvals, which at the persistence of neighbours [REDACTED] eventually applied a

Section 84. It was in the Environment Resources and Development Court for approximately 3 years before Mr Papalia eventually gained staged retrospective approvals. However this does not negate the fact that this was an alleged criminal offence committed, which cannot be revoked when retrospective approvals are granted for any development. The offence committed is a separate issue from the development itself and by law does require action regardless of any subsequent Development Approvals attained.

On two occasions at your behest, Council inspectors attended 23a Whiteleaf Crescent to find Mr Papalia continuing to build in defiance of the Section 84 that had been placed on him. You notified us saying: "*the Courts don't look lightly upon this kind of behaviour*" and you would report this, however it is alleged you have failed yet again to take action against Mr Papalia,
Why?

Pursuant to Section 4 of the *Development Act 1993*
development means –

(a) building work

Building work means work or activity in the nature of –

(a) the construction, demolition or removal of a building

Section 32 of the *Development Act 1993* states:

Development must be approved under this Act –

Subject to this Act, no development may be undertaken unless the development is an approved development.

Section 105 (4) of the *Development Act 1993* states:

The offences constituted by this Act lie within the criminal jurisdiction of the Court.

The absence of approvals abovementioned all constitute breaches of the *Development Act 1993* which amount to serious offences, that were brought to your attention allegedly only to be '*swept under the carpet*'. Your omission to take action could be viewed as allegedly Aiding and Abetting Mr Papalia, which amounts to a breach of Part 7B, Section 267 of the *Criminal Law Consolidation Act 1935*.

It is alleged that you have whitewashed all potential opportunities to enlist action against Mr Papalia; clearly you have not exercised the powers delegated to you as CEO under legislation,
Why not?

Your alleged complicity in the absence of these mandatory approvals amounts to an act of deception and dishonesty pursuant to Section 131(1), 139, 140(3)(a)(d), (4)(a)(i)(ii) of the *Criminal Law Consolidation Act 1935* which also amounts to a breach of your Code of Conduct. Your alleged deceitful behaviour goes little way to promoting a positive public image of Marion Council, an attribute also required by your Code of Conduct.

We make it clear that Mr Papalia's alleged criminal offences are in no way connected to the claim we had submitted in the tort of negligence, which has been rejected by the LGAMLS. Our claim was rejected on 25 October 2010, of which you were acutely aware on 19 October 2010 (6 days prior to us receiving the rejection letter). On 25 October 2010 Ms Robyn Daly from the LGAMLS advised us that "*Our response is out with the Council for approval, and then it will be sent to you*".

At the conclusion of 'mediation' your only advice to us was that we could submit a claim to the LGAMLS, which we did. A letter dated 14 July 2010 from you states: "*...the matter will be referred to Council's insurance provider (LGA Mutual Liability Scheme) for an independent (our*

emphasis) review of any claim you are making.” However it is clearly evident that the review of our claim was allegedly controlled by you, not independently as you claim.

It was in December 2010, after the final rejection of our claim on 25 October 2010; you advised the Elected Members that there was an active claim before the LGAMLS which was not correct, totally untenable advice. It is alleged that you knowingly misled the Elected Members about the true state of affairs, which obstructed and in turn terminated our prearranged meeting with them during December 2010, which was to seek their assistance regarding your alleged failure to action Mr Papalia’s serious alleged criminal offences.

Pursuant to Marion Council’s “**How we Work Together Policy**” it states within that Employees should be aware that Councillors have a legitimate right and responsibility to represent the interests of residents and ratepayers. It is alleged that you as an employee of the Councillors have breached this policy by the termination of our abovementioned meeting which has denied them the legitimate right to represent us in a dire situation such as this.

We now turn to your letter dated 19 October 2010 which was addressed to us only, however you took the liberty to covertly distribute a copy to all the Elected Members without indicating to us in the letter that there would be carbon copies to them. In the letter you documented a purported claim figure, of which you had no reason to do so. Our claim letter dated 2 August 2010 was addressed to Council’s Claims Officer [REDACTED] which was to be forwarded to the LGAMLS. This letter regarded as being confidential to the LGAMLS was not addressed to you personally; therefore it is alleged you had no legal or moral authority to cherry pick confidential information, incorporate it into a letter written by yourself, and then make it public knowledge.

We take offence to your alleged immoral and unethical conduct in the management of this serious issue. It is alleged that your sole incentive for presenting this letter to the Elected Members, in a covert manner as explained above, was a concerted attempt by you to denigrate our character.

Our 17 page letter dated 2 August 2010 to the LGAMLS clearly states the reasons for and fully supports our claim. Did you give the Elected Members a copy of this letter as well, to enable them to fully understand the alleged malfeasance that has occurred in the City of Marion? If not you may wish to distribute a copy to each of them to allow them to form an unbiased view of what is happening ‘behind closed doors’.

As the Chief Executive Officer of the City of Marion you have the authority and a duty under the powers that have been delegated to you, to ensure that the impeccable integrity of the Council is maintained. It is alleged that you have seriously breached your Code of Conduct, the *Local Government Act 1999* and the *Criminal Law Consolidation Act 1935*, also abused the powers that you had the privilege to be granted as CEO.

During the course of the last 4 years it is alleged you have deceived and betrayed us on numerous occasions. It is alleged that your conduct as described in this letter has eroded the positive public image and reputation of Marion City Council and its honesty and integrity.

Your Code of Conduct states that you will be “...*scrupulous in the performance of your duties...*” It is alleged you have failed to demonstrate these qualities in the discharge of your duties as CEO and have failed to perform in general as required by your Code of Conduct and the *Local Government Act 1999*.

We await your reply as to why you have not pursued action against Mr Papalia with regard to the abovementioned alleged criminal offences, which are scarcely of a minor nature.

Yours faithfully

Leona and Glen Lindner
Residents – City of Marion

Cc: The Hon Russell Wortley MLC (Minister for State and Local Government Relations)
The Hon John Darley MLC
Dr Duncan McFetridge MP

Attachment 1: Application Form & Development Approval documentation for 19 and 21 Hardy
(12 pages) Avenue, Glengowrie

Attachment 2: Application Form & Development Approval documentation for 38 Hardy
(11 pages) Avenue, Glengowrie

Attachment 3: Application Form & Development Approval documentation for 37 Ranelagh
(12 pages) Street, Glengowrie

Attachment 4: An example of a lawful Application and Demolition Approval
(5 pages)

Attachment 5: Demolition Plan WD 11
(1 page)

Attachment 6: Development Approval documentation for 21-23 Whiteleaf Crescent, Glengowrie
(9 pages) Planning Assessment Checklist

CITY OF MARION - DEVELOPMENT APPLICATION FORM

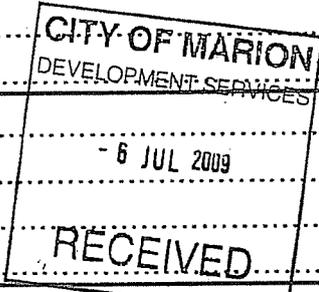
What are you applying for:

- Planning Consent only at this stage
- I have Planning Consent and now seek Building Consent & Full Development Approval
- Both Planning and Building Consent at once (ie Full Development Approval)
- Residential Development Code Assessment



Development Application No:
100/1320/2009

Applicant Name: Five Star Homes SA Pty Ltd
 Address: Po box 218 Fulham Gardens SA
 Post Code: 5024
 Phone Numbers:



Owner Name:

Address:

Post Code:

Phone Numbers:

Builder Name: Five Star Homes SA Pty Ltd Supervisor Name: Pat Papalia
 Address: po box 218 Fulham Gardens
 Post Code: 5024
 Phone Numbers: 0913992429
 Licence No: B4D.16.7.798

Contact Person for Further Information: Name: Pat Papalia
 Phone Numbers (business hours): 0913992429
 Fax Number: 83500257 E-Mail: fivestarhomes@three.com.au

Location of the proposed development:
 Street No: 19/21 Street Name: HARDY STREET AVE
 Suburb: ELENGOURIE
 Lot No: Deposited Plan/File Plan/Strata Plan No:

Note: No Demolition Application

What is the land, or building(s), currently used for: (i.e. shop, office, ve
residential x 2 houses

Please describe the nature of the proposed development: (i.e. alteration and additions to dwelling, freestanding
 page, change of use to offices etc): Construction of x 4 ^{new} ~~dwelling~~ & 1 ~~separate dwelling~~ ^{detached}

Have you provided a current copy of your Certificate of Title: Yes / No CT Number:

Do you want Council to purchase a copy of your CT on your behalf: Y / N (see fee schedule for further information).
 Assessment will not commence until a current copy of your CT is provided (as with all other information required as part of your application).

Have you provided a copy of Indemnity Insurance: Yes / No / Not Required
 (required if development cost is over \$12 000, domestic construction is proposed and if Building Consent/Full Development Approval is sought).

Are there significant trees on the subject land or adjacent land? Yes / No
 Please refer to the attached, additional form related to significant trees for clarification on what a significant tree is and complete form if relevant.

Building Rules classification - current Class: proposed Class:

If Class 5, 6, 7, 8 or 9 is sought, state the proposed number of employees:
 Male: Female:

If Class 9a is sought, state the number of persons for whom accommodation is provided:

If Class 9b is sought, state the number of occupants of the various spaces at the premises:

Proposed Total Floor Area:m²

Development Cost (inclusive GST, not including furnishing costs): \$ 1,500,000

I acknowledge that copies of this application and supporting documentation may be provided to interested persons in accordance with the Development Regulations 1993.

Signature: [Signature]
 Name: PAT PAPALIA Date: 6/7/09



ADMINISTRATION CENTRE:
245 STURT ROAD
STURT S.A. 5047

POSTAL ADDRESS
PO. BOX 21
OAKLANDS PARK S.A. 5046

OFFICE HOURS:
MONDAY TO FRIDAY
8.30A.M. TO 5.00PM.
TELEPHONE (08) 8375 6600
FACSIMILE (08) 8375 6699
EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

1

DECISION NOTIFICATION FORM

DEVELOPMENT ACT 1993

DEVELOPMENT APPLICATION NUMBER: 100/1320/2009
DATED: 06/07/2009
REGISTERED ON: 06/07/2009

TO: Five Star Homes SA Pty Ltd
PO Box 218
Fulham Gardens SA 5024

LOCATION OF PROPOSED DEVELOPMENT

19-21 Hardy Avenue Glengowrie 5044
LOT: 224 and 223 DP: 3243 CT: 5129/720 and 5645/440

Note:

No Demolition

Reference

DESCRIPTION OF PROPOSED DEVELOPMENT

To construct two sets of two storey semi-detached dwellings (total of four dwellings) with associated garaging and landscaping.

In respect of this proposed development you are informed that:

NATURE OF DECISION	DECISION	DATE OF DECISION	NUMBER OF CONDITIONS
Development Plan Consent	Granted	09/10/2009	9
Building Rules Consent		STILL REQUIRED	
DEVELOPMENT APPROVAL		STILL REQUIRED	

Conditions imposed on this consent and the reasons for imposing those conditions are set out in the attached sheet(s). Important information that may affect this consent can also be found under 'NOTES' and on the back of this page.

Note - this is not a Development Approval. Development Plan Consent only has been granted. No work can commence until full Development Approval has been obtained.



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DEVELOPMENT APPLICATION NUMBER: 100/1320/2009
APPLICANT: Five Star Homes SA Pty Ltd
LOCATION: 19-21 Hardy Avenue Glengowrie 5044
 LOT: 224 and 223 DP: 3243 CT: 5129/720 and 5645/440

DESCRIPTION OF DEVELOPMENT: To construct two sets of two storey semi-detached dwellings (total of four dwellings) with associated garaging and landscaping.

DECISION: Development Plan Consent Granted
DATE OF DECISION: 09/10/2009

Note: No Demolition Reference

DEVELOPMENT PLAN CONSENT

GRANTED

Reasons For Decision:

Consent is granted as the proposed development is considered to accord sufficiently with the provisions of the Development Plan.

The following conditions have been imposed to reasonably ensure that the development will not impair the orderly and proper planning of the locality or detrimentally affect the amenity of the locality, having particular regard to the Objectives and Principles of Development Control applicable to such a use in the locality.

Conditions of Consent:

- (1) The development shall be constructed and maintained in accordance with the plans and details submitted with and forming part of Development Application No.100/1320/2009 except when varied by the following conditions of consent.
- (2) The driveways servicing each dwelling shall be realigned to ensure appropriate and convenient entry and exit to the proposed garages. An amended plan shall be submitted to Council for consideration and approval, prior to Development Approval being issued.
- (3) All areas nominated as landscaping or garden areas on the approved plans shall be planted and maintained with a suitable mix and density of native trees, shrubs and groundcovers prior to the occupation of the premises to the reasonable satisfaction of the Council.
- (4) Stormwater from the structure approved herein shall be collected and directed into a detention tank (or tanks) which are sized and installed in accordance with the

Initials [Redacted]
Date... 9/10/2009



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P.O. BOX 21
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specifications contained in Council's Information Sheet "Stormwater Detention" to the reasonable satisfaction of the Council (copies of relevant documents are attached).

- (5) The stormwater collection and disposal system shall be connected to the street watertable (inclusive of any system that connects to the street watertable via detention or rainwater tanks) immediately following roof completion and gutter and downpipe installation.
- (6) All car parking areas, driveways and vehicle manoeuvring areas must be constructed, sealed and drained in accordance with recognised engineering practices prior to the occupation of the premises or the use of the development herein approved.
- (7) Where the driveway crosses the front boundary, the finished ground level shall be between 50mm and 150mm above the top of kerb.
- (8) The portion of the upper floor windows to the eastern, southern and western elevations of all dwellings less than 1.7m above the internal floor level shall be treated prior to occupation of the building and maintained in a manner that permanently restricts views of adjoining property's yards and/or indoor areas being obtained by a person within the room to the reasonable satisfaction of the Council. (Note, suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7m above the internal floor level or a window sill height of 1.7m above the internal floor level).
- (9) All devices/treatments proposed as part of the Development Application to protect the privacy of adjoining properties shall be installed and in use prior to occupation of the premises and maintained for the life of the building.

BUILDING RULES CONSENT

STILL REQUIRED

Appeal Rights:

- (1) If you are not satisfied with this decision, there may be a right of appeal to you. Applicants have the right to appeal against a refusal or the imposition of any conditions or requirements on any consent issued, unless the application was for a non-complying kind of development. An appeal by an applicant must be lodged within two (2) months of receiving notice of the decision. Where Category Three public notification was involved, persons who lodged written representations during the formal consultation period, have the right to appeal against any decision made on that application. An appeal by a third party must be lodged within fifteen (15) business days of the date of the decision. All



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appeals are lodged with the Environment, Resources and Development Court, Sir Samuel Way Building, Victoria Square, Adelaide, telephone: 8204 0300.

Approval Timeframes:

- (1) The proposed development must:
 - o receive full Development Approval within 12 months of receiving Development Plan Consent; and
 - o be substantially commenced within twelve months from the date full Development Approval is granted; and
 - o be completed within three years of full Development Approval being granted
 noting that the operative date of any consent or approval, is subject to any appeal where applicable being finally determined.

Signed:	
	Authorised Officer
Date:	9/10/09

Cc:

Patfran Developments Pty Ltd
PO Box 218
Fulham Gardens SA 5024



PROJECT BUILDING CERTIFIERS PTY LTD

ACN 070 843 971

29 Rundle Street, Kent Town SA 5067

PO Box 48 Kent Town SA 5071

Phone : (08) 8362 7800 Fax: (08) 8362 7855

DEVELOPMENT ACT 1993
DECISION NOTIFICATION FORM

BUILDING RULES CONSENT

DEVELOPMENT NUMBER: 100/1320/2009

OUR REF: BAA 09/183

Two Sets of Two Storey Semi- Detached Dwellings with Garage
19-21 Hardy Ave, Glengowrie

The development has been assessed against the provisions of the Building Rules pursuant to Sec 33 of the Development Act 1993 and complies with the Development Plan. Consent number 100/1320/2009 and any conditions.

Project Building Certifiers Pty Ltd pursuant to Sec 89 of the Act certify that the works comply with the requirements for Building Rules Consent subject to any attached conditions or comments marked upon the documents.

Note: No Demolition Classification

BUILDING CLASSIFICATION :

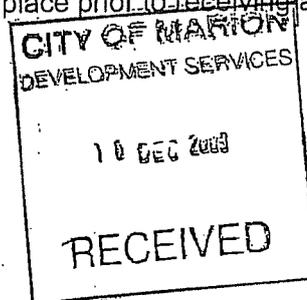
4 x New Dwelling
4 x Garage

Class 1a
Class 10a

BUILDING RULES CONSENT IS GRANTED..... 10- DEC - 09

VARIATIONS : Nil
CONDITIONS : 2

No development, site works or building work shall take place prior to receiving a Development Approval.



Duncan Cooke
Private Certifier (SA Reg No.032)
For PROJECT BUILDING CERTIFIERS PTY LTD

CONDITIONS OF BUILDING RULES CONSENT

1. The development shall be in accordance with the approved plans, specification and details and with the conditions of approval.
2. Construction must NOT commence until a copy of the Home Owners Warranty of Insurance has been lodged with City of Marion.

ADVISORY NOTES

1. This application has been assessed for compliance with the Development Act 1993 and the South Australian Housing Code, 1996.
2. Pursuant to regulation 74 of the Development Regulations 1993, one business day notice must be given to the council before both commencement and completion of any building work on the site.
3. Pursuant to Section 45 of the Development Act, building work must be performed in accordance with the approved documents. Changes to building materials or systems that may effect the structural soundness or safety of a building, must be approved by Project Building Certifiers Pty Ltd. In considering a proposal to substitute building items, Project Building Certifiers Pty Ltd may require the submission of evidence to show that proposed products or systems meet the Deemed-to-Satisfy provisions, or Performance Requirements, of the Building Code.
4. Other authority approvals, including connections for electricity, gas, water and sewer services are the responsibility of the relevant authority.
5. This consent applies solely to works within the site boundaries and is not intended to indicate acceptance of the works in the public realm, which must be to the approval of the relevant local council.
6. Your attention is drawn to Section 60 of the Development Act 1993 and Regulation 75 of the Development Regulations in relation to taking precautions to protect adjoining premises that may be affected by any building work.
7. On completion, the builder must provide to the council and Project Building Certifiers Pty Ltd a statement for compliance of the building work with the approved documents, pursuant to Regulation 83AB of the Development Regulations.



Administration Centre

245 Sturt Road, Sturt
South Australia 5047

Office Hours

Monday to Friday
8.30am to 5.00pm

Postal Address

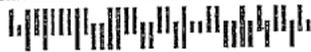
PO Box 21, Oaklands Park
South Australia 5046

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council@marion.sa.gov.au
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DECISION NOTIFICATION FORM

DEVELOPMENT ACT 1993

TO:



Five Star Homes SA Pty Ltd
PO Box 218
FULHAM GARDENS SA 5024

DEVELOPMENT APPLICATION NUMBER: 100/1320/2009
DATED: 06/07/2009
REGISTERED ON: 14/12/2009

LOCATION OF PROPOSED DEVELOPMENT

19-21 Hardy Avenue Glengowrie 5044
LOT: 224 and 223 DP: 3243 CT: 5129/720 and 5645/440

Note:

No Demolition
Reference

DESCRIPTION OF PROPOSED DEVELOPMENT

To construct two sets of two storey semi-detached dwellings (total of four dwellings) with associated garaging and landscaping.

In respect of this proposed development you are informed that:

NATURE OF DECISION	DECISION	DATE OF DECISION	NUMBER OF CONDITIONS
Development Plan Consent	Granted	09/10/2009	9
Building Rules Consent	Granted (by Private Certifier)	10/12/2009	2
DEVELOPMENT APPROVAL	Granted	13/01/2010	11

The building classification under the Building Code is Class 1A,10A.

Conditions imposed on this consent and the reasons for imposing those conditions are set out in the attached sheet(s). Important information that may affect this consent can also be found under 'NOTES' and on the back of this page.



Administration Centre

245 Sturt Road, Sturt
South Australia 5047

Office Hours

Monday to Friday
8.30am to 5.00pm

Postal Address

PO Box 21, Oaklands Park
South Australia 5046

Phone (08) 8375 6600
Fax (08) 8375 6699
council@marion.sa.gov.au
www.marion.sa.gov.au

DEVELOPMENT APPLICATION NUMBER:

100/1320/2009

APPLICANT:

Five Star Homes SA Pty Ltd

LOCATION:

19-21 Hardy Avenue Glengowrie 5044

LOT: 224 and 223 DP: 3243 CT: 5129/720 and
5645/440

DESCRIPTION OF DEVELOPMENT:

To construct two sets of two storey semi-detached dwellings (total of four dwellings) with associated garaging and landscaping.

DECISION:

Development Approval Granted

DATE OF DECISION:

13/01/2010

Note:

No Demolition

Reference

DEVELOPMENT PLAN CONSENT

GRANTED

Reasons For Decision:

Consent is granted as the proposed development is considered to accord sufficiently with the provisions of the Development Plan.

The following conditions have been imposed to reasonably ensure that the development will not impair the orderly and proper planning of the locality or detrimentally affect the amenity of the locality, having particular regard to the Objectives and Principles of Development Control applicable to such a use in the locality.

Conditions of Consent:

- (1) The development shall be constructed and maintained in accordance with the plans and details submitted with and forming part of Development Application No.100/1320/2009 except when varied by the following conditions of consent.
- (2) The driveways servicing each dwelling shall be realigned to ensure appropriate and convenient entry and exit to the proposed garages. An amended plan shall be submitted to Council for consideration and approval, prior to Development Approval being issued
- (3) All areas nominated as landscaping or garden areas on the approved plans shall be planted and maintained with a suitable mix and density of native trees, shrubs and groundcovers prior to the occupation of the premises to the reasonable satisfaction of the Council.



Administration Centre	Office Hours	Postal Address	Phone (08) 8375 6600 Fax (08) 8375 6699 council@marion.sa.gov.au www.marion.sa.gov.au
245 Sturt Road, Sturt South Australia 5047	Monday to Friday 8.30am to 5.00pm	PO Box 21, Oaklands Park South Australia 5046	

- (4) Stormwater from the structure approved herein shall be collected and directed into a detention tank (or tanks) which are sized and installed in accordance with the specifications contained in Council's Information Sheet "Stormwater Detention" to the reasonable satisfaction of the Council (copies of relevant documents are attached).
- (5) The stormwater collection and disposal system shall be connected to the street watertable (inclusive of any system that connects to the street watertable via detention or rainwater tanks) immediately following roof completion and gutter and downpipe installation.
- (6) All car parking areas, driveways and vehicle manoeuvring areas must be constructed, sealed and drained in accordance with recognised engineering practices prior to the occupation of the premises or the use of the development herein approved.
- (7) Where the driveway crosses the front boundary, the finished ground level shall be between 50mm and 150mm above the top of kerb.
- (8) The portion of the upper floor windows to the eastern, southern and western elevations of all dwellings less than 1.7m above the internal floor level shall be treated prior to occupation of the building and maintained in a manner that permanently restricts views of adjoining property's yards and/or indoor areas being obtained by a person within the room to the reasonable satisfaction of the Council. (Note, suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7m above the internal floor level or a window sill height of 1.7m above the internal floor level).
- (9) All devices/treatments proposed as part of the Development Application to protect the privacy of adjoining properties shall be installed and in use prior to occupation of the premises and maintained for the life of the building.

BUILDING RULES CONSENT

GRANTED

Conditions of Consent:

Please refer to the attached copy of your Private Certifier's Building Rules Consent for Conditions of Consent (if applicable).



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NOTES:General:

- (1) Before commencing any site works, a temporary vehicular access to the property for machinery, delivery of building materials and general vehicles should be provided. In the case where no driveway invert exists, the kerb can be saw cut and removed at the intended location for the new driveway invert to provide the necessary temporary access. In addition, if a paved Council footpath exists, this should also be removed in alignment with the removed section of kerb. The applicant should also take note of other information provided regarding use of, damage to and construction on Council owned land.
- (2) In assessing your application it has been determined that it is likely that you will be undertaking work that may affect the stability of adjoining land. Section 60 of the Development Act 1993 and Regulation 75 of the Development Regulations 2008, prescribe that your neighbour has a right to be notified by you 28 days prior to you undertaking that work. This is to enable your neighbour to obtain a report for which you are obliged to pay, that specifies any work that is required to be undertaken to ensure the stability of your neighbour's property is maintained during and following the undertaking of the work you propose. You should make yourself aware of these requirements before proceeding.
- (3) Council requires at least one business days notice of the following stages of building work:-
 - a) prior to the placement of any concrete for footings or other structural purposes (Note - Where an engineer carries out an inspection, Council will also require a copy of the inspection certificate); and
 - b) at the completion of wall and roof frames prior to the fixing of any internal linings.
- (4) On completion of building work, the Development Act requires that a signed Statement of Compliance from the licensed builder be provided to the relevant authority declaring that the building work carried out is in accordance with the relevant approvals (pursuant to Regulation 83AB of the Development Regulations 1993).



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Appeal Rights:

- (1) If you are not satisfied with this decision, there may be a right of appeal to you. Applicants have the right to appeal against a refusal or the imposition of any conditions or requirements on any consent issued, unless the application was for a non-complying kind of development. An appeal by an applicant must be lodged within two (2) months of receiving notice of the decision. Where Category Three public notification was involved, persons who lodged written representations during the formal consultation period, have the right to appeal against any decision made on that application. An appeal by a third party must be lodged within fifteen (15) business days of the date of the decision. All appeals are lodged with the Environment, Resources and Development Court, Sir Samuel Way Building, Victoria Square, Adelaide, telephone: 8204 0300.

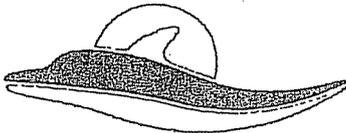
Approval Timeframes:

- (1) The proposed development must:
- be substantially commenced within twelve months from the date full Development Approval is granted; and
 - be completed within three years of full Development Approval being granted noting that the operative date of any consent or approval, is subject to any appeal where applicable being finally determined.

Signed:	
	Authorised Officer
Date:	13/1/10

Cc:

Patfran Developments Pty Ltd
 PO Box 218
 FULHAM GARDENS SA 5024



CITY OF
HOLDFAST BAY

DEVELOPMENT APPLICATION FORM

5★ = 0413 992 429 = Pat.

Please use **BLOCK LETTERS** and **BLACK** or **BLUE** ink so that photocopies can be made of your application
If not a Company, please provide **FULL NAME(S)**, including middle name(s):

FOR OFFICE USE ONLY	
Development No: <u>2006/1343</u>	110/.....
Zone:	Officer(s):

APPLICANT: FIVE STAR HOUSING.

Postal Address: 1631 A MAIN NORTH ROAD SAUSBOURNE

OWNER: 'AS ABOVE'

Postal Address: 'AS ABOVE'

BUILDER: T.B.A

Postal Address: T.B.A.

Licence No: T.B.A. Telephone: _____

ARCHITECT/DRAFTSPERSON: PERSPECTIVE DESIGN Telephone: 8443 6611

Postal Address: 2 RONALD STREET THEBARTON

CONTACT PERSON FOR FURTHER INFORMATION Name: PERSPECTIVE DESIGN.

Telephone: 8443 6611 (work) _____ (Ah) Fax 8443 6622

EXISTING USE: SINGLE STOREY DWELLING **Note: No Demolition Reference**

DESCRIPTION OF PROPOSED DEVELOPMENT: (X2) TWO STOREY ATTACHED DWELLINGS

LOCATION OF PROPOSED DEVELOPMENT: 38 HARDY AVE GLENGOWRIE

House No: 38 Street: HARDY Town/Suburb: GLENGOWRIE

Lot No: _____ Volume: _____ Folio: _____

NATURE OF ASSESSMENT SOUGHT (tick only one):

PLANNING CONSENT ONLY BUILDING CONSENT ONLY FULL DEVELOPMENT APPROVAL

BUILDING RULES CLASSIFICATION SOUGHT: _____ Present classification: _____

HAS THE CONSTRUCTION INDUSTRY TRAINING FUND ACT 1993 LEVY BEEN PAID? YES NO

DOES THIS APPLICATION INVOLVE TREE DAMAGING ACTIVITY TO A SIGNIFICANT TREE? YES NO

DEVELOPMENT COST (do not include any fit - out costs for residential development): \$ 385,000

I acknowledge that copies of this application and supporting documentation may be provided to interested persons in accordance with the Development Regulations 1993

SIGNATURE: _____

Dated: 20/6/06

NB: Where work associated with the planned development extends to or affects the footpath, road or other Council property, it is the responsibility of the land owner and or applicant to ensure that the area remains safe during the period of the works, and is reinstated to Council's satisfaction on completion of the works. In the event that reinstatement works resulting from the activity are not completed within a reasonable time to Council's satisfaction, the applicant and/or owner of the property acknowledge that they will be jointly and severally liable for the costs incurred by Council in undertaking such works. Authority to undertake work on footpaths/roads is required pursuant to Section 221 of the Local Government Act (1999) refer to the Environment and Engineering Department for further information.

CITY OF HARTON
DEVELOPMENT SERVICES

21 JUN 2006

RECEIVED



ADMINISTRATION CENTRE:
245 STURT ROAD
STURT S.A. 5047

POSTAL ADDRESS
PO. BOX 21
OAKLANDS PARK S.A. 5046

OFFICE HOURS:
MONDAY TO FRIDAY
8.30A.M. TO 5.00PM.
TELEPHONE (08) 8375 6600
FACSIMILE (08) 8375 6699
EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

2

DECISION NOTIFICATION FORM
DEVELOPMENT ACT 1993

DEVELOPMENT APPLICATION NUMBER: 100/1343/2006
DATED: 20/06/2006
REGISTERED ON: 21/06/2006

TO: Five Star Housing Constructions Pty Ltd
1631A Main North Road
Salisbury East SA 5109

LOCATION OF PROPOSED DEVELOPMENT:
38 Hardy Avenue Glengowrie 5044 *Note: No Demolition Reference*
LOT: 216 DP: 3243 CT: 5364/076

DESCRIPTION OF PROPOSED DEVELOPMENT:
A pair of two storey, semi-detached dwellings and garages

In respect of this proposed development you are informed that:

NATURE OF DECISION	DECISION	DATE OF DECISION	NUMBER OF CONDITIONS
Provisional Development Plan Consent	Granted	25/07/2006	9
Provisional Building Rules Consent		STILL REQUIRED	
DEVELOPMENT APPROVAL		STILL REQUIRED	

Conditions imposed on this consent and the reasons for imposing those conditions are set out in the attached sheet(s). Important information that may affect this consent can also be found under 'NOTES' and on the back of this page.

Note - this is not a Development Approval. Provisional Development Plan Consent only has been granted. No work can commence until full Development Approval has been obtained.

Initials: [Redacted]
Date... 25/7/06



ADMINISTRATION CENTRE:
245 STURT ROAD
STURT S.A. 5047

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PO. BOX 21
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EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

DEVELOPMENT APPLICATION NUMBER: 100/1343/2006
APPLICANT: Five Star Housing Constructions Pty Ltd
LOCATION: 38 Hardy Avenue Glengowrie 5044
LOT: 216 DP: 3243 CT: 5364/076
DESCRIPTION OF DEVELOPMENT: A pair of two storey, semi-detached dwellings and garages
DECISION: Provisional Development Plan Consent Granted
DATE OF DECISION: 25/07/2006

Note: No Demolition
Reference

PROVISIONAL DEVELOPMENT PLAN CONSENT

GRANTED

Reasons For Decision:

Consent is granted as the proposed development is considered to accord sufficiently with the provisions of the Development Plan.

The following conditions have been imposed to reasonably ensure that the development will not impair the orderly and proper planning of the locality or detrimentally affect the amenity of the locality, having particular regard to the Objectives and Principles of Development Control applicable to such a use in the locality.

Conditions of Consent:

- (1) The development shall proceed in accordance with the plans and details submitted with and forming part of Development Application No.100/1343/2006 except when varied by the following conditions of consent.
- (2) The colour scheme of the proposed dwellings shall be provided to Council, for consideration, prior to Development Approval being issued.
- (3) The upper level living room windows (facing north) shall be consist of fixed and obscured to a height of 1700mm above the internal floor level. The window shall be treated prior to occupation of the building in a manner that restricts views of adjoining properties.
- (4) Stormwater from the structure approved herein shall be collected and directed into a detention tank (or tanks) which are sized and installed in accordance with the specifications contained in Council's Information Sheet "Stormwater Detention" to the reasonable satisfaction of the Council (copies of relevant documents are attached).



ADMINISTRATION CENTRE:
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www.marion.sa.gov.au

2

- (5) The stormwater collection and disposal system shall be connected to the street watertable (inclusive of any system that connects to the street watertable via detention or rainwater tanks) immediately following roof completion and gutter and downpipe installation.
- (6) Dust emissions from the site during construction shall be controlled by a dust suppressant or by watering regularly to the reasonable satisfaction of the Council.
- (7) All runoff and stormwater from the subject site during the construction phase must be either contained on site or directed through a temporary sediment trap or silt fence, prior to discharge to the stormwater system, to the reasonable satisfaction of the Council. (Acceptable ways of controlling silt and runoff during construction can be found in the Stormwater Pollution Prevention Code of Practice issued by the Environment Protection Authority).
- (8) All car parking, driveways and vehicle manoeuvring areas shall be constructed of concrete or paving bricks and drained in accordance with recognised engineering practices prior to occupation of the premises.
- (9) Where the driveway crosses the front boundary, the finished ground level shall be between 50mm and 150mm above the top of kerb.

PROVISIONAL BUILDING RULES CONSENT

STILL REQUIRED

NOTES:

General:

nil

Appeal Rights:

- (1) If you are not satisfied with this decision, there may be a right of appeal to you. Applicants have the right to appeal against a refusal or the imposition of any conditions or requirements on any consent issued, unless the application was for a non-complying kind of development. An appeal by an applicant must be lodged within two (2) months of receiving notice of the decision. Where Category Three public notification was involved, persons who lodged written representations during the formal consultation period, have the right to appeal against any decision made on that application. An appeal by a third party must be lodged within fifteen (15) business days of the date of the decision. All appeals are lodged with the Environment, Resources and Development Court, Sir Samuel Way Building, Victoria Square, Adelaide, telephone: 8204 0300.



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FACSIMILE (08) 8375 6699
EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

Approval Timeframes:

- (1) The proposed development must:
 - receive full Development Approval within 12 months of receiving Provisional Development Plan Consent; and
 - be substantially commenced within twelve months from the date full Development Approval is granted; and
 - be completed within three years of full Development Approval being granted
 noting that the operative date of any consent or approval, is subject to any appeal where applicable being finally determined.

Signed:	
	Authorised Officer
Date:	25 / 7 / 20

K | B | S | Consultants

BUILDING SURVEYORS, PRIVATE CERTIFIERS, AND CONSULTANTS

59 Hughes Street Unley
 South Australia 5061
 Telephone: (08) 8274 1500
 Facsimile: (08) 8271 5071
 Mobile: 0419 817 960
 Email: neil@kbsconsultants.com.au
 ABN 62 128 779 924

DECISION NOTIFICATION FORM

Development Application Number: **100/1343/2006**
 Registered: **14/09/2006**

To: **Perspective Designers & Developers**
2 Ronald Street
THEBARTON SA 5031

LOCATION OF PROPOSED DEVELOPMENT: No **38 Hardy Ave, Glengowrie** *Note: No Demolition Reference*
 Volume: _____ Folio: _____

NATURE OF PROPOSED DEVELOPMENT: **Two two storey dwellings & single garages**

FROM: **KBS CONSULTANTS** REF NO: **20060263**

In respect of this proposed development you are informed that:

NATURE OF DECISION	Consent Granted or Refused	Number of Conditions	Date of Decision
PROVISIONAL DEVELOPMENT PLAN CONSENT	—	—	—
PROVISIONAL BUILDING RULES CONSENT	GRANTED	1	09-Oct-06
OTHER	—	—	—
DEVELOPMENT APPROVAL	—	—	—

If applicable, the details of the **building classification** and the approved number of occupants under the Building Code are attached.

If there were third party representations, any consent/approval or consent/approval with conditions does not operate until the periods specified in the Act have expired. Reasons for this decision, any conditions imposed and the reasons for imposing those conditions are set out on the attached sheet.

No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Notification Form, you must not start any site works or building work or change the use of the land until you have also received notification of a Development Approval.

CITY OF MARION
 10 OCT 2006
RECEIVED

Signed by Private Certifier: 
 Date: **09-Oct-06** **NEIL KIRKHAM** Sheets Attached

**PROVISIONAL BUILDING RULES CONSENT
 CONDITIONS AND NOTES**

PROPOSED BUILDING WORK: Two two-storey dwellings & single garages

SITE ADDRESS: No 38 Hardy Ave, Glengowrie

APPLICANT: Perspective Designers & Developers

CLASSIFICATION: 1A & 10A

*Note: No Classification for
 Demolition which should
 have been U*

CONDITIONS OF CONSENT: 1

1. If the building work is to be carried out by a licensed builder, then the owner of the land on which domestic work is to be performed must ensure that a certificate of insurance in relation to that work is lodged with Council on or before the giving of notice to Council of commencement of building work.

IMPORTANT NOTES:

- If an excavation penetrates a plane inclined downwards at a slope of 1 vertical to 2 horizontal from a point 600mm below the surface at the boundary the owner must notify the adjoining owner in accordance with Section 60 of the Development Act.
- If fill exceeds 200mm within 600mm of the boundary the owner must notify the adjoining owner in accordance with Section 60 of the Development Act.
- All stormwater must be disposed of in such a manner that it does not flow or discharge onto land of adjoining owners or lie against any building or create insanitary conditions. It is recommended where possible to drain stormwater from the building and paved areas to the street watertable.
- The Building Rules requires the installation of a smoke alarm. Appropriate maintenance is important. You should test for audible alarm 3 monthly and replace the battery when necessary.
- During the period that the development is being undertaken care should be taken to ensure all paper, plastic, rubbish and other waste material associated with the building work is secured and contained within the subject land.
- You are advised to contact the appropriate authorities such as S.A. Water, E.T.S.A., Telstra, Department of Transport, Gas. Co., Australia Post regarding their requirement before construction is commenced.
- Statement of Compliance (Class 1A Building): Both parts A and B of the Statement of Compliance (form attached) must be signed and returned to KBS Consultants.



NEIL KIRKHAM
 Building Certifier/Surveyor
 09-Oct-06



ADMINISTRATION CENTRE:
245 STURT ROAD
STURT S.A. 5047

POSTAL ADDRESS
P.O. BOX 21
OAKLANDS PARK S.A. 5046

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MONDAY TO FRIDAY
8.30A.M. TO 5.00P.M.
TELEPHONE (08) 8375 6600
FACSIMILE (08) 8375 6699
EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

DECISION NOTIFICATION FORM
DEVELOPMENT ACT 1993

DEVELOPMENT APPLICATION NUMBER: 100/1343/2006
DATED: 09/10/2006
REGISTERED ON: 10/10/2006

TO: Five Star Housing
186C Frederick Road
Grange SA 5022

LOCATION OF PROPOSED DEVELOPMENT
38 Hardy Avenue Glengowrie 5044
LOT: 216 DP: 3243 CT: 5364/076
Note: No Demolition Reference

DESCRIPTION OF PROPOSED DEVELOPMENT
A pair of two storey, semi-detached dwellings and garages

In respect of this proposed development you are informed that:

NATURE OF DECISION	DECISION	DATE OF DECISION	NUMBER OF CONDITIONS
Provisional Development Plan Consent	Granted	25/07/2006	9
Provisional Building Rules Consent	Granted (by Private Certifier)	09/10/2006	1
DEVELOPMENT APPROVAL	Granted	12/10/2006	10

The building classification under the Building Code is Class 1A and 10A.

Conditions imposed on this consent and the reasons for imposing those conditions are set out in the attached sheet(s). Important information that may affect this consent can also be found under 'NOTES' and on the back of this page.



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DEVELOPMENT APPLICATION NUMBER: 100/1343/2006
APPLICANT: Five Star Housing
LOCATION: 38 Hardy Avenue Glengowrie 5044
LOT: 216 DP: 3243 CT: 5364/076
DESCRIPTION OF DEVELOPMENT: A pair of two storey, semi-detached dwellings and garages
DECISION: Development Approval Granted
DATE OF DECISION: 12/10/2006

Note: No Demolition

Reference

PROVISIONAL DEVELOPMENT PLAN CONSENT

GRANTED

Reasons For Decision:

Consent is granted as the proposed development is considered to accord sufficiently with the provisions of the Development Plan.

The following conditions have been imposed to reasonably ensure that the development will not impair the orderly and proper planning of the locality or detrimentally affect the amenity of the locality, having particular regard to the Objectives and Principles of Development Control applicable to such a use in the locality.

Conditions of Consent:

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- (2) The colour scheme of the proposed dwellings shall be provided to Council, for consideration, prior to Development Approval being issued.
- (3) The upper level living room windows (facing north) shall be consist of fixed and obscured to a height of 1700mm above the internal floor level. The window shall be treated prior to occupation of the building in a manner that restricts views of adjoining properties.
- (4) Stormwater from the structure approved herein shall be collected and directed into a detention tank (or tanks) which are sized and installed in accordance with the specifications contained in Council's Information Sheet "Stormwater Detention" to the reasonable satisfaction of the Council (copies of relevant documents are attached).



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- (5) The stormwater collection and disposal system shall be connected to the street watertable (inclusive of any system that connects to the street watertable via detention or rainwater tanks) immediately following roof completion and gutter and downpipe installation.
- (6) Dust emissions from the site during construction shall be controlled by a dust suppressant or by watering regularly to the reasonable satisfaction of the Council.
- (7) All runoff and stormwater from the subject site during the construction phase must be either contained on site or directed through a temporary sediment trap or silt fence, prior to discharge to the stormwater system, to the reasonable satisfaction of the Council. (Acceptable ways of controlling silt and runoff during construction can be found in the Stormwater Pollution Prevention Code of Practice issued by the Environment Protection Authority).
- (8) All car parking, driveways and vehicle manoeuvring areas shall be constructed of concrete or paving bricks and drained in accordance with recognised engineering practices prior to occupation of the premises.
- (9) Where the driveway crosses the front boundary, the finished ground level shall be between 50mm and 150mm above the top of kerb.

PROVISIONAL BUILDING RULES CONSENT

GRANTED

Conditions of Consent:

Please refer to the attached copy of your Private Certifier's Provisional Building Rules Consent for Conditions of Consent (if applicable).

NOTES:

General:

- (1) Council wishes to advise that during the construction of any party wall/common wall the applicant should ensure that a suitably qualified person is present to inspect the works to ensure that all party walls/common walls associated with the development are fire rated in accordance with the Building Code of Australia. Statements regarding the adequacy of party walls/common walls may be requested as part of any future land division.



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Appeal Rights:

- (1) If you are not satisfied with this decision, there may be a right of appeal to you. Applicants have the right to appeal against a refusal or the imposition of any conditions or requirements on any consent issued, unless the application was for a non-complying kind of development. An appeal by an applicant must be lodged within two (2) months of receiving notice of the decision. Where Category Three public notification was involved, persons who lodged written representations during the formal consultation period, have the right to appeal against any decision made on that application. An appeal by a third party must be lodged within fifteen (15) business days of the date of the decision. All appeals are lodged with the Environment, Resources and Development Court, Sir Samuel Way Building, Victoria Square, Adelaide, telephone: 8204 0300.

Approval Timeframes:

- (1) The proposed development must:
 - be substantially commenced within twelve months from the date full Development Approval is granted; and
 - be completed within three years of full Development Approval being granted
 noting that the operative date of any consent or approval, is subject to any appeal where applicable being finally determined.

Signed:	
	Authorised Officer
Date:	12 / 10 / 06

CITY OF MARION - DEVELOPMENT APPLICATION FORM

What are you applying for:

- Planning Consent only at this stage
- I have Planning Consent and now seek Building Consent & Full Development Approval
- Both Planning and Building Consent at once (ie Full Development Approval)



Development Application No: 100/2000/...1013...

Applicant Name: BEN KLINGBERG
 Address: 34/422 PULTENEY ST ADELAIDE Post Code: 5000
 Phone Numbers: 8232 1091 MOB 0417 801 732

Owner Name: PAT PAPALIA
 Address: PO Box 218 FULHAM GARDENS SA Post Code:
 Phone Numbers: 0413 992 429

Builder Name: CITY OF MARION DEVELOPMENT SERVICES Supervisor Name:
 Address: 2-8 MAY 2000 Post Code:
 Phone Numbers:
 Licence No:

Contact Person for Further Information Name: BEN KLINGBERG
 Phone Numbers (business hours): 8232 1091
 Fax Number: 8227 0764 E-Mail: BENKLINGBERG@CONTECH.NET.AU

Location of the proposed development:
 Street No: 37 Street Name: KANGAROO
 Suburb: GLENGOFFIE
 Lot No: 392 Deposited Plan/File Plan/Strata Plan No:

What is the land, or building(s), currently used for: (i.e. shop, office, vacant land, residential): RESIDENTIAL

Please describe the nature of the proposed development: (i.e. alter garage, change of use to offices etc) Note: NOTHING
 ← RECORDED HERE !!

Have you provided a current copy of your Certificate of Title: Yes / No CT Number:
 Do you want Council to purchase a copy of your CT on your behalf: Y.../...N (see fee schedule for further information).
 Assessment will not commence until a current copy of your CT is provided (as with all other information required as part of your application).

Have you provided a copy of Indemnity Insurance: Yes / No / Not Required
 (required if development cost is over \$12 000, domestic construction is proposed and if Building Consent/Full Development Approval is sought).

Are there significant trees on the subject land or adjacent land? Yes / NO
 Please refer to the attached additional form related to significant trees for clarification on what a significant tree is and complete form if relevant.

Building Rules classification - current Class: 1A proposed Class: 1A
 If Class 5, 6, 7, 8 or 9 is sought, state the proposed number of employees:
 Male: Female:
 If Class 9a is sought, state the number of persons for whom accommodation is provided:
 If Class 9b is sought, state the number of occupants of the various spaces at the premises:
 Proposed Total Floor Area: 470m² m²

Development Cost (inclusive GST, not including furnishing costs): \$ 520,000

I acknowledge that copies of this application and supporting documentation may be provided to interested persons in accordance with the Development Regulations 1993.
 Signature: BEN KLINGBERG Date: 19/5/08
 Name: BEN KLINGBERG



ADMINISTRATION CENTRE:
245 STURT ROAD
STURT S.A. 5047

POSTAL ADDRESS
P.O. BOX 21
OAKLANDS PARK S.A. 5046

OFFICE HOURS:
MONDAY TO FRIDAY
8.30A.M. TO 5.00P.M.
TELEPHONE (08) 8375 6600
FACSIMILE (08) 8375 6699
EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

DECISION NOTIFICATION FORM
DEVELOPMENT ACT 1993

DEVELOPMENT APPLICATION NUMBER: 100/1013/2008
DATED: 19/05/2008
REGISTERED ON: 21/05/2008

TO: Ben Klingberg
34/422 Pulteney Street
Adelaide SA 5000

LOCATION OF PROPOSED DEVELOPMENT
37 Ranelagh Street Glengowrie 5044
LOT: 392 DP: 3472 CT: 5647/788

Note: No Demolition Reference

DESCRIPTION OF PROPOSED DEVELOPMENT
To construct a pair of two storey semi-detached dwellings with associated garage and verandah

In respect of this proposed development you are informed that:

NATURE OF DECISION	DECISION	DATE OF DECISION	NUMBER OF CONDITIONS
Development Plan Consent	Granted	28/07/2008	9
Building Rules Consent		STILL REQUIRED	
DEVELOPMENT APPROVAL		STILL REQUIRED	

Conditions imposed on this consent and the reasons for imposing those conditions are set out in the attached sheet(s). Important information that may affect this consent can also be found under 'NOTES' and on the back of this page.

Note - this is not a Development Approval. Development Plan Consent only has been granted. No work can commence until full Development Approval has been obtained.

Initials: [Redacted]
Date: 23/7/08

DEVELOPMENT APPLICATION NUMBER: 100/1013/2008
APPLICANT: Ben Klingberg
LOCATION: 37 Ranelagh Street Glengowrie 5044
DESCRIPTION OF DEVELOPMENT: LOT: 392 DP: 3472 CT: 5647/788
To construct a pair of two storey semi-detached dwellings with associated garage and verandah
DECISION: Development Plan Consent Granted
DATE OF DECISION: 28/07/2008

Note: No Demolition
Reference

DEVELOPMENT PLAN CONSENT

 GRANTED

Reasons For Decision:

Consent is granted as the proposed development is considered to accord sufficiently with the provisions of the Development Plan.

The following conditions have been imposed to reasonably ensure that the development will not impair the orderly and proper planning of the locality or detrimentally affect the amenity of the locality, having particular regard to the Objectives and Principles of Development Control applicable to such a use in the locality.

Conditions of Consent:

-  (1) The development shall proceed in accordance with the plans and details submitted with and forming part of Development Application No.100/1013/2008 except when varied by the following conditions of consent.
- (2) The driveway servicing proposed Residence 1 shall incorporate a width at the front boundary and a crossover width of no more than 3.65 metres to ensure sufficient separation to maintain the health and stability of the existing street tree (Queensland Box).
- (3) Stormwater from the structure approved herein shall be collected and directed into a detention tank (or tanks) which are sized and installed in accordance with the specifications contained in Council's Information Sheet "Stormwater Detention" to the reasonable satisfaction of the Council (copies of relevant documents are attached).
- (4) The stormwater collection and disposal system shall be connected to the street watertable (inclusive of any system that connects to the street watertable via detention or rainwater tanks) immediately following roof completion and gutter and downpipe installation.

- (5) The portion of all upper floor windows (except those facing the street) less than 1.7m above the internal floor level shall be treated prior to occupation of the building in a manner that permanently restricts views of adjoining property's yards and/or indoor areas being obtained by a person within the room to the reasonable satisfaction of the Council. (Note, suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7m above the internal floor level or a window sill height of 1.7m above the internal floor level).
- (6) Dust emissions from the site during construction shall be controlled by a dust suppressant or by watering regularly to the reasonable satisfaction of the Council.
- (7) All runoff and stormwater from the subject site during the construction phase must be either contained on site or directed through a temporary sediment trap or silt fence, prior to discharge to the stormwater system, to the reasonable satisfaction of the Council. (Acceptable ways of controlling silt and runoff during construction can be found in the Stormwater Pollution Prevention Code of Practice issued by the Environment Protection Authority).
- (8) All car parking, driveways and vehicle manoeuvring areas shall be constructed of concrete or paving bricks and drained in accordance with recognised engineering practices prior to occupation of the premises.
- (9) Where the driveway crosses the front boundary, the finished ground level shall be between 50mm and 150mm above the top of kerb.

BUILDING RULES CONSENT

STILL REQUIRED

NOTES:

General:

- (1) The applicant is advised that due to the proximity of the driveway to the street tree, two-three western-leading limbs may require removal. The applicant should contact Council's Street Tree department to have the limbs removed by Council.

Appeal Rights:

- (1) If you are not satisfied with this decision, there may be a right of appeal to you. Applicants have the right to appeal against a refusal or the imposition of any conditions or requirements on any consent issued, unless the application was for a non-complying kind of development. An appeal by an applicant must be lodged within two (2) months of receiving notice of the decision. Where Category Three public notification was involved, persons who lodged written representations during the formal consultation period, have the right to appeal against any decision made on that application.



ADMINISTRATION CENTRE:
245 STURT ROAD
STURT S.A. 5047

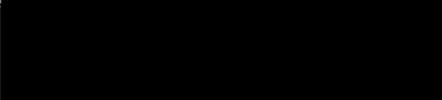
POSTAL ADDRESS
P.O. BOX 21
OAKLANDS PARK S.A. 5046

OFFICE HOURS:
MONDAY TO FRIDAY
8.30A.M. TO 5.00P.M.
TELEPHONE (08) 8375 6600
FACSIMILE (08) 8375 6699
EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

An appeal by a third party must be lodged within fifteen (15) business days of the date of the decision. All appeals are lodged with the Environment, Resources and Development Court, Sir Samuel Way Building, Victoria Square, Adelaide, telephone: 8204 0300.

Approval Timeframes:

- (1) The proposed development must:
- receive full Development Approval within 12 months of receiving Development Plan Consent; and
 - be substantially commenced within twelve months from the date full Development Approval is granted; and
 - be completed within three years of full Development Approval being granted
- noting that the operative date of any consent or approval, is subject to any appeal where applicable being finally determined.

Signed:	
	Authorised Officer
Date:	28/7/08

Cc:

Patfran Developments Pty Ltd
10 Douglas Street
Salisbury SA 5109



PROJECT BUILDING CERTIFIERS PTY LTD

ACN 070 843 971

Level 1, 18 - 20 Grenfell Street, Adelaide, SA 5000
Phone : (08) 8231 2611 Fax: (08) 8231 2599

DEVELOPMENT ACT 1993
DECISION NOTIFICATION FORM

BUILDING RULES CONSENT

DEVELOPMENT NUMBER: 100/1013/2008

OUR REF: BAA 08/118

**Pair of Two Storey Smei-Detached Dwellings with Garage and Verandah
37 Ranelagh Street, Glengowrie SA 5044**

The development has been assessed against the provisions of the Building Rules pursuant to Sec 33 of the Development Act 1993 and complies with the Development Plan Consent number 100/1013/2008 and any conditions.

Project Building Certifiers Pty Ltd pursuant to Sec 89 of the Act certify that the works comply with the requirements for Building Rules Consent subject to any attached conditions or comments marked upon the documents.

BUILDING CLASSIFICATION :	2x Dwelling	Class 1a
	2x Garage/Patio	Class 10a

BUILDING RULES CONSENT IS GRANTED... 8-Sep-08

VARIATIONS : Nil
CONDITIONS : 2

Note: No Demolition Reference

No development, site-works or building work shall take place prior to receiving a Development Approval.

Duncan Cooke
Private Certifier (SA Reg No.032)
For PROJECT BUILDING CERTIFIERS PTY LTD

CITY OF MARION
DEVELOPMENT SERVICES

13 SEP 2008

RECEIVED

CONDITIONS OF BUILDING RULES CONSENT

1. The development shall be in accordance with the approved plans, specification and details and with the conditions of approval.
2. Construction must NOT commence until a copy of the Home Owners Warranty of Insurance has been lodged with City of Marion

ADVISORY NOTES

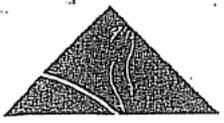
1. This application has been assessed for compliance with the Development Act 1993 and the South Australian Housing Code, 1996.
2. Pursuant to regulation 74 of the Development Regulations 1993, one business day notice must be given to the council before both commencement and completion of any building work on the site.
3. Pursuant to Section 45 of the Development Act, building work must be performed in accordance with the approved documents. Changes to building materials or systems that may effect the structural soundness or safety of a building, must be approved by Project Building Certifiers Pty Ltd. In considering a proposal to substitute building items, Project Building Certifiers Pty Ltd may require the submission of evidence to show that proposed products or systems meet the Deemed-to-Satisfy provisions, or Performance Requirements, of the Building Code.
4. Other authority approvals, including connections for electricity, gas, water and sewer services are the responsibility of the relevant authority.
5. This consent applies solely to works within the site boundaries and is not intended to indicate acceptance of the works in the public realm, which must be to the approval of the relevant local council.
6. Your attention is drawn to Section 60 of the Development Act 1993 and Regulation 75 of the Development Regulations in relation to taking precautions to protect adjoining premises that may be affected by any building work.
7. On completion, the builder must provide to the council and Project Building Certifiers Pty Ltd a statement for compliance of the building work with the approved documents, pursuant to Regulation 83AB of the Development Regulations.

ADMINISTRATION CENTRE:
245 STURT ROAD
STURT S.A. 5047

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EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

3



CITY OF
MARION

DECISION NOTIFICATION FORM

DEVELOPMENT ACT 1993

DEVELOPMENT APPLICATION NUMBER: 100/1013/2008
DATED: 08/09/2008
REGISTERED ON: 16/09/2008

TO: Ben Klingberg
34/422 Pulteney Street
Adelaide SA 5000

LOCATION OF PROPOSED DEVELOPMENT

37 Ranelagh Street Glengowrie 5044
LOT: 392 DP: 3472 CT: 5647/788

Note: No Demolition
Reference

DESCRIPTION OF PROPOSED DEVELOPMENT

To construct a pair of two storey semi-detached dwellings with associated garage and verandah

In respect of this proposed development you are informed that:

NATURE OF DECISION	DECISION	DATE OF DECISION	NUMBER OF CONDITIONS
Development Plan Consent	Granted	28/07/2008	9
Building Rules Consent	Granted (by Private Certifier)	08/09/2008	2
DEVELOPMENT APPROVAL	Granted	17/09/2008	11

The building classification under the Building Code is Class 1A and 10A.

Conditions imposed on this consent and the reasons for imposing those conditions are set out in the attached sheet(s). Important information that may affect this consent can also be found under 'NOTES' and on the back of this page.



ADMINISTRATION CENTRE:
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STURT S.A. 5047

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EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

3

DEVELOPMENT APPLICATION NUMBER: 100/1013/2008
APPLICANT: Ben Klingberg
LOCATION: 37 Ranelagh Street Glengowrie 5044
LOT: 392 DP: 3472 CT: 5647/788
DESCRIPTION OF DEVELOPMENT: To construct a pair of two storey semi-detached dwellings with associated garage and verandah
DECISION: Development Approval Granted
DATE OF DECISION: 17/09/2008

Note: No Demolition Reference

DEVELOPMENT PLAN CONSENT

GRANTED

Reasons For Decision:

Consent is granted as the proposed development is considered to accord sufficiently with the provisions of the Development Plan.

The following conditions have been imposed to reasonably ensure that the development will not impair the orderly and proper planning of the locality or detrimentally affect the amenity of the locality, having particular regard to the Objectives and Principles of Development Control applicable to such a use in the locality.

Conditions of Consent:

- (1) The development shall proceed in accordance with the plans and details submitted with and forming part of Development Application No.100/1013/2008 except when varied by the following conditions of consent.
- (2) The driveway servicing proposed Residence 1 shall incorporate a width at the front boundary and a crossover width of no more than 3.65 metres to ensure sufficient separation to maintain the health and stability of the existing street tree (Queensland Box).
- (3) Stormwater from the structure approved herein shall be collected and directed into a detention tank (or tanks) which are sized and installed in accordance with the specifications contained in Council's Information Sheet "Stormwater Detention" to the reasonable satisfaction of the Council (copies of relevant documents are attached).



ADMINISTRATION CENTRE:
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TELEPHONE (08) 8375 6600
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EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

- (4) The stormwater collection and disposal system shall be connected to the street watertable (inclusive of any system that connects to the street watertable via detention or rainwater tanks) immediately following roof completion and gutter and downpipe installation.
- (5) The portion of all upper floor windows (except those facing the street) less than 1.7m above the internal floor level shall be treated prior to occupation of the building in a manner that permanently restricts views of adjoining property's yards and/or indoor areas being obtained by a person within the room to the reasonable satisfaction of the Council. (Note, suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7m above the internal floor level or a window sill height of 1.7m above the internal floor level).
- (6) Dust emissions from the site during construction shall be controlled by a dust suppressant or by watering regularly to the reasonable satisfaction of the Council.
- (7) All runoff and stormwater from the subject site during the construction phase must be either contained on site or directed through a temporary sediment trap or silt fence, prior to discharge to the stormwater system, to the reasonable satisfaction of the Council. (Acceptable ways of controlling silt and runoff during construction can be found in the Stormwater Pollution Prevention Code of Practice issued by the Environment Protection Authority).
- (8) All car parking, driveways and vehicle manoeuvring areas shall be constructed of concrete or paving bricks and drained in accordance with recognised engineering practices prior to occupation of the premises.
- (9) Where the driveway crosses the front boundary, the finished ground level shall be between 50mm and 150mm above the top of kerb.

BUILDING RULES CONSENT

GRANTED

Conditions of Consent:

Please refer to the attached copy of your Private Certifier's Building Rules Consent for Conditions of Consent (if applicable).

NOTES:

General:

- (1) The applicant is advised that due to the proximity of the driveway to the street tree, two-three western-leading limbs may require removal. The applicant should contact Council's Street Tree department to have the limbs removed by Council.
- (2) Before commencing any site works, a temporary vehicular access to the property for machinery, delivery of building materials and general vehicles should be provided. In the case where no driveway invert exists, the kerb can be saw cut and removed at the intended location for the new driveway invert to provide the necessary temporary access. In addition, if a paved Council footpath exists, this should also be removed in alignment with the removed section of kerb. The applicant should also take note of other information provided regarding use of, damage to and construction on Council owned land.
- (3) In assessing your application it has been determined that it is likely that you will be undertaking work that may affect the stability of adjoining land. Section 60 of the Development Act 1993 and Regulation 75 of the Development Regulations 1993, prescribe that your neighbour has a right to be notified by you 28 days prior to you undertaking that work. This is to enable your neighbour to obtain a report for which you are obliged to pay, that specifies any work that is required to be undertaken to ensure the stability of your neighbour's property is maintained during and following the undertaking of the work you propose. You should make yourself aware of these requirements before proceeding.
- (4) Council requires at least one business days notice of the following stages of building work:-
 - a) prior to the placement of any concrete for footings or other structural purposes (Note - Where an engineer carries out an inspection, Council will also require a copy of the inspection certificate); and
 - b) at the completion of wall and roof frames prior to the fixing of any internal linings.
- (5) On completion of building work, the Development Act requires the owner of the land on which the building work is carried out to provide to the relevant authority a signed Statement of Compliance by either a registered building work supervisor or private certifier declaring that the building work carried out is in accordance with the relevant approvals (pursuant to Regulation 83AB of the Development Regulations 1993).
- (6) The owner is advised that, should a licensed builder or contractor be engaged to carry out building works greater than \$12 000 in value, that builder or contractor will be required to supply to the Council a Certificate of Indemnity Insurance prior to commencement of that work.
- (7) Council wishes to advise that during the construction of any party wall/common wall the applicant should ensure that a suitably qualified person is present to inspect the works to ensure that all party walls/common walls associated with the development are fire rated in accordance with the Building Code of Australia. Statements regarding the adequacy of party walls/common walls may be requested as part of any future land division.



ADMINISTRATION CENTRE:
245 STURT ROAD
STURT S.A. 5047

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TELEPHONE (08) 8375 6600
FACSIMILE (08) 8375 6699
EMAIL council@marion.sa.gov.au
www.marion.sa.gov.au

Appeal Rights:

- (1) If you are not satisfied with this decision, there may be a right of appeal to you. Applicants have the right to appeal against a refusal or the imposition of any conditions or requirements on any consent issued, unless the application was for a non-complying kind of development. An appeal by an applicant must be lodged within two (2) months of receiving notice of the decision. Where Category Three public notification was involved, persons who lodged written representations during the formal consultation period, have the right to appeal against any decision made on that application. An appeal by a third party must be lodged within fifteen (15) business days of the date of the decision. All appeals are lodged with the Environment, Resources and Development Court, Sir Samuel Way Building, Victoria Square, Adelaide, telephone: 8204 0300.

Approval Timeframes:

- (1) The proposed development must:
- be substantially commenced within twelve months from the date full Development Approval is granted; and
 - be completed within three years of full Development Approval being granted noting that the operative date of any consent or approval, is subject to any appeal where applicable being finally determined.

Signed:	
	Authorised Officer
Date:	17 / 9 / 08.

Cc:

Patfran Developments Pty Ltd
10 Douglas Street
Salisbury SA 5109

CITY OF MARION - DEVELOPMENT APPLICATION FORM

What are you applying for:

- Planning Consent only at this stage
- I have Planning Consent and now seek Building Consent & Full Development Approval
- Both Planning and Building Consent at once (ie Full Development Approval)
- Residential Development Code Assessment



CITY OF MARION

Development Application No:

100/1016/2011

PLEASE USE BLOCK LETTERS and Black or Blue Ink - (Full names are required, initials will not be accepted)

Applicant Surname: FIVE STAR HOMES		Given Name <i>*initials not accepted</i>	
Street Address: PO BOX 215 FULHAM GARDENS		Post Code: 5024	
Postal Address:		Post Code:	
Phone Numbers:	Mobile: 041399 2429	Fax Number: 1300 791 839	

Owner Surname: PATRAN DEVELOPMENTS		Given Name <i>*initials not accepted</i>	
Street Address: "as above"		Post Code:	
Postal Address:		Post Code:	
Phone Numbers:	Mobile:	Fax Number:	

Builder: FIVE STAR HOMES		Contact Name:	
Street Address: "as above"		Post Code:	
Postal Address:		Post Code:	
Phone Numbers:	Fax Number:	Licence No: RL0210395	

Contact Name for Further Information: PAT PAPALIA	
Business Hours Phone: 0413992429	Fax Number: 1300 791 839
E-Mail: pap@fivestarthomes.com.au	

LOCATION OF THE PROPOSED DEVELOPMENT:		
Street No.: 7	Street Name: HAZELMERE ROAD	CITY OF MARION DEVELOPMENT SERVICE
Suburb: GLENGOURIE	Lot No: 142	
Deposited Plan/File Plan/Strata Plan No: 4906 CT 5646/701		- 6 JUN 2011

PLEASE DESCRIBE THE NATURE OF THE PROPOSED DEVELOPMENT: <i>(i.e. alteration and additions to dwelling, demolition, freestanding garage, change of use to offices, removal or pruning of significant trees etc)</i>	
Demolition of existing single storey dwelling	
RECEIVED	

Have you provided a current copy of your Certificate of Title: (Yes) No .	CT Number:
Do you want Council to purchase a copy of your CT on your behalf: Yes . (No)* (see fee schedule for further information). <i>Assessment will not commence until a current copy of your CT is provided (as with all other information required as part of your application).</i>	
Have you provided a copy of Indemnity Insurance: Yes . (No) Not Required . <i>(required if development cost is over \$12 000, domestic construction is proposed and if Building Consent/Full Development Approval is sought).</i>	
Are there significant trees on the subject land or adjacent land? Yes (No). <i>Please refer to the attached, additional form related to significant trees for clarification on what a significant tree is and complete form if relevant.</i>	

Building Rules classification - Current Class	Proposed Class	
If Class 5, 6, 7, 8 or 9 is sought, state the proposed number of employees:	Male:	Female:
If Class 9a is sought, state the number of persons for whom accommodation is provided:		
If Class 9b is sought, state the number of occupants of the various spaces at the premises:		
Proposed Total Floor Area:	m ²	

Development Cost (inclusive GST, not including furnishing costs): \$ 7000

I acknowledge that copies of this application and supporting documentation may be provided to interested persons in accordance with the Development Regulations 2008

Signature: *[Signature]*

Name: PAT PAPALIA

DATE: 6/6/11



Administration Centre	Office Hours	Postal Address	Phone (08) 8375 6600
245 Sturt Road, Sturt South Australia 5047	Monday to Friday 8.30am to 5.00pm	PO Box 21, Oaklands Park South Australia 5046	Fax (08) 8375 6699 council@marion.sa.gov.au www.marion.sa.gov.au

DECISION NOTIFICATION FORM
DEVELOPMENT ACT 1993

TO: 

Five Star Housing Constructions
PO Box 218
FULHAM GARDENS SA 5024

DEVELOPMENT APPLICATION NUMBER: 100/1016/2011
DATED: 06/06/2011
REGISTERED ON: 06/06/2011

LOCATION OF PROPOSED DEVELOPMENT

7 Hazelmere Road GLENGOWRIE 5044
 LOT: 142 DP: 4906 CT: 5646/701

DESCRIPTION OF PROPOSED DEVELOPMENT

Demolition

In respect of this proposed development you are informed that:

NATURE OF DECISION	DECISION	DATE OF DECISION	NUMBER OF CONDITIONS
Development Plan Consent	Not Required	N/A	-
Building Rules Consent	Granted by Council	09/06/2011	0
DEVELOPMENT APPROVAL	Granted	09/06/2011	0

The building classification under the Building Code is Class U.

Conditions imposed on this consent and the reasons for imposing those conditions are set out in the attached sheet(s). Important information that may affect this consent can also be found under 'NOTES' and on the back of this page.



Initials: 
 Date: 9/6/11



Administration Centre	Office Hours	Postal Address	Phone (08) 8375 6600 Fax (08) 8375 6699 council@marion.sa.gov.au www.marion.sa.gov.au
245 Sturt Road, Sturt South Australia 5047	Monday to Friday 8.30am to 5.00pm	PO Box 21, Oaklands Park South Australia 5046	

DEVELOPMENT APPLICATION NUMBER: 100/1016/2011
APPLICANT: Five Star Housing Constructions
LOCATION: 7 Hazelmere Road GLENGOWRIE 5044
 LOT: 142 DP: 4906 CT: 5646/701
DESCRIPTION OF DEVELOPMENT: Demolition
DECISION: Development Approval Granted
DATE OF DECISION: 09/06/2011

DEVELOPMENT PLAN CONSENT

Not required pursuant to Schedule 1A of the Development Regulations 2008.

BUILDING RULES CONSENT

GRANTED

Conditions of Consent:

nil

NOTES:

General:

- (1) In undertaking the subject development the applicant should consider the retention of any existing trees and the replacement of any removed with suitable species in appropriate locations.
- (2) The owner's attention is drawn to the provisions of the South Australian Occupational Health, Safety and Welfare Act 1986, and in particular the South Australian Occupational Health, Safety and Welfare Regulation 4.2.4 and the Code of Practice for the Safe Removal of Asbestos in relation to the removal of asbestos from within any building or structure.

Further guidance and additional information is provided in the Code of Practice for Working with Asbestos (excluding Asbestos Removal). Further information is available from the Mineral Fibres Unit of Workplace Services Level 3, 1 Richmond Road, Keswick 5035. Phone 8303 0405 or Fax 8303 0490

- (3) Provision shall be made for the removal of all garbage and waste materials resulting from demolition work. If material chutes are used they shall be completely enclosed and a conspicuous "DANGER" sign placed at the discharge end.



Administration Centre	Office Hours	Postal Address	Phone (08) 8375 6600 Fax (08) 8375 6699 council@marion.sa.gov.au www.marion.sa.gov.au
245 Sturt Road, Sturt South Australia 5047	Monday to Friday 8.30am to 5.00pm	PO Box 21, Oaklands Park South Australia 5046	

- (4) Precautions should be taken by the person(s) carrying out demolition to ensure the safety of people using the adjoining premises or public place.
- (5) This approval does not relate to the removal of, or to any tree damaging activity to, any significant tree (as defined under the Development Act 1993) that may be located on the subject site or adjoining land. If any tree-damaging activity is anticipated, a separate Development Application is required to be lodged prior to any such damage occurring.

For your information a significant tree is any tree that has a trunk circumference of 2.0m or more - or, in the case of trees with multiple trunks, that have trunks with a total circumference of 2.0m or more and have an average circumference of 625mm or more - measured at a point 1m above natural ground level. Tree-damaging activity means the killing, destruction or removal of a tree, the severing of branches, limbs, stems or trunk of a tree, ringbarking, topping or lopping of a tree or other substantial damage (including damage to root systems of trees).

Should a significant tree/s exist on the subject site care must be taken during demolition/construction of the proposed buildings to ensure that no damage is done to that/those tree(s) (including their root systems) unless otherwise approved by the Council. For this reason, a protective barrier should be erected at the dripline of the tree, and that barrier should be maintained for the duration of demolition/construction. It is also recommended that you seek the advice a suitably qualified arborist.

Appeal Rights:

- (1) If you are not satisfied with this decision, there may be a right of appeal to you. Applicants have the right to appeal against a refusal or the imposition of any conditions or requirements on any consent issued, unless the application was for a non-complying kind of development. An appeal by an applicant must be lodged within two (2) months of receiving notice of the decision. Where Category Three public notification was involved, persons who lodged written representations during the formal consultation period, have the right to appeal against any decision made on that application. An appeal by a third party must be lodged within fifteen (15) business days of the date of the decision. All appeals are lodged with the Environment, Resources and Development Court, Sir Samuel Way Building, Victoria Square, Adelaide, telephone: 8204 0300.

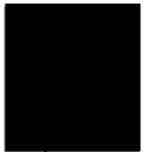


Administration Centre	Office Hours	Postal Address	Phone (08) 8375 6600 Fax (08) 8375 6699 council@marion.sa.gov.au www.marion.sa.gov.au
245 Sturt Road, Sturt South Australia 5047	Monday to Friday 8.30am to 5.00pm	PO Box 21, Oaklands Park South Australia 5046	

Approval Timeframes:

- (1) The proposed development must:
- be substantially commenced within twelve months from the date full Development Approval is granted; and
 - be completed within three years of full Development Approval being granted noting that the operative date of any consent or approval, is subject to any appeal where applicable being finally determined.

Signed:		
	Authorised Officer	
Date:	09 1 06 1 2011	





ADMINISTRATION CENTRE:
245 STURT ROAD
STURT S.A. 5047

POSTAL ADDRESS
P.O. BOX 21
OAKLANDS PARK S.A. 5046

OFFICE HOURS:
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FACSIMILE (08) 8375 6699
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www.marion.sa.gov.au

DECISION NOTIFICATION FORM
DEVELOPMENT ACT 1993

DEVELOPMENT APPLICATION NUMBER: 100/1768/2007
DATED: 26/11/2007
REGISTERED ON: 30/11/2007

TO:	BGK Contech Pty Ltd 34/422 Pulteney Street Adelaide SA 5000
------------	---

LOCATION OF PROPOSED DEVELOPMENT	<i>Note: No Reference to Verandahs</i>
21-23 Whiteleaf Crescent Glengowrie 5044 LOT: 203 ALP: * FP: 9507 CT: 5751/068	

DESCRIPTION OF PROPOSED DEVELOPMENT
Two Pairs of Two Storey Semi-Detached Dwellings with associated Garaging

In respect of this proposed development you are informed that:

NATURE OF DECISION	DECISION	DATE OF DECISION	NUMBER OF CONDITIONS
Development Plan Consent	Granted	19/09/2007	11
Building Rules Consent	Granted (by Private Certifier)	26/11/2007	2
DEVELOPMENT APPROVAL	Granted	30/11/2007	13

The building classification under the Building Code is Class 1A and 10A.

Conditions imposed on this consent and the reasons for imposing those conditions are set out in the attached sheet(s). Important information that may affect this consent can also be found under 'NOTES' and on the back of this page.



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DEVELOPMENT APPLICATION NUMBER: 100/1768/2007
APPLICANT: BGK Contech Pty Ltd
LOCATION: 21-23 Whiteleaf Crescent Glengowrie, 5044
LOT: 203 ALP: * FP: 9507 CT: 5751/068
DESCRIPTION OF DEVELOPMENT: Two Pairs of Two Storey Semi-Detached
Dwellings with associated Garaging
DECISION: Development Approval Granted
DATE OF DECISION: 30/11/2007

Note: No Reference
to Verandahs

DEVELOPMENT PLAN CONSENT

GRANTED

Reasons For Decision:

Consent is granted as the proposed development is considered to accord sufficiently with the provisions of the Development Plan.

The following conditions have been imposed to reasonably ensure that the development will not impair the orderly and proper planning of the locality or detrimentally affect the amenity of the locality, having particular regard to the Objectives and Principles of Development Control applicable to such a use in the locality.

Conditions of Consent:

- (1) The development shall proceed in accordance with the plans and details submitted with and forming part of Development Application No.100/1768/2007 except when varied by the following conditions of consent.
- (2) All existing vegetation nominated to be retained and all new vegetation to be planted shall be nurtured and maintained in good health and condition at all times with any diseased or dying plants being replaced, to the reasonable satisfaction of the Council.
- (3) Where the driveway crosses the front boundary, the finished ground level shall be between 50mm and 150mm above the top of kerb.
- (4) All devices/treatments proposed as part of the Development Application to protect the privacy of adjoining properties shall be installed and in use prior to occupation of the premises.
- (5) Stormwater from the structure approved herein shall be collected and directed into a detention tank (or tanks) which are sized and installed in accordance with the specifications contained in Council's Information Sheet "Stormwater Detention" to the reasonable satisfaction of the Council (copies of relevant documents are attached).



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- (6) All stormwater from buildings and paved areas shall be disposed of in accordance with the approved plans and details prior to the occupation of the premises to the reasonable satisfaction of the Council.
- (7) The stormwater collection and disposal system shall be connected to the street watertable (inclusive of any system that connects to the street watertable via detention or rainwater tanks) immediately following roof completion and gutter and downpipe installation.
- (8) Dust emissions from the site during construction shall be controlled by a dust suppressant or by watering regularly to the reasonable satisfaction of the Council.
- (9) All runoff and stormwater from the subject site during the construction phase must be either contained on site or directed through a temporary sediment trap or silt fence, prior to discharge to the stormwater system, to the reasonable satisfaction of the Council. (Acceptable ways of controlling silt and runoff during construction can be found in the Stormwater Pollution Prevention Code of Practice issued by the Environment Protection Authority).
- (10) Measures to prevent silt and mud from vehicle tyres and machinery being transported onto the road shall be installed and maintained at all times during the construction phase of the development, to the reasonable satisfaction of the Council. (A suggested measure is to install a gravelled construction exit with wash down facilities).
- (11) The paving associated with the driveways of each dwelling shall have a width no greater than three metres at the front property boundary.

BUILDING RULES CONSENT

GRANTED

Conditions of Consent:

Please refer to the attached copy of your Private Certifier's Building Rules Consent for Conditions of Consent (if applicable).



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NOTES:

General:

- (1) Each dwelling should incorporate one panel lift door and one roller door. This is recommended to break up the amount of garaging located forward of the dwelling.
- (2) Before commencing any site works, a temporary vehicular access to the property for machinery, delivery of building materials and general vehicles should be provided. In the case where no driveway invert exists, the kerb can be saw cut and removed at the intended location for the new driveway invert to provide the necessary temporary access. In addition, if a paved Council footpath exists, this should also be removed in alignment with the removed section of kerb. The applicant should also take note of other information provided regarding use of, damage to and construction on Council owned land.
- (3) In assessing your application it has been determined that it is likely that you will be undertaking work that may affect the stability of adjoining land. Section 60 of the Development Act 1993 and Regulation 75 of the Development Regulations 1993, prescribe that your neighbour has a right to be notified by you 28 days prior to you undertaking that work. This is to enable your neighbour to obtain a report for which you are obliged to pay, that specifies any work that is required to be undertaken to ensure the stability of your neighbour's property is maintained during and following the undertaking of the work you propose. You should make yourself aware of these requirements before proceeding.
- (4) Council requires at least one business days notice of the following stages of building work:-
 - a) prior to the placement of any concrete for footings or other structural purposes (Note - Where an engineer carries out an inspection, Council will also require a copy of the inspection certificate); and
 - b) at the completion of wall and roof frames prior to the fixing of any internal linings.
- (5) On completion of building work, the Development Act requires the owner of the land on which the building work is carried out to provide to the relevant authority a signed Statement of Compliance by either a registered building work supervisor or private certifier declaring that the building work carried out is in accordance with the relevant approvals (pursuant to Regulation 83AB of the Development Regulations 1993).
- (6) The owner is advised that, should a licensed builder or contractor be engaged to carry out building works greater than \$12 000 in value, that builder or contractor will be required to supply to the Council a Certificate of Indemnity Insurance prior to commencement of that work.
- (7) Council wishes to advise that during the construction of any party wall/common wall the applicant should ensure that a suitably qualified person is present to inspect the works to ensure that all party walls/common walls associated with the development are fire rated in accordance with the Building Code of Australia. Statements regarding the adequacy of party walls/common walls may be requested as part of any future land division.



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Appeal Rights:

- (1) If you are not satisfied with this decision, there may be a right of appeal to you. Applicants have the right to appeal against a refusal or the imposition of any conditions or requirements on any consent issued, unless the application was for a non-complying kind of development. An appeal by an applicant must be lodged within two (2) months of receiving notice of the decision. Where Category Three public notification was involved, persons who lodged written representations during the formal consultation period, have the right to appeal against any decision made on that application. An appeal by a third party must be lodged within fifteen (15) business days of the date of the decision. All appeals are lodged with the Environment, Resources and Development Court, Sir Samuel Way Building, Victoria Square, Adelaide, telephone: 8204 0300.

Approval Timeframes:

- (1) The proposed development must:
 - be substantially commenced within twelve months from the date full Development Approval is granted; and
 - be completed within three years of full Development Approval being granted
 noting that the operative date of any consent or approval, is subject to any appeal where applicable being finally determined.

Signed:	 _____ Alex Wilkinson Authorised Officer
Date:	30 / 11 / 2004

Cc:

Five Star Housing & P Papalia
38A Hardy Avenue
Glengowrie SA 5044



PROJECT BUILDING CERTIFIERS PTY LTD

ACN 070 843 971

Level 1, 18 - 20 Grenfell Street, Adelaide, SA 5000
Phone : (08) 8231 2611 Fax: (08) 8231 2599

DEVELOPMENT ACT 1993
DECISION NOTIFICATION FORM

BUILDING RULES CONSENT

DEVELOPMENT NUMBER: 100/1768/2007

OUR REF: BAA 07/137

Two Pairs of Two Storey Semi-Detached Dwellings with associated Garaging
21-23 Whiteleaf Crescent GLENGOWRIE 5044

The development has been assessed against the provisions of the Building Rules pursuant to Sec 33 of the Development Act 1993 and complies with the Development Plan Consent number 100/1768/2007 and any conditions.

Project Building Certifiers Pty Ltd pursuant to Sec 89 of the Act certify that the works comply with the requirements for Building Rules Consent subject to any attached conditions or comments marked upon the documents.

BUILDING CLASSIFICATION

Dwelling
Garage

Class 1a
Class 10a

BUILDING RULES CONSENT IS GRANTED... 26-NOV-07

VARIATIONS : Nil
CONDITIONS : 2.

Note: No Classification for verandahs which would be a Class 10a

No development, site works or building work shall take place prior to receiving a Development Approval.

Duncan Cooke
Private Certifier (SA Reg No.032)
For PROJECT BUILDING CERTIFIERS PTY LTD

Alice Springs - Adelaide - Darwin
Building Consultants & Private Building Certifiers

CONDITIONS OF BUILDING RULES CONSENT

1. The development shall be in accordance with the approved plans, specification and details and with the conditions of approval.
2. Construction must NOT commence until a copy of the Home Owners Warranty of Insurance has been lodged with City of Marion.

ADVISORY NOTES

1. This application has been assessed for compliance with the Development Act 1993 and the South Australian Housing Code, 1996.
2. Pursuant to regulation 74 of the Development Regulations 1993, one business day notice must be given to the council before both commencement and completion of any building work on the site.
3. Pursuant to Section 45 of the Development Act, building work must be performed in accordance with the approved documents. Changes to building materials or systems that may effect the structural soundness or safety of a building, must be approved by Project Building Certifiers Pty Ltd. In considering a proposal to substitute building items; Project Building Certifiers Pty Ltd may require the submission of evidence to show that proposed products or systems meet the Deemed-to-Satisfy provisions, or Performance Requirements, of the Building Code.
4. Other authority approvals, including connections for electricity, gas, water and sewer services are the responsibility of the relevant authority.
5. This consent applies solely to works within the site boundaries and is not intended to indicate acceptance of the works in the public realm, which must be to the approval of the relevant local council.
6. Your attention is drawn to Section 60 of the Development Act 1993 and Regulation 75 of the Development Regulations in relation to taking precautions to protect adjoining premises that may be affected by any building work.
7. On completion, the builder must provide to the council and Project Building Certifiers Pty Ltd a statement for compliance of the building work with the approved documents, pursuant to Regulation 83AB of the Development Regulations.

PLANNING ASSESSMENT CHECK LIST

APPLICANT	ADDRESS	APPLICATION NO.	OFFICER
	21-23 Whiteleaf	100/2007/1708	Alex.
COMMENTS			
Nature of Development		2 pairs of 1st storey semi-detached	
Zone		Residential General (R)	
Complying/Minor development		No	
Category of Notification	Note: Site Coverage	Category 1	
Land management agreement		NA	
Site plan, area & dimensions	NOT ASSESSED	1575m ² (2) 2311m ² (3) 3322m ² (4) 3142m ²	
Site coverage	FLOOR AREA RATIO	1.22m ² (2) 2233m ² (3) 2314m ² (4) 2233m ²	
Front Set backs	Note: Rear Setback	7 metres	
Rear Set back		6 metres to the single storey portion	
Side Set backs	6 Metres	3 metres (West) 1 metre (East)	
Private open space 20% of site		40% 31% 30% 26%	
Number of storeys (overshadowing, overlooking)		(1) 200 (4) 116 (3) 100 (4) 100	
Amenity impact (noise, light, pollution, view etc)		The southern boundary is 9.5 metres	
Balcony Screening		No balconies proposed.	
North Facing (shaded) Living Area		No North facing living area.	
External Colours and Finishes		Rendered finish.	
Roofing (pitch/colour/material)		Coloured.	
Car parking (numbers, visitors, customers, disabled, layout, circulation)		Aspartic	
Garaging Width (50% of allotment, Moulded Doors)		? Debate over that the upper storey is set back 1 metre it is smaller than the garage	
Vehicular access (driveway gradient max 1:4 not including crossover, safe, convenient)		✓ Varying flat site.	
Crossover gradient (level or max 150 mm rise to boundary)		✓	
Vehicular access available (not blocked by reserve, tree, stobie pole, side entry pit, traffic device etc)		Driveway can be reduced to be more from the empty street	
Easement details on-site		No easements located on site	
Land fill site / Contaminated land site		Residential use knowledge	
Signage		No signage proposed.	
Service Areas (waste disposal, materials & goods loading / unloading)			
Structure height (signs, garages, aerials and masts)		Total wall height 10.6 metres	
Finished floor levels (drainage / flooding)		Not required flat site	
Excavation / fill (retaining wall details, erosion)		Minimal.	
On-site stormwater detention tanks		Required as conditions	
Fence location and height			
Building rules compliance of existing buildings			
Land use details (hours of operation, staff levels)			
Landscaping			
EHO comment on kitchen layouts, flue heights, govt. licenses			
Significant Tree		Significant Norfolk Island Pine @ 25 Whiteleaf Gordon St has sound + cooperation distance is fine give the budget PTO of the species.	

Referred to other agencies	PLANNING	BUILDING
Local Heritage Consultant		
State Heritage Branch		
S'A Water Corp		
Department of Transport (Roads / Airports)		
Coast Protection Board		
Environment Protection Agency		
Development Assessment Commission		
Department of Mines and Energy		

Comments: (attach additional pages if necessary)

The proposal is appropriate within the zone & policy Area. Notwithstanding the there are some concerns surrounding controlling gaspans & expenses of being forward of the city. These have been overcome by way of control & negotiat with the architect.

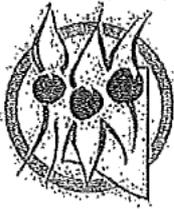
The proposal meets ^{the} private open space site coverage & set back requirements & is therefore consistent with the above. Gordon has decided

the 25 @ 25 & has said the separation distance is appropriate

Decision: Pursuant to the powers, duties and functions delegated to me under the Development Act 1993 and the Development Regulations 1993, I have formed the opinions and undertaken the actions necessary to process and assess the application in accordance with the provisions of the Act and Regulations and resolve to APPROVE/~~REFUSE~~ provisional development plan consent, development approval subject to the following conditions/for the following reasons:

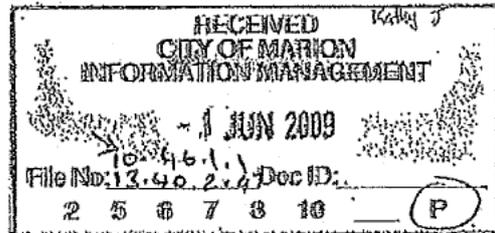
PLANNING CONDITIONS:			BUILDING CONDITIONS:		
DNF CODE:			DNF CODE: Class		
PLANNING	PLANNING	PLANNING	BUILDING	BUILDING	BUILDING
DDP03					
RS01					
PD08					
POT02					
PSN02					
PSN03					
PSN05					
PE01					
PE02					
PE03					
FNS01					
FNS02					

Signature of Authorized Officer DATE: 19/09 Signature of Authorized Officer DATE:



ombudsman
south australia

Enquiries:	Susan Subramaniam
Telephone:	8226 8601
Ombudsman reference:	76837A61
Agency reference:	



Mr Mark Searle,
Chief Executive Officer
City of Marion
PO Box 21
OAKLANDS PARK SA 5046

Dear Sir,

Complaint by Mr and Mrs Lindner regarding 21-23 Whiteleaf Crescent, Glengowrie

I have conducted a preliminary investigation relating to a complaint made by Mr and Mrs Lindner against the City of Marion (the Council). The complaint relates to the Council's handling of a development at 21-23 Whiteleaf Crescent, Glengowrie (the development).

My investigation on behalf of the Lindners has now been concluded and I have advised the Lindners accordingly. There are, however, certain matters that have arisen that, in my opinion, should be clarified with the Council. Having concluded this investigation of the Lindner's specific complaint these additional matters are now being undertaken on an Own Initiative basis. The issues concerned are limited in scope, but, nonetheless, in my opinion, are of public interest importance.

I refer you to Section 13(2) of the Ombudsman Act 1972 which states:

13—Matters subject to investigation

- (2) *The Ombudsman may make such an investigation either on receipt of a complaint or on the Ombudsman's own initiative and, where a complaint is made, the Ombudsman may investigate an administrative act notwithstanding that, on the face of it, the complaint may not appear to relate to that administrative act.*

In reviewing the Lindner's complaint, there were certain statements made by [REDACTED] that raise an issue concerning the approach taken by the Council to the assessment of development applications. In my opinion, these issues should be clarified to confirm that the Council is assessing these matters in accordance with all relevant legislative and other requirements.

Section 35 (2) of the Development Act 1993 states:

35 - Special provisions relating to assessment against a Development Plan

- (2) *Subject to subsection (1), a development that is assessed by a relevant authority as being seriously at variance with the Development Plan must not be granted consent.*

The law is clear (section 35 (2) of the Development Act 1993) that the Council has no jurisdiction to deal with an application for a proposed development that is 'seriously at variance' to the Development Plan. I note that in the Lindner matter that [redacted] stated as follows in the context of an internal memo to the Mayor dated 24 May 2008:

"I note that for an application to be refused it must be demonstrated that the application is "significantly at variance" with the Development Plan. As the proposal satisfies a majority of the provisions of the Development Plan, many quite comfortably, I do not consider refusal of the application to have been justifiable in this instance".

By way of a general observation, the use of the phrase "significantly at variance" indicates that the Council may be determining the acceptability of a development application on an inappropriate jurisdictional basis. In my opinion, in dealing with development applications the Council should, in all cases, use the express words in the statute i.e. 'seriously at variance' and not 'significantly at variance'.

This comment is not intended as a criticism of [redacted] in this matter. Nonetheless, it does emphasize the need to ensure that in assessing a proposed development application that the Council is mindful of its jurisdictional limitations. In my opinion, having regard to the relevant authorities and ordinary usage the term 'significant' may, in some circumstances, in assessing a development application lead a council planning officer into error in applying the appropriate standard. To avoid the possibility of this occurring, strict adherence to the actual words of the act will ensure that the risk of this occurring is mitigated.

In a letter from [redacted] to this office dated 12 June 2008 he stated as follows:

"....the proposal still exhibited all the characteristics of row dwellings...."

He also made the observation that [the proposal]

"does meet the requirements for row dwellings."

In my opinion, there is evidence that establishes that [redacted] had regard to the principles stated in the relevant Development Plan and that the proposed development was not 'seriously at variance' with the requirements of the Development Plan. There is no evidence that he did not at all times act in good faith in making the decisions relevant to this matter.

Under the Development Plan in the case of a semi-detached development proposal a frontage to the street of 9 metres per dwelling is indicated as the appropriate standard. In this particular development application, being assessed as a 'row' development the appropriate standard states that the road frontage should be 7 metres. This development involved four dwellings.

[redacted] stated in his letter dated 12 June 2008 referred to above:

"In this instance it was felt that holding the applicant to adherence to this provision [Dimensions for the Frontage i.e. a reduction from 36 metres to 28 metres] would provide no benefit to the development from the

perspective of character/design etc and would create unnecessary administrative burden to the applicant."

In my opinion the language used by [REDACTED] in this communication with this office raises the possibility that he was mindful of the burden on the applicant as being a dominant factor when it is clear that the relevant consideration is that of compliance with all legally endorsed principles, and that the application of those principles are not 'seriously at variance' with the Development Plan. In my opinion, there is no evidence that he did not make a good faith judgement that this development proposal was not seriously at variance with the Development Plan.

As stated above, it is important that the internal administrative controls within the Council are so structured as to ensure that irrelevant considerations do not compromise the decision-making processes in these matters.

It would be appreciated if you would confirm that the Council has taken the necessary steps to ensure that proposed development applications are being assessed within a control environment that mitigates the risk of failing to comply with the proper standards and legal requirements. I would appreciate your confirmation concerning this matter by Tuesday 15 June 2009.

If you are unable to respond by the above mentioned date please contact Susan Subramaniam on 8226 8601.

I look forward to hearing from you.

Yours sincerely



KI MacPherson
ACTING STATE OMBUDSMAN

28 May 2009

(Left Blank Intentionally)

Our Ref: 10.46.1.1
13.40.2.47

16 June 2009

Mr Ken McPherson
Acting State Ombudsman
PO Box 3651
RUNDLE MALL SA 5000

Attention: Ms Susan Subramaniam

Dear Sir,

**RE: Complaint by Mr & Mrs Lindner regarding 21-23 Whiteleaf Crescent,
Glengowrie**

Thank you for your advice regarding the conclusion of your investigation in to the above-mentioned matter. I am pleased that we have been able to resolve your enquiries.

I note however, that you have raised two additional matters to which you seek clarification of, on an 'Own Initiative' basis. These matters are summarised as:

- Whether the Council is mindful of jurisdictional limitations and applying appropriate standards in assessing development applications, namely "seriously at variance" (Refer Section 35(2) of the Development Act, 1993) and;
- Whether irrelevant considerations (e.g. burden on an applicant) are factors in the assessment of an application and in this context, whether Council has the necessary internal administrative controls to ensure that irrelevant considerations do not compromise the decision-making processes in these matters.

As background to these matters, it is useful to note that there are two approaches in the assessment of development applications by Council, namely:

(a) Assessment under delegation by authorised officers; and

(b) Assessment by the City of Marion Development Assessment Panel.

In relation to applications assessed under delegation, I have attached for your information (Appendix 1) 'planning assessment checklist'. This checklist is used by all development assessment staff in the planning assessment of applications. It provides a detailed checklist designed to ensure planning staff do not overlook a relevant consideration in the assessment of applications. It also provides a framework whereby irrelevant considerations



PO Box 21, Oaklands Park
South Australia 5046
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South Australia
council@marion.sa.gov.au
www.marion.sa.gov.au
Phone +61 (08) 8375 6600
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Management Systems
accreditation



Page 2
Date: 16 June 2009
Subject: Ombudsman Letter – Own Initiative Investigation

do not factor in the assessment process.

The majority of matters detailed in the checklist provide prompts for staff to have regard to the provisions in Council's Development Plan, for example, setbacks, site coverage and amenity impacts. These considerations differ, depending on the nature of the development and the relevant zone.

The checklist also contains a requirement for staff to have regard to the following text:

"Pursuant to the powers, duties and functions delegated to me under the Development Act, 1993 and the Development Regulations 2008, I have formed the opinions and undertaken the actions necessary to the process and assess the application in accordance with the provisions of the Act and Regulations and resolve the proposed development is/is not (please circle) seriously at variance to the Marion (City) Development Plan" (my underlining).

This wording is a form of internal control whereby staff are required to declare that they have considered the provisions of Section 35(2) of the Development Act 1993.

With respect to applications considered by Council's Development Assessment Panel, I have attached at Appendix 2 an extract from an officer's report, where as above, the officer and the Panel is expressly required to turn its mind to a consideration of "seriously at variance".

The City of Marion has always taken pride in acting within the jurisdictional parameters of the Development Act 1993, although prior to early 2008, the processes adopted by Council did not facilitate an internal control environment that expressly required consideration of Section 35(2) of the Act.

This circumstance changed in early 2008 by the introduction of the above controls following a decision in the Supreme Court involving the City of Marion "*Mar Mlna v City of Marion & Others*". In this case, the Court found error in the decision of the Marion Development Assessment Panel for not expressly indicating in its decision whether it had considered Section 35(2) of the Development Act.

Given the above, I am confident that both Council staff and the Development Assessment Panel turn their mind to Section 35(2) and specifically whether a development is "seriously at variance" with the relevant Development Plan.

In relation to [REDACTED] use of the term "significantly at variance" in his memo to the Mayor dated 24 May 2008, [REDACTED] has confirmed with me that the wording, in retrospect, was confusing and could have been better phrased.

However, he has also drawn my attention to Section 33(1)(a) of the Development Act,

Page 3
Date: 16 June 2009
Subject: Ombudsman Letter – Own Initiative Investigation

"Matters against which development must be assessed" where aside from the requirements of Section 35(2) of the Act, the Council is also required to assess an application against the provisions of the appropriate Development Plan. This section is separate to, and/or additional to, the "seriously at variance" requirements of Section 35(2) of the Act.

██████████ has indicated that in assessing an application it is possible to find that notwithstanding that a development is not "seriously at variance" with the Development Plan pursuant to Section 35(2) of the Act, that an individual application may still warrant refusal pursuant to Section 33(1) of the Development Act, merely by being at variance with the Development Plan, albeit not seriously so. To this end, ██████████ has indicated that in assessing each application, Council's authorised officers will have regard to whether a development satisfies a majority of applicable provisions, thereby rightfully being granted Development Plan consent after having regard to both Sections 33 & 35 of the Act. ██████████ has further indicated that for a development to warrant refusal on the basis of Section 33 of the Act, it needs to be at variance with a number of provisions of the Development Plan such that on balance it warrants refusal. To this end, the term "significantly at variance" is a term that reflects the practical process that an authorised officer turns their mind to in determining whether the merits of a proposal vary from the requirements of the Development Plan in a minor or a significant way – or somewhere in between.

Notwithstanding the above, ██████████ has agreed that it is confusing to use such terminology. However, I reassure you that it is not one expressly described in Council's planning assessment checklist or officer reports to the Development Assessment Panel.

You have also sought clarity as to whether it is the practice of the Council to have regard to irrelevant considerations (e.g. burden on the applicant) as a factor in the assessment of a development application. I would like to reassure you that it is not.

I again refer to the planning checklist which is used in the assessment of applications by planning staff. This checklist provides a series of Development Plan considerations that may or may not be relevant to a particular application type. The individual circumstances of the applicant are not outlined in this checklist. Likewise, officer reports to the Development Assessment Panel detail only relevant planning considerations under the Development Plan or Act, and do not detail irrelevant considerations.

Specifically in relation to ██████████ comments concerning the administrative burden, ██████████ has confirmed that his primary consideration was the very limited planning benefit which would have been achieved by requiring an increased street frontage, particularly given that proposed development complied with the majority of applicable Development Plan provisions.

In conclusion, I confirm that Council has a number of procedures in place to ensure the existence of a proper control environment. The change in its procedures following the

Page 4
Date: 16 June 2009
Subject: Ombudsman Letter -- Own Initiative Investigation

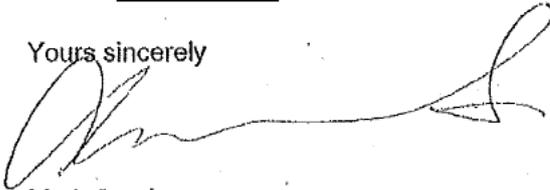
Supreme Court decision referred to earlier in this letter highlights an example where changes to our procedures have occurred in response to legislative and court interpretations. To this end, Council receives regular "legal decision updates" from both its preferred legal advisers, Wallmans Lawyers and Norman Waterhouse in relation to development assessment and development policy issues and responds accordingly.

Finally, I note that your correspondence, together with a number of recent matters before your office has highlighted a need for improvement to the City of Marion's written communications and communications more generally both to its residents and to other agencies. We acknowledge the importance of providing sufficient information and reasons for the courses of action taken in reaching a decision, as well as the reasons for the decision itself. It is noted that lack of information or the use of expressions that are not within the parameters of the legislation can cause persons impacted by decisions to question the legitimacy and fairness of decision making processes. In response to this circumstance, extensive training for staff is being organised over the next 12 months, particularly focusing on report writing and communication skills.

Thank you again for bringing these matters to our attention.

Should you have any further queries in relation to this matter, please do not hesitate to contact [REDACTED] Manager Governance on 8375 6720.

Yours sincerely



Mark Searle
Chief Executive Officer
Telephone: 8375 6878

Attachments: Planning Assessment Checklist & Extract from Development Assessment Panel Report

Appendix 1

PLANNING ASSESSMENT CHECK LIST

ADDRESS	APPLICATION NO. 100/2009/	OFFICER
Nature of Development		
Zone		
Complying /Res Devt Code complying		
Category of Notification		
If Category 1/Consent -- advise why minor		
Land Management Agreement -- Council or private?		
Site plan, area & dimensions		
Site Coverage		
Front set backs		
Rear set backs		
Side set backs		
Private open space 20% of site, north-facing, 50% accessible from living room, <10% grade		
Number of storeys (overshadowing, overlooking)		
Amenity impact (noise, light, pollution, view etc)		
Balcony screening		
North facing (shaded) living area		
External colours and finishes		
Roofing (pitch/colour/material)		
Car parking (numbers, visitors, customers, disabled, layout, circulation)		
Garaging width (50% of allotment, Moulded doors)		
Vehicular access (driveway gradient max 1:4 not including crossover, safe, convenient)		
Vehicular access available (not blocked by reserve, tree, stobie pole, side entry pit, traffic device etc)		
Basement details on-site		
Land fill site/Contaminated land site		
Structure height (signs, garages, aerials & masts)		
FFL's (drainage/flooding/excessive fill)		
Excavation/fill (retaining wall heights, o'looking)		
Stormwater detention tanks/stormwater disposal		
Landscaping		
Significant tree		

Referred to other agencies	Planning	Building
State Heritage Branch		
SA Water Corp		
Department of Transport (Roads / Airports)		
Coast Protection Board		
Environment Protection Agency		
Development Assessment Commission		
Department of Mines and Energy		

Appendix 2 - Extract from Report
000072 to DAP

ANALYSIS/CONCLUSION:

The proposed dwellings comply with a majority of Council's residential design criteria, including open space, side setbacks, energy efficiency, car parking and privacy. Where the proposal fails to satisfy other quantitative criteria, it only does so by a minimal amount, and as identified through this report, it is considered that these shortfalls are not fatal to the proposal.

Specifically, the amount of earthworks, whilst up to 2.2 metres in depth, are not visible from adjoining land, whilst the benching of the site has minimised the height of retaining walls and maximised opportunities for landscaping. Further, whilst the front setback proposed does not comply with Council Wide Principle 72, the front façade of both buildings are well articulated; reducing bulk and providing visual interest. The rear setback falls short by 400mm, and as discussed will not have an unreasonable impact upon adjoining land via visual impacts or overshadowing.

The proposal does not however seek for two allotments with site areas less than that sought for allotments with a grade of less than 10% in the Residential (Foothills) Zone; 700 square metres.

The proposed allotments of 612 and 617 square metres are approximately 12% less than that sought in the Zone. These allotments however, are provided with ample frontage and depth, and to this end, the apparent shortfall in site area will be less evident. Furthermore, the dwellings designed for the site are not restricted in achieving a majority of design criteria by the dimensions and size of the allotments. The allotments are nonetheless considered low density, and achieve the qualities sought by the Desired Character of the Zone.

The landscape plan submitted by the applicants detail that the land will be suitably planted following construction. The location and species chosen will aid in screening the hard paved areas and improve the perceived separation of the building to all boundaries.

It is in my view that the proposed development is not seriously at variance to the Development Plan. Further, the proposed development sufficiently accords with the relevant provisions of the Development Plan, and warrants Development Plan Consent subject to conditions.

000073

RECOMMENDATION:

- (a) The proposed development is not seriously at variance to the Marion (City) Development Plan; and
- (b) That Development Plan Consent for Development Application No: 100/2008/489 for two, two storey detached dwellings with undercroft garage, earthworks and retaining walls at 15 Arthur Street Seacliff Park 5049 be GRANTED subject to the following conditions:

CONDITIONS:

1. The development shall proceed in accordance with the plans and details submitted with and forming part of Development Application No: 100/2008/489, being drawing number(s) PD01 A to PD12 (inclusive) prepared by Aspex, and documentation titled AR 2126 except when varied by the following conditions of consent.
2. A fully engineered site works plan detailing top of kerb level, proposed finished floor levels, any cut/fill and/or retaining walls proposed, shall be provided to Council for consideration and approval, prior to Development Approval being issued.
3. Stormwater from all structures approved herein shall be collected and directed into a detention tank (or tanks) which are sized and installed in accordance with the specifications contained in Council's Information Sheet "Stormwater Detention" to the reasonable satisfaction of the Council (copies of relevant documents are attached).
4. All areas nominated as landscaping or garden areas on the approved plans shall be planted and maintained with a suitable mix and density of native trees, shrubs and groundcovers prior to the occupation of the premises to the reasonable satisfaction of the Council.
5. The portion of the upper floor windows upon the eastern elevation of Dwelling 1 and upon the northern and eastern elevation of Dwelling 2 less than 1.7m above the internal floor level shall be treated and maintained prior to occupation of the building in a manner that permanently restricts views of adjoining properties yards and/or indoor areas being obtained by a person within the room to the reasonable satisfaction of the Council. (Note, suggested treatments include, but are not restricted to, permanently fixed translucent glazing in any part of the window below 1.7m above the internal floor level or a window sill height of 1.7m above the internal floor level).
6. All devices/treatments proposed as part of the Development Application to protect the privacy of adjoining properties shall be installed and in use prior to occupation of the premises and maintained for the life of the building.
7. All existing vegetation nominated to be retained and all new vegetation to be planted shall be nurtured and maintained in good health and condition at all times with any diseased or dying plants being replaced, to the reasonable satisfaction of the Council.
8. All landscaped areas shall be separated from adjacent driveways and parking areas by a suitable kerb or non-mountable device to prevent vehicle movement thereon (incorporating ramps or crossovers to facilitate the movement of persons with a disability).

000074

9. The stormwater collection and disposal system shall be connected to the street watertable (inclusive of any system that connects to the street watertable via detention or rainwater tanks) immediately following roof completion and gutter and downpipe installation.
10. All car parking, driveways and vehicle manoeuvring areas shall be constructed of concrete or paving bricks and drained in accordance with recognised engineering practices prior to occupation of the premises.
11. Where the driveway crosses the front boundary, the finished ground level shall be between 50mm and 150mm above the top of kerb.
12. Dust emissions from the site during construction shall be controlled by a dust suppressant or by watering regularly to the reasonable satisfaction of the Council.
13. All runoff and stormwater from the subject site during the construction phase must be either contained on site or directed through a temporary sediment trap or silt fence, prior to discharge to the stormwater system, to the reasonable satisfaction of the Council. (Acceptable ways of controlling silt and runoff during construction can be found in the Stormwater Pollution Prevention Code of Practice issued by the Environment Protection Authority).
14. All hard waste must be stored on-site in such a manner so as to prevent any materials entering the stormwater system either by wind or water action.
15. Consent is granted for the removal/relocation of the existing street sign, located at the proposed driveway point servicing Dwelling 1. The applicant/owner should contact Council's traffic services department in relation to the timing and costs of relocating/removing this sign.

Attachments

- Attachment I: Aerial Photograph/Site Locality Plan/UBD*
Attachment II: Proposal Plan and supporting documentation
Attachment III: Residential Zone for City of Holdfast Bay

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OmbudsmanSA

Enquiries: Richard Bingham
Telephone: 8226 8699
Ombudsman reference: 500/0075837
Agency reference:

RECEIVED		CITY OF MARION		INFORMATION MANAGEMENT	
31 AUG 2010		Original		Fwd: <input type="checkbox"/>	
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Mr Mark Searle
Chief Executive Officer
City of Marion
PO Box 21
OAKLANDS PARK SA 5046



Mark

Dear Mr Searle

Complaint by Mr and Mrs Lindner - 21-23 Whiteleaf Crescent, Glengowrie

I refer to my telephone conversation with [REDACTED] earlier today.

I confirm that my predecessor's letter of 28 May 2009 concluded this office's investigation of this complaint, and that I am not taking any further action in relation to it.

Yours sincerely

Richard

Richard Bingham
SA OMBUDSMAN

30 August 2010

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09/09/2010

Mr Glen & Mrs Leona Lindner
19 Whiteleaf Cres
GLENGOWRIE SA 5044

LGA Mutual Liability Scheme
ABN 13 733 952 332
Level 1, 148 Frome Street
Adelaide SA 5000
PO Box 7170
Hutt Street SA 5000
<http://www.jlta.com.au>
Telephone (08) 8235 6444
Facsimile (08) 8235 6448

Dear Mr & Mrs Lindner,

We advise that the City of Marion (the Council) is a Member of the Local Government Association Mutual Liability Scheme (the LGAMLS). LGRS is contracted by the Local Government Association of South Australia to manage the LGAMLS.

Accordingly, we are in receipt of your letter to the Council, dated 2 August 2010 which sets out your claim for compensation in the sum of \$4 million. We provide the following response in relation to this aspect of your correspondence.

We have undertaken an inquiry with the Council and advise that we do not agree with your assertion that the Council failed in its role as the approving authority for the relevant development at Whiteleaf Crescent, Glengowrie. We say this for the following reasons:

1. Development Application No. 100/1768/2007 was initially submitted to the Council as an application for development of "Four two-storey row dwellings" with associated garages and verandahs. Given that the proposal, in fact, contemplated two sets of semi-detached dwellings (which in the original form incorporated garage walls abutting between each set of semi-detached dwellings) the proposal description was revised to (correctly) describe the development as "Two pairs of semi-detached dwellings with associated garaging"

You are aware that "Development Plan Consent" was granted on 19 September 2007 and the development was subsequently approved on 30 November 2007.

The Council correctly categorised the development as Category 1. There was no application made to the ERD Court to review that decision under the Development Act prior to, or since, the development - which was completed almost two years ago.

The Council acted in accordance with the Development Act 1993 and Regulations.

2. The Council had sufficient information to enable a proper assessment of the development under the Act.

3. The Council has, at all times, endeavoured to provide you with access to complete and accurate records that are subject to your various requests. Likewise, the Council has fully complied with its statutory obligations to provide information to the Office of the Ombudsman and in response to relevant Freedom of Information Act requests.

The Council does not accept your allegation that the Council provided other than complete and accurate information at any time.

4. The Council exercised reasonable care in the assessment of the subject development and was in no way negligent in doing so.

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Page 2

5. The Council takes allegations as to breaches of Code of Conduct very seriously. We understand that you have had a substantial discourse directly with the Council and Council's Chief Executive Officer (CEO), over the past 2 years. The Council is not aware of any suggestion of a breach of Council's Code of Conduct on the part of any Employee or Elected Member. If you wish to particularise that complaint, then the CEO will investigate and respond accordingly.

We suggest that you liaise with SAPOL as to your concerns relating to any criminal behaviour, your personal safety and allegations that your neighbour has assaulted you.

We note your summary of the lengthy history of events relevant to your concerns. For reasons set out above, we do not accept that the Council has been in any way negligent and therefore, on behalf of Council, we confirm that liability to compensate you as claimed, is denied.

Yours faithfully

Robyn Daly
Scheme Manager, LGAMLS


City of Marion

Leona & Glen Lindner
19 Whiteleaf Crescent
GLENGOWRIE SA 5044
Ph: 0419 830 351

27 September 2010

Mr Mark Searle
Chief Executive Officer
City of Marion
PO Box 21
OAKLANDS PARK SA 5046

Dear Mark

We refer to your letter dated 8 September 2010.

The following issues were raised in our letter/email dated 16 August 2010:

- 1) Disclaimer that mediation between Council and ourselves was not conducted in accordance with accredited mediation principles thereby not affording us an impartial process resulting in a Denial of Justice.
- 2) [REDACTED] stated that "There is currently no intent to pursue criminal sanctions" regarding the fourteen (14) alleged criminal offences committed by the developer of 19-21 Whiteleaf Crescent Glengowrie, which equates to a total of \$1,680,000.00 if the maximum penalties were to be imposed.
- 3) On at least two occasions Council was alerted that the developer was continuing to build in defiance of a Section 84 of the Development Act, and subsequently caught in action by Council inspectors.
- 4) The matter of the illegal verandahs to the rear of residences 2, 3 & 4 at 21-23 Whiteleaf Crescent Glengowrie; which have never attained development approval due to the exacerbation of the site coverage. Despite [REDACTED] being informed by numerous residents on various occasions at the commencement of construction of the verandahs, no action was ever taken.

We note that you are currently assessing the issues raised.

We ask if you would kindly identify and inform us of exactly what action you are undertaking on each of the issues listed above.

Would you also kindly advise by whom these issues are being assessed.

To enable openness and transparency, our expectation is that this operation be conducted externally and independently from the Council to enable due diligence to be attained.

We await your early reply.

Kind regards

L.B. Lindner

L. Lindner
G. Lindner

Leona and Glen Lindner

Cc: Dr Duncan McFetridge MP
The Mayor
Deputy Mayor Cheryl Connor
Cr Joel Bayliss
Cr Rob Durwood
Cr Carol Bouwens
Cr Raelene Telfer
Cr Frank Verrall
Cr Chris Tilbrook
Cr Vicky Veliskou
Cr Natalie Victory
Cr Irene Whennan
Cr Jason Veliskou
Cr Steven Mudge

Mr Bruce Hull
Mr Vince Brown

3.67.2.2

19 October 2010

Leona and Glen Lindner
19 Whiteleaf Crescent
GLENGOWRIE SA 5044



PO Box 21, Oaklands Park
South Australia 5046

245 Sturt Road, Sturt
South Australia

council@marion.sa.gov.au
www.marion.sa.gov.au

Phone +61 (08) 8375 6600
Fax +61 (08) 8375 6699

Dear Leona and Glen,

Thank you for your letters dated 27 September and 16 August 2010. I apologise for the delay in response. I have been on annual leave for the past 3 weeks and wanted to personally respond.

I feel it is important to raise up front that the Council has made every effort to help reach resolution to your on going issues with the development at 19-23 Whiteleaf Crescent, Glengowrie. I have met with you personally on several occasions, allowed you access to Council files, organised an informal mediation at the cost of Council and covered the cost of independent legal advice.

The matter has also been independently reviewed by the Ombudsman and the Ombudsman has advised Council that they have no further interest in this matter.

The Council staff and I have been more than accommodating and you have received a heightened level of service in comparison to other council rate payers.

You have formulated and lodged a claim against Council asserting a civil liability of \$4 million which was referred by Council to the Local Government Association Mutual Liability Scheme (LGA MLS). It is my understanding that the LGA MLS have denied that the Council has been negligent in this matter and therefore they are unable to compensate you for your claim. If you wish to pursue this claim in any way, correspondence must be dealt with through the LGA MLS unless you wish to formally serve Court Proceedings on Council which must be served on Council direct.

If you wish to issue proceedings against the Council, part of the process will include a court required mediation process. The mediation that we undertook with John McInerney was never intended to be a formal mediation in accordance with accredited mediation principles. It was intended for both sides to talk through the legal issues with an independent mediator who has expertise in planning.

Turning specifically to the four points raised in your more recent correspondence, I note the following;

1. the mediation undertaken by John McElhinney was never intended to be a formal mediation in accordance with the accredited mediation principles, It was intended for both sides to talk through the legal and planning issues with a independent expert in the field of planning.



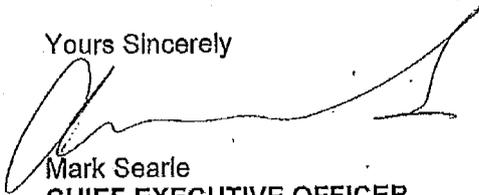
First SA council
awarded Environmental
Management Systems
accreditation

2. Council is of the opinion that the only current breach of the *Development Act 1993* undertaken by the Developer, is confined to work to the rear of 23a Whiteleaf Crescent, Glengowrie. This breach has been the subject of enforcement proceedings under the Development Act, which is on going through the Environment Resources and Development Court. Any other breaches identified by Council have been resolved to Council's satisfaction.
3. The verandah's to the rear of residence 2, 3 and 4, 21-23 Whiteleaf Crescent, Glengowrie were approved under the original development approval for the four dwellings. I note that these plans have been shown to you as part of the mediation process.

Given the above, there is no further action readily available to Council in relation to your concerns.

I understand that this matter has been extremely frustrating and consuming for you both, but I have exhausted all options and it is clear I cannot reach a satisfactory outcome for you. The Council is unable to engage with you any further regarding the development at 19-23 Whiteleaf Crescent, Glengowrie. If you wish to further pursue a claim against Council, I respectfully suggest that you obtain independent legal advice and follow up through the LGA MLS.

Yours Sincerely



Mark Searle
CHIEF EXECUTIVE OFFICER

Mr Glen & Mrs Leona Lindner
19 Whiteleaf Cres
GLENGOWRIE SA 5044

LGA Mutual Liability Scheme
ABN 13 733 952 332
Level 1, 148 Frome Street
Adelaide SA 5000
PO Box 7170
Hutt Street SA 5000
<http://www.jlta.com.au>
Telephone (08) 8235 6444
Facsimile (08) 8235 6448

25 October 2010

Dear Mr Glen & Mrs Leona Lindner,

Claim: 516014
Council: City of Marion

We refer to your letter dated 27 September 2010.

The Local Government Association Mutual Liability Scheme provides Council (LGAMLS) with civil liability cover for claims made against it by third parties.

The LGAMLS is a self managed fund owned by the Local Government Association. The LGAMLS assesses the merits of, and subsequently manages the defence and/or negotiation of such claims for its Council members.

To clarify, all persons have rights to make a "claim" against any other person or entity (such as the Council) for compensation if they consider that they have suffered loss or damage due to negligence (or other breach of duty) on the part of another party (in this case, the Council). However, the party suffering the alleged loss must be able to establish (if necessary, in Court) that the other party was in breach of a relevant duty of care.

For reasons set out in our letter dated 9 September 2010 we do not accept that the Council has breached any duty owed. To briefly address your particular complaints, we note that:

- The Freedom of Information Application referred to in your letter was processed strictly in accordance with the Freedom of Information Act and the application;
- The subject development was correctly approved as semi-detached dwellings and was constructed accordingly. The land could have accommodated either row dwellings or semi-detached dwellings in any event.
- No documentation sent to the ombudsman had been altered. Any minor corrections of any documents would have been made during the creation and/or processing of the documents in the ordinary course and were purely incidental to the document.
- Council maintains that the development was correctly categorised.

We understand that the Ombudsman investigated your claims as to alleged administrative error(s) on the part of the Council and was satisfied that the Council had acted appropriately.

There are avenues for challenge to development decisions via the Environment and Resource Development Court (ERD) court and/or Judicial Review proceedings.

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Page 2

With respect to our claim for damages, on the information available to us we remain of the view that the Council is not liable to compensate you for alleged losses.

We trust that the above sufficiently clarifies the Council's position.

Yours faithfully

Robyn Daly
Divisional Manager - Liability

cc



City of Marion

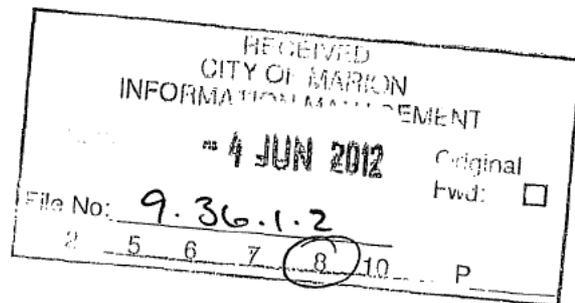


SAPOL
Anti-Corruption Branch
GPO Box 1539
Adelaide SA 5001

31 June 2012



City Of Marion
PO Box 21
Oaklands Park,
South Australia 5046



Dear [Redacted]



Re: Complaint by Mr & Mrs Lindner.

I refer to your correspondence dated 9 May 2012 referring to a disclosure pursuant to the Whistleblowers Protection Act 2005 to the Anti-Corruption Branch (ACB) concerning Mr. and Mrs Lindner's grievances with the Council.

I have referred to your detailed letter and accompanying correspondence marked Appendix 1 - 3. I also note that this office has previously engaged in correspondence in November 2011 regarding the Lindners' complaint but not with your Council. Consequently, I am aware of the general circumstances surrounding the dispute regarding the housing development issue at Glengowrie.

It is important to understand the role of this office before addressing issues of alleged criminality. The South Australia Police Anti-Corruption Branch (ACB) was established to investigate 'corruption' by or involving a public official where that conduct constitutes or involves or might constitute or involve a criminal offence.

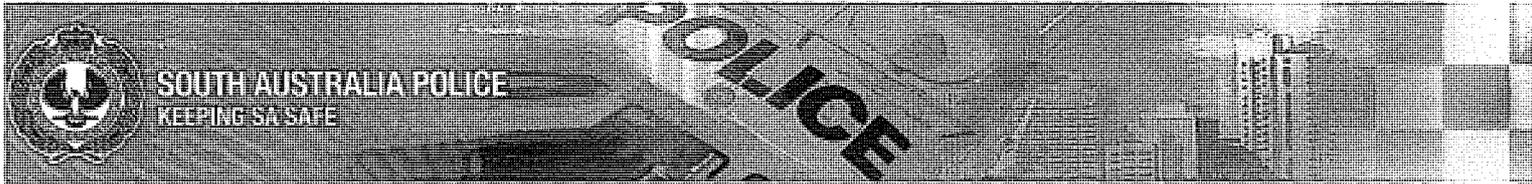
In the course of conducting a criminal investigation the ACB utilises Part 7, Division 1 of the CLCA, *Offences of a Public Nature* and Division 4 of the CLCA – *Offences relating to Public Officers*. The offence of Abuse of Public Office carries a maximum term of imprisonment of 7 years.

These provisions require three important threshold tests before I would contemplate a criminal investigation being undertaken by the ACB *inter alia*:

- i. the act was not trivial and
- ii. the act caused significant detriment to the public interest and
- iii. the imposition of a criminal sanction is warranted.



Government of South Australia



-2-

The reference by Mr. & Mrs Lindner in their letter dated 24 April 2012 to Mayor Lewis and Mr. Searle relating to breaches of the Criminal Law Consolidation Act, 1935 brought about by development issues is not correct. Their assertion that certain conduct in managing development related matters on the part of Mr. Searle may amount to a breach of the criminal law is also not correct. SAPOL nor this office is the appropriate authority to deal with Development Act1993 issues.

I note that the Ombudsman has, after receiving a complaint from Mr. & Mrs. Lindner, concluded a preliminary investigation regarding to the Council's handling of the said development. On 30 August 2010 the Ombudsman confirmed to Mr. Searle in writing that his office was not taking any further action. The ACB does not act as a review body for the Ombudsman for matters within his jurisdiction. Accordingly, the ACB will not give any further considerations to matters that are substantially the same as those investigated by the Ombudsman.

In so far as 'conduct' issues are concerned in relation to any member of the council, whether elected or appointed, again SAPOL nor this office are the appropriate authority to deal with these issues. Instead these matters should be dealt with through the internal mechanisms of the Council in the first instance.

In conclusion I can confirm that there is neither basis to consider a criminal investigation nor any further involvement from the Anti-Corruption Branch in relation to this matter.

Should you have any questions regarding this response please do not hesitate to contact me on 732 23028.

Yours truly,



Lyn Dunstan
Detective Chief Inspector
Operations Manager
ANTI-CORRUPTION BRANCH