

**CAP MEETING – 8 MAY 2024**

**ITEM 8.1**

<b>DEVELOPMENT NO.:</b>	23035583
<b>APPLICANT:</b>	Lianne Sordillo
<b>ADDRESS:</b>	23 HIGHLANDS COURT WOODFORDE SA 5072
<b>NATURE OF DEVELOPMENT:</b>	Variation to DA 22022718 - to increase wall height of dwelling
<b>ZONING INFORMATION:</b>	<p><b>Zones:</b></p> <ul style="list-style-type: none"> <li>• Housing Diversity Neighbourhood</li> </ul> <p><b>Overlays:</b></p> <ul style="list-style-type: none"> <li>• Affordable Housing</li> <li>• Hazards (Bushfire - Urban Interface)</li> <li>• Hazards (Flooding - Evidence Required)</li> <li>• Prescribed Wells Area</li> <li>• Regulated and Significant Tree</li> <li>• Stormwater Management</li> <li>• Traffic Generating Development</li> <li>• Urban Tree Canopy</li> <li>• Water Resources</li> </ul> <p><b>Technical Numeric Variations (TNVs):</b></p> <ul style="list-style-type: none"> <li>• Maximum Building Height (Metres) (Maximum building height is 9m)</li> <li>• Maximum Building Height (Levels) (Maximum building height is 2 levels)</li> </ul>
<b>LODGEMENT DATE:</b>	13 Dec 2023
<b>RELEVANT AUTHORITY:</b>	Assessment Panel at Adelaide Hills Council
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	P&D Code (in effect) - Version 2023.18 7/12/2023
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Ashleigh Gade Senior Statutory Planner
<b>REFERRALS STATUTORY:</b>	None
<b>REFERRALS NON-STATUTORY:</b>	None

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<b>ATTACHMENT 1:</b>	<b>Application Documents</b>	<b>ATTACHMENT 6:</b>	<b>Relevant P &amp; D Code Policies</b>
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<b>ATTACHMENT 3:</b>	<b>Zoning Map</b>		
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<b>ATTACHMENT 5:</b>	<b>Response to Representation</b>		

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#### DETAILED DESCRIPTION OF PROPOSAL:

The proposal seeks to vary Development Application 22022718 for a dwelling granted Planning Consent on 17 January 2023 by staff under delegated authority from the Assessment Panel.

The approved development comprised the construction of a “three storey dwelling, swimming pool and associated safety barriers, retaining walls and fencing”.

The proposed variation is seeking to increase the wall height of the dwelling by 900mm due to an increase in ceiling height on the upper and lower ground levels. It is noted that due to an adjustment to the lower ground floor level which has been reduced by 300mm, the increase to visible wall height at ground level across the rear section of the dwelling will be only 600mm.

All other aspects of the proposal are unchanged including the siting of the dwelling on the allotment, the floor size and layout, building form and appearance, and the associated retaining and fencing.

#### BACKGROUND:

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
17/01/2023	22022718	Three storey dwelling, swimming pool and associated safety barriers, retaining walls and fencing

#### SUBJECT LAND & LOCALITY:

**Location reference:** 23 HIGHLANDS CT WOODFORDE SA 5072

**Title ref.:** CT 6258/244 **Plan Parcel:** D127625 AL270 **Council:** ADELAIDE HILLS COUNCIL

#### Site Description:

The subject land comprises a single allotment located at 23 Highlands Court, Woodforde. The land is part of the Hamilton Hill master planned development in Woodforde.

The allotment is a rectangle shape with a frontage width of 20 metres, a depth of up to 35 metres and a total site area of 695m<sup>2</sup>. The land comprises a single allotment that is formally described as Allotment 270 in Deposited Plan 127625, Certificate of Title Volume 6258 Folio 244. It is noted there is an encumbrance on the title that requires the consent of the Hamilton Hill Design Panel. There are no other registered interests on the Certificate of Title.

The allotment is currently vacant and naturally slopes away from Highlands Court toward the rear boundary in a south-westerly direction with a crossfall of approximately 6.5 metres.

#### Locality

The locality is typically residential and contains both established and new residential development interfacing with vegetated open space to the south and east of the subject land.

The immediate surroundings of the subject land comprise residential development either newly built or currently under construction as part of the Hamilton Hill estate. Newer allotments fronting Highlands Court and Kintyre Road in this section of Hamilton Hill have site areas typically between 500m<sup>2</sup> and 700m<sup>2</sup> and are being developed with modern dwellings of generous proportions. It is typical of dwellings approved or under construction in this locality to be of two to three storeys in height and involve significant earthworks and retaining walls due to the topography of the land.

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The established residential area to the north is characterised by detached dwellings at low densities. There are several large two-storey dwellings with distant views of the city and dwellings are typically set back from the street frontage with established landscaped gardens.

Land further to the east and south-east along Kintyre and Norton Summit Roads is within a different zone and is characterised by higher levels of vegetation and larger allotment sizes.

#### CONSENT TYPE REQUIRED:

Planning Consent

#### CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**  
Detached dwelling: Code Assessed - Performance Assessed  
New housing
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed
- **REASON**  
P&D Code

#### PUBLIC NOTIFICATION

- **REASON**  
The proposal exceeds the maximum building height specified in DPF 3.1 of the Housing Diversity Neighbourhood Zone and the proposed variation is not of a minor nature.

Public Notification period – 14 February to 5 March 2024

- **LIST OF REPRESENTATIONS**

One (1) representation was received during the notification period opposing the proposed development. The representation opposing the development has requested to be heard by the Panel.

Representor Name	Representor's Property Address	Wishes to be heard (Y/N)	Nominated Speaker (if relevant)
Phillip Brunning On behalf of Mr Allan Amber	17 Kintyre Road, Woodforde	Yes	Phillip Brunning

- **SUMMARY**

The issues contained in the representations can be briefly summarised as follows:

- Excessive building height
- Streetscape impact

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- Loss of outlook from building bulk
- The building design does not positively contribute to the character of the local area
- Departure from the Technical Numerical Variation

A copy of the representation is included as **Attachment 4 – Representation** and the applicant’s response is provided in **Attachment 5 – Response to Representation**.

### AGENCY REFERRALS

No agency referrals were required.

### INTERNAL REFERRALS

No internal referrals were required.

### PLANNING ASSESSMENT

#### *Desired outcomes*

*Desired outcomes are policies designed to aid the interpretation of performance outcomes by setting a general policy agenda for a zone, subzone, overlay or general development policies module. Where a relevant authority is uncertain as to whether or how a performance outcome applies to a development, the desired outcome(s) may inform its consideration of the relevance and application of a performance outcome or assist in assessing the merits of the development against the applicable performance outcomes collectively.*

#### *Performance outcomes*

*Performance outcomes are policies designed to facilitate assessment according to specified factors, including land use, site dimensions and land division, built form, character and hazard risk minimisation.*

#### *Designated performance features*

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

A detailed assessment of the application has taken place against the relevant provisions of the Planning and Design Code (P & D Code) and this is provided below under a series of headings. A Policy Enquiry extract containing the relevant provisions of the P & D Code is contained in **Attachment 6 – Relevant P & D Code Policies**.

**Zone:**

**Housing Diversity Neighbourhood Zone:**

<b>Desired Outcomes</b>	
DO1	Medium density housing supports a range of needs and lifestyles, located within easy reach of a diversity of services and facilities. Employment and community service uses contribute to making the neighbourhood a convenient place to live without compromising residential amenity.
<b>Performance Outcomes (PO) &amp; Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria</b>	
POs: 1.1, 3.1, 4.1, 6.1, 7.1 and 8.1	
DPFs: 1.1, 3.1, 4.1, 6.1, 7.1 and 8.1	

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The approved proposal comprises the construction of a three-level detached dwelling on a newly created allotment that is part of the Hamilton Hill master planned development in Woodforde.

As the proposed variation relates only to a change to the wall height of the dwelling and will not change the nature of the development nor alter the intensity of the approved residential use, the proposal will continue to be consistent with DO 1 and PO 1.1 for the Zone.

The proposed variation seeks to increase the wall height of the front and rear sections of the approved dwelling by 900mm. This increase will be visually evident from the front section, however from the rear section the visible increase above ground level will be 600mm as the lower ground floor level has been reduced by 300mm.

'Building height' is defined by the Code as *"the maximum vertical distance between the lower of the natural or finished ground level or a measurement point specified by the applicable policy of the Code (in which case the Code policy will prevail in the event of any inconsistency) at any point of any part of a building and the finished roof height at its highest point"*. Based on this definition, the dwelling as previously approved had a maximum building height of 9.8 metres and the proposed variation has a maximum building height of 10.7 metres. The tallest section of the dwelling is limited to a section central to the side elevations where the dwelling is three storey, utilising the slope of the land to provide vehicle access to the lower ground floor. All other sections of the dwelling are two storey in building height. It is noted that the maximum height of the building above the natural ground level at any point is approximately 9.6 metres.

Zone DPF 3.1 recommends a maximum building height of 9 metres and two building levels for dwellings. The three-storey scale of the dwelling has previously been considered and deemed consistent with the associated PO 3.1 which contemplates buildings that are "generally low-rise or complements the height of nearby buildings". The changes to the wall height proposed in this variation do not result in additional building levels but raise the overall building height at its tallest section by 900mm to 10.7 metres.

The building as viewed from Highlands Court presents as two storey and through this variation the front façade would increase in height by 900mm to 8 metres. As such, it is considered that when viewed from street level the dwelling would present no differently to a two-storey dwelling built up on fill at a height consistent with Zone DPF 3.1. The dwelling's tallest section is located centrally on the site where the visual bulk is concealed from the street.

Although not a relevant Code consideration, it is noted that the revised proposal has been approved by the Hamilton Hill Design Panel who have deemed the increased building height to be consistent with the design guidelines of the encumbrance.

The proposed building height is also consistent with other large dwellings approved within the locality. These include a three-storey dwelling under construction at 15 Kintyre Road, the rear boundary of which is along Highlands Court adjacent the subject land. That dwelling also has a building height of 10.7 metres. At 14 and 15 Highlands Court two further three storey dwellings are under construction with building heights of 10.4 metres and 14.8 metres respectively. A three storey dwelling with a building height of 12.4 metres and a four storey dwelling with a building height of 14.9 metres have been granted Planning Consent at 16 Highlands Court and 21B Kintyre Road respectively.

It is noted that the Planning and Design Code has no policies with respect to protection or maintenance of views from other land. This consideration as raised in the representation has therefore not been taken into account when considering the appropriateness of the building height.

The variation does not involve any changes to the siting of the dwelling and its setbacks to site boundaries. Notwithstanding this, the increase in wall height does impact the calculated setbacks sought by DPF 7.1. DPF 7.1 contemplates that buildings should be setback from side boundaries "where the wall height exceeds 3m – at least 900mm from the boundary of the site plus a distance of 1/3 of the extent to which the height of the wall exceeds 3m from the top of the footings". The setbacks to the north-western and south-eastern side boundaries were approved with a shortfall of 400mm along the rear section of the dwelling. The proposed increase to wall height would increase that shortfall by 200mm in both instances, to a total of 600mm.

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The applicant has provided shadow diagrams to demonstrate that the shortfall in these sections of the side setbacks will not unreasonably impact access to natural light for immediate neighbours. These are discussed in further detail in later sections of the report. The shortfall is also not considered likely to risk lack of ventilation to neighbours given that the dimension of both setbacks is 2 metres.

On balance, the revised proposal is supported from a building height and scale perspective as it presents to the street as a low-rise form of development, and it is considered to sufficiently complement the height of nearby buildings. The additional height is not considered likely to unreasonably restrict neighbours' access to light and ventilation. It is therefore considered that PO 3.1 and PO 7.1 of the Housing Diversity Neighbourhood Zone are reasonably satisfied.

There is no change to the approved design, appearance, and floor size of the dwelling. Only minor adjustments to site works to allow for the 300mm reduction to the lower ground level are proposed, which will not be noticeable as it will be absorbed within an area of previously approved fill.

### Overlays

#### Affordable Housing Overlay

<b>Desired Outcomes</b>	
DO1	Affordable housing is integrated with residential and mixed use development.
<b>Performance Outcomes (PO) &amp; Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria</b>	
POs:	
DPFs:	

The proposal does not include any affordable housing.

#### Hazards (Flooding – Evidence Required) Overlay

<b>Desired Outcomes</b>	
DO1	Development adopts a precautionary approach to mitigate potential impacts on people, property, infrastructure and the environment from potential flood risk through the appropriate siting and design of development.
<b>Performance Outcomes (PO) &amp; Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria</b>	
POs: 1.1	
DPFs: 1.1	

There are no changes to the main finished floor levels of the dwelling or to the approved stormwater management system.

#### Stormwater Management Overlay

<b>Desired Outcomes</b>	
DO1	Development incorporates water sensitive urban design techniques to capture and re-use stormwater.
<b>Performance Outcomes (PO) &amp; Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria</b>	
POs: 1.1	
DPFs: 1.1	

There are no changes to the roof area of the dwelling or to the approved stormwater management system.

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#### Traffic Generating Development Overlay

Desired Outcomes	
DO1	Safe and efficient operation of Urban Transport Routes and Major Urban Transport Routes for all road users.
DO2	Provision of safe and efficient access to and from urban transport routes and major urban transport routes.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1, 1.2 and 1.3	
DPFs: 1.1, 1.2 and 1.3	

There is no change to the approved access and car parking arrangements and the proposed variation will have no impact on traffic generation.

The proposal will not impact on the State Maintained Road network.

#### Urban Tree Canopy Overlay

Desired Outcomes	
DO1	Residential development preserves and enhances urban tree canopy through the planting of new trees and retention of existing mature trees where practicable.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1	
DPFs: 1.1	

There is no change to the trees identified for planting under the Urban Tree Canopy Overlay.

#### Water Resources Overlay

Desired Outcomes	
DO1	Protection of the quality of surface waters considering adverse water quality impacts associated with projected reductions in rainfall and warmer air temperatures as a result of climate change.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1, 1.2, 1.5 and 1.7	
DPFs: 1.5	

There are no watercourses that traverse the site and no changes to the dwelling's proximity to any watercourse on an adjacent site.

#### General Development Policies

##### Design in Urban Areas

Desired Outcomes	
DO1	Development is: <ul style="list-style-type: none"><li>a) contextual - by considering, recognising and carefully responding to its natural surroundings or built environment and positively contributes to the character of the immediate area</li><li>b) durable - fit for purpose, adaptable and long lasting inclusive - by integrating landscape design to optimise pedestrian and cyclist usability, privacy and equitable access, and promoting the provision of quality spaces integrated with the public realm that can be used for access and recreation and help optimise security and safety both internally and within the public realm, for occupants and visitors</li></ul>

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	c) sustainable - by integrating sustainable techniques into the design and siting of development and landscaping to improve community health, urban heat, water management, environmental performance, biodiversity and local amenity and to minimise energy consumption.
<b>Performance Outcomes (PO) &amp; Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria</b>	
POs: 6.1, 8.1, 8.2, 8.3, 8.4, 8.5, 10.1, 10.2, 17.1, 17.2, 18.1, 20.1, 20.2, 20.3, 21.1, 21.2 and 22.1	
DPFs: 6.1, 8.1, 8.2, 10.1, 10.2, 17.1, 17.2, 18.1, 20.1, 20.2, 21.2, 21.2 and 22.1	

The proposed variation does not significantly alter the street appearance of the dwelling, besides an increase to the overall height as viewed from Highlands Court. The garage size, fenestration and façade design remain substantially the same.

The approved privacy treatments to upper storey windows include obscure glazing and slatted screens. These privacy measures have been maintained to protect the privacy of neighbouring properties in accordance with PO 10.1 of the General Development Policies (Design in Urban Areas).

There are no changes to the areas of private open space or soft landscaping.

#### Interface between Land Uses

<b>Desired Outcomes</b>	
DO1	Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.
<b>Performance Outcomes (PO) &amp; Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria</b>	
POs: 3.1, 3.2 and 3.3	
DPFs: 3.1 and 3.2	

The approved application included shadow diagrams for 9.00am, 12.00pm and 3.00pm on the winter solstice. The diagrams illustrated that most shadow would be cast over the adjacent reserve to the south with the side and rear yards of the adjoining properties in shadow for only short periods of the day.

The revised shadow diagrams show the increased wall height resulting in a negligible increase to the level of overshadowing to the adjoining property to the south-east. The adjoining dwelling will continue to receive at least three hours of sunlight to north-facing habitable room windows and at least two hours of sunlight to more than half of the ground level private open space during the winter solstice, as sought by DPF 3.1 and DPF 3.2 of the General Development Policies (Interface between Land Uses).

#### Transport, Access and Parking

<b>Desired Outcomes</b>	
DO1	A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.
<b>Performance Outcomes (PO) &amp; Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria</b>	
POs: 1.4, 3.1, 3.5, 4.1, 5.1, 6.1 and 6.2	
DPFs: 1.4, 3.1, 3.5, 5.1 and 6.1	

There is no change to the approved access and car parking arrangements for the dwelling.

#### CONSIDERATION OF SERIOUSLY AT VARIANCE

Having considered the proposal against the relevant provisions of the Planning and Design Code Version 2023.18 – 7 December 2023, the proposal is not considered to be seriously at variance with the provisions of the Planning and Design Code for the following reasons:



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- The approved dwelling is an envisaged land use in the Housing Diversity Neighbourhood Zone and the proposed variation will not change the nature of the development nor alter the intensity of the approved residential use.
- The proposed height and scale of the built form is sufficiently compatible with that of nearby buildings and the local context.
- It has been reasonably demonstrated that the proposal would not adversely impact upon the amenity of nearby sensitive uses.

### **CONCLUSION**

Having considered the proposal against the relevant provisions of the Planning and Design Code, the proposal is not seriously at variance with the Planning and Design Code.

The approved dwelling is an envisaged form of development within the Housing Diversity Neighbourhood Zone and the proposed variation will not change the nature of the development nor alter the intensity of the approved residential use.

The increased building height is not an unreasonable departure from the maximum recommended building height considering its context in the locality. The overall height and scale of the built form is considered reasonable given the sloping nature of the land, the two storey presentation of the dwelling from the street, and that the setbacks to site boundaries allow for sufficient amenity to neighbours. As there are no policies relating to protection of views from adjoining land, the potential impact of such has not been considered. The revised dwelling will remain a low-rise form of development that is complementary to the height of nearby buildings.

Accordingly, the proposal achieves the Performance Outcomes for the Housing Diversity Neighbourhood Zone and warrants the granting of Plan Consent subject to conditions.

### **RECOMMENDATION**

**It is recommended that the Council Assessment Panel resolve that:**

- 1) Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and**
- 2) Development Application Number 23035583 by Lianne Sordillo for variation to DA 22022718 - to increase wall height of dwelling at 23 Highlands Court, Woodforde is GRANTED Planning Consent subject to the following conditions:**

### **CONDITIONS**

#### **Planning Consent**

- 1) The development granted shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below.**
- 2) Except where varied by this authorisation, all other conditions, plans and details relating to Development Authorisation 22022718 continue to apply to this amended authorisation.**

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#### **ADVISORY NOTES**

##### **General Notes**

- 1) No work can commence on this development unless a Development Approval has been obtained. If one or more consents have been granted on this Decision Notification Form, you must not start any site works or building work or change of use of the land until you have received notification that Development Approval has been granted.**
- 2) Appeal rights – General rights of review and appeal exist in relation to any assessment, request, direction or act of a relevant authority in relation to the determination of this application, including conditions.**
- 3) This Planning Consent is valid for a period of twenty-four (24) months commencing from the date of the decision, subject to the below or subject to an extension having been granted by the relevant authority. If applicable, Building Consent must be obtained prior to expiration of the Planning Consent.**
- 4) Where an approved development has been substantially commenced within 2 years from the operative date of approval, the approval will then lapse 3 years from the operative date of the approval (unless the development has been substantially or fully completed within those 3 years, in which case the approval will not lapse).**

#### **OFFICER MAKING RECOMMENDATION**

**Name:** Ashleigh Gade

**Title:** Senior Statutory Planner

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<b>DEVELOPMENT NO.:</b>	23034228
<b>APPLICANT:</b>	Scott Butler
<b>ADDRESS:</b>	47 LESLEY CRESCENT CRAFERS SA 5152 CT 5637/466
<b>NATURE OF DEVELOPMENT:</b>	Single storey detached dwelling, in-ground swimming pool with associated safety barriers, tennis court with 4 x light poles and associated fencing, combined fence & retaining walls, retaining walls & 2 x water storage tanks
<b>ZONING INFORMATION:</b>	<b>Zones:</b> <ul style="list-style-type: none"> <li>• Rural Neighbourhood</li> </ul> <b>Subzones:</b> <ul style="list-style-type: none"> <li>• Adelaide Hills</li> </ul> <b>Overlays:</b> <ul style="list-style-type: none"> <li>• Hazards (Bushfire - Medium Risk)</li> <li>• Hazards (Flooding - Evidence Required)</li> <li>• Mount Lofty Ranges Water Supply Catchment (Area 2)</li> <li>• Native Vegetation</li> <li>• Prescribed Water Resources Area</li> <li>• Regulated and Significant Tree</li> </ul> <b>Technical Numeric Variations (TNVs):</b> <ul style="list-style-type: none"> <li>• Minimum Site Area (Minimum site area is 2,000 sqm)</li> </ul>
<b>LODGEMENT DATE:</b>	20 November 2023
<b>RELEVANT AUTHORITY:</b>	Assessment Panel at Adelaide Hills Council
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	P&D Code (in effect) - Version 2023.16 - 09/11/2023
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes 8 January 2024 – 29 January 2024
<b>RECOMMENDING OFFICER:</b>	Doug Samardzija Senior Statutory Planner
<b>REFERRALS STATUTORY:</b>	Nil
<b>REFERRALS NON-STATUTORY:</b>	<ul style="list-style-type: none"> <li>• Council Engineering</li> <li>• Council Open Space</li> </ul>

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**ATTACHMENT 1:**        **Applicant Amended Proposal to CAP**  
**ATTACHMENT 2:**        **Previous CAP Report and Attachments**

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#### DETAILED DESCRIPTION OF PROPOSAL:

The proposal in its amended form is for a replacement single storey dwelling, in-ground swimming pool with associated safety barriers, tennis court with 4 x light poles and associated fencing, combined fence & retaining walls, retaining walls & 2 x water storage tanks with the following amendments:

- The size of the garage is reduced from triple width to a double width garage.
- The dwelling width is reduced from 24.8m to 22.3m facing Lesley Crescent.
- The total floor area of the dwelling including the garage, rear verandah (alfresco) and enclosed swimming pool area under main roof is reducing from 665m<sup>2</sup> to 636.47m<sup>2</sup>.
- The front boundary setback is increasing by 1.4m and going from the original 14.1m to 15.5m
- The northern side boundary setback is changing to 1.92m which is a reduction of 0.8m and the southern side boundary is increasing by 2.1m to a 3.6m setback at the closest point and then tapering out to 5.4m.
- An amended landscaping plan has been provided increasing the level of landscaping along the front of the property and along the rear of the property.

#### BACKGROUND:

At its meeting on 13 March 2024, the Council Assessment Panel considered the merits of the proposed development. A total of six (6) representations were received from nearby adjoining and adjacent landowners and occupiers of land during the notification period. Representations were heard at the meeting on 13 March 2024.

On 13 March 2024 the Panel determined that the application was NOT seriously at variance with the provisions of the Planning and Design Code, however, the panel resolved to refuse the Planning Consent for the following reasons:

- **Rural Neighbourhood Zone**

Performance Outcome 3.1

The proposed building setback from the primary street boundary is not consistent with the existing streetscape.

Performance Outcome 5.1

The proposed development will not be setback from side boundaries sufficiently to minimise impacts on adjoining properties and the trees located on 25 Old Mount Barker Road, Crafers.

Performance Outcome 7.1

The siting and design of the proposed residential ancillary structure (tennis court) will detract from neighbouring properties.

- **General Development Policies**

Design

Performance Outcome 8.1

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The proposal does not minimise the need for earthworks and disturbs the natural topography of the site.

#### Performance Outcome 14.1

The proposed triple garage is not designed to avoid detracting from the streetscape.

#### Performance Outcome 15.1

The proposed development will have a visual mass that does not reduce when viewed from adjoining allotments.

The Applicant has lodged an appeal against the CAP decision. The applicant has also prepared an amended proposal with the intent to address the concerns and reasons for refusal determined by the CAP prior to formal court proceedings. Accordingly, the applicant's response to the reasons for refusal and the amended proposal is presented to the CAP for its further consideration. The ERD Court Conference has been adjourned to 15 May 2024 to allow the CAP to consider the appeal compromise.

The previous CAP Agenda Report and Attachments for this proposal from the 13 March 2024 Agenda is contained in **Attachment 2**.

### **SUBJECT LAND & LOCALITY:**

**Location reference:** 47 LESLEY CRESCENT CRAFTERS SA 5152

**Title ref.:** CT 5637/466 **Plan Parcel:** D6506 AL10 **Council:** ADELAIDE HILLS COUNCIL

#### **Site Description:**

The subject land is rectangular in shape, with an area of 2108 square metres. It has a 29m frontage to Lesley Crescent and is 74m long. The subject land is on the south-eastern side of the road and approximately 69m from the intersection of Old Mount Barker Road.

The land currently contains a single storey dwelling, which is in the process of being demolished. The existing dwelling has a floor area of 224 square metres and is setback 18m from the front boundary.

The front yard consists of a large lawn area, bordered by low lying plants with some irregularly spaced small trees. The front boundary is setback approximately 6m from the edge of the Lesley Crescent carriageway. The road verge along both sides of the road is planted with trees and shrubs. There is generally a lack of front fencing with the larger row of tree plantings on the south-eastern side of Lesley Crescent near the subject land acting as the marker between public and private property. In other sections along Lesley Crescent the distinction is not so clear with front yard landscaping creeping up to the edge of the carriageway.

There are no easements or other restrictions on the Certificate of Title. The land is serviced by mains water, sewer and electricity supply.

#### **Locality:**

The locality is characterised by predominantly single storey dwellings. Well landscaped yards and a sense of spaciousness resulting from generous building setbacks are a defining part of the locality,

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which is wholly residential in nature. Dwellings in the locality that are most visible from the roadway are generally older in nature and constructed of brick walls with tiled roofs.

The Lesley Crescent carriageway is sealed, but there is no kerb and gutter.

#### **CONSENT TYPE REQUIRED:**

Planning Consent

#### **ASSESSMENT OF VARIED PROPOSAL:**

The applicant has provided amended plans including additional landscaping details along with a detailed planning report which are a direct response to CAPs reason for refusal of the original proposal at the March meeting. The assessment has been broken down into two different areas, the zone policies and the general development policies addressing each of the reasons for refusal individually.

##### Rural Neighbourhood Zone

**Performance Outcome 3.1:** *The proposed building setback from the primary street boundary is not consistent with the existing streetscape.*

The proposal was amended to increase the setback of the dwelling from the front allotment boundary. The original proposal included a setback of 14.1m and the amended plan is now proposing a setback of 15.5m which is an increase of 1.4m.

Whilst the proposal still fails to satisfy DPF 3.1 in that the setback is not consistent with the adjoining property of 45 Lesley Crescent, the 15.5m setback from front allotment boundary is still considered to be substantial. The streetscape consists of a mixture of setbacks and as such when assessing the setback of the proposed development it must be done so factoring in the setbacks in the streetscape as the entire locality and not basing it solely on the setback of immediate properties as is implied by DPF 3.1. Based on the streetscape analysis it is considered that the increase of 1.4 m to a 15.5m setback offers an improved outcome to assist in maintaining the streetscape character of generous setbacks, despite the proposal not satisfying the wording of DPF3.1.

**Performance Outcome 5.1:** *The proposed development will not be setback from side boundaries sufficiently to minimise impacts on adjoining properties and the trees located on 25 Old Mount Barker Road, Crafers.*

The proposal has been amended to address some of the concerns CAP had in relation to side boundary setbacks. The main extent of the change is a reduction in the garage width going from a three-car garage to a two-car garage. This change has resulted in the increased setback from the southwestern boundary going from 1.55m at its closest point to 3.6m. The increase in setback is well above the 2m setback envisaged in the Zone.

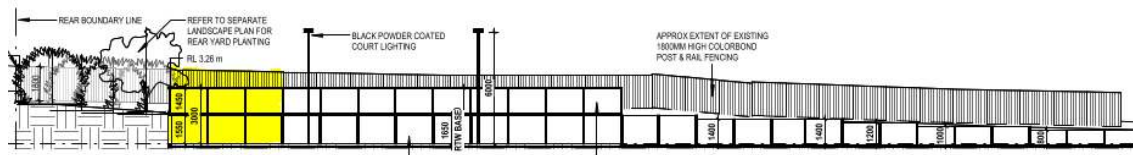
There has been a very marginal reduction in the setback from the northeastern boundary going from a 2m setback to 1.92m setback. The change is only marginal and only a slight departure from a 2m setback as envisaged. The same also goes for the tennis court with a marginal change to the setback

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at the closest point going from original proposed 825mm at its closest point to 775mm whilst the setback at its furthest point is staying at 1.6m.

On balance the setbacks that have been proposed within the amended proposal are sufficient. Whilst there is still a small shortfall in relation to the setback for the tennis court, this departure is minor in nature especially given that the tennis court at its closest point to that boundary is also going to be at its lowest point in relation to the neighbouring property as highlighted in yellow in the image below.



Applicant has also confirmed that there is no intention to prune any of the trees along the southwestern boundary within the neighbouring property at 25 Old Mount Barker Road. Furthermore, to minimise any potential impact on the trees on the adjoining allotment as a result of the earthworks and retaining walls, the Applicant has offered to accept a condition in relation to the works within the tree protection zone of these trees. Conditions 12 and 13 have been added requiring a tree protection management plan to be prepared prior to works being undertaken in the tree protection zone and that earthworks and retaining wall construction inside the tree protection zone of trees 2 and 3 be undertaken using non-invasive methods in accordance with the project arborist recommendation.

**Performance Outcome 7.1:** *The siting and design of the proposed residential ancillary structure (tennis court) will detract from neighbouring properties.*

In response to the above CAP reason for refusal, the applicant has disputed the relevance of PO 7.1 in relation to tennis court by arguing that a tennis court is not an ancillary building as it does not include walls or a roof. The applicant argues that it is more of a recreational area ancillary to residential use of the land. Notwithstanding this, applicant argues that the tennis court will not detract from the streetscape or appearance of building in the locality because it is located on excavated land, the associated fencing is black chain mesh which is permeable allowing light to penetrate and lastly they are of the view that existing mature trees that line the northeastern boundary of the neighbouring property will largely conceal the tennis court.

Some small visual impacts will exist from the proposed tennis court as a result of the associated fence and lighting, however it is unreasonable to think that these visual impacts can completely be avoided in built up residential settings. The fence and the lights associated with tennis courts are required to be of taller nature in order to achieve their purpose. That being said, given that the tennis court is going to be located on an excavated site with the expected difference in ground levels between the tennis court and neighbouring property at approximately 2m, a large part of the visual impact is going to be reduced or completely eliminated. The image provided above clearly illustrates that when a Colorbond fence is installed between neighbouring properties the only element of the tennis court that will remain visible is the lighting.

The Applicant has also argued that existing established mature vegetation on neighbouring properties is going to provide visual screening and have confirmed that no pruning of trees would be required.

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The Arborist report provided by the representor at the CAP meeting prepared clearly demonstrates that the level of encroachment within the tree protection zones of the trees on neighbouring properties is above the tolerable 10%. Applicant has not amended the location of retaining walls or the tennis court to reduce the encroachment but has offered to undertake building work in the tree protection zones of the two trees in accordance with the recommendations by the project Arborist and with the supervision of the Arborist, utilising tree sensitive techniques which will minimise the impacts on the trees. Whilst there is still potential that these works will still impact on the trees, as noted in the original report, the impact on these trees does not constitute tree damaging activity as defined by the *Planning, Development and Infrastructure Act 2016* given that they are located within 20m of a dwelling, as such this is not a consideration in this application.

#### General Development Policies: Design

**Performance Outcome 8.1:** *The proposal does not minimise the need for earthworks and disturbs the natural topography of the site.*

In their response the Applicant maintains that the level of earthworks associated with the proposal is of a modest nature comprising minimal cut and fill with the dwelling having a very similar FFL to the existing dwelling whilst earthworks associated with the tennis court are internal to the site with ground levels at boundaries remaining unchanged.

Whilst the extent of the earthworks exceeds that envisaged by DPF 8.1, this departure is only limited to a small portion of the site and the building work associated with the tennis court. A large portion of the dwelling is proposed on an existing benched area where the previous dwelling was meaning that large portion of earthworks associated with the development is minimal. Earthworks associated with the tennis court whilst being a departure from the DPF are considered acceptable given that they will be located to the rear of the site and will be in the form of a cut rather than fill. These earthworks are going to be screened by the proposed built form and are going to be further landscaped as shown on the amended landscaping plan which shows additional landscaping along the front of the property, along the south-west boundary and along the rear of the property. This excavation as outlined above will also contribute to lowering of the built form which will reduce visual impacts on neighbouring properties.

**Performance Outcome 14.1:** *The proposed triple garage is not designed to avoid detracting from the streetscape.*

As outlined earlier in the report, the proposal has been amended by reducing the garage width from a three-car garage to a two-car garage. The change has resulted in a significant visual reduction of a garage when viewed from the street whilst at the same time contributed to the dwelling being a focal feature of the site when viewed from the street.

Given this change and additional increase in front boundary setback with added landscaping the varied proposal ensures that the garage no longer detracts from the streetscape.

**Performance Outcome 15.1:** *The proposed development will have a visual mass that does not reduce when viewed from adjoining allotments.*



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In response to PO 15.1 the applicant maintains that the proposal satisfies PO 15.1 given that the dwelling is single storey in nature with maximum overall height of 6.25m, additionally they argue that the reduction of the garage width has also resulted in the reduction of horizontal profiling of the dwelling whilst the use of cut rather than fill has further reduced the vertical profile of the dwelling.

Whilst the proposal does still have a large footprint, this is not uncommon for the locality which is characterised by a mixture of single and two storey dwellings with varying footprints and heights. Additionally, a large portion of the built form will be screened by Colorbond fencing along the boundaries given its single storey nature. It is also important to note that the Zone does allow for two storey dwellings to a height of 9m and wall heights of 7m. Whilst a two storey dwelling would result in a reduced footprint, the two storey element would also result in a much greater visual impact not only on the neighbouring properties but also the streetscape. As such when considered in the context of what the zoning allows, the choice to go with a single storey design using natural and darker colours and materials and detailed landscaping to blend in with the natural environment will ensure that the visual impacts on neighbouring properties are minimised. Additionally, the implementation of cut rather than fill as outlined by the applicant is also contributing to reducing in the visual profile of the dwelling.

In relation to the tennis court with associated fencing and lighting, as mentioned earlier in the report the majority of this will be screened from neighbouring view because of the difference in ground levels and added screening that a boundary fence will provide. The only visual impact will be the four light poles and lights which is unavoidable, but their visual impacts would be minimal given their narrow pole construction.

### **CONSIDERATION OF SERIOUSLY AT VARIANCE**

The proposal is not considered to be seriously at variance with the provisions of the P & D Code. Rural Neighbourhood Zone envisages dwellings as the most suitable form of land use and of kind that contribute to the low-rise residential character and complement the height of nearby buildings. The zone also seeks that buildings are setback from primary street boundaries consistent with existing streetscape. Whilst the proposal doesn't directly satisfy the corresponding DPF given that it is further forward than existing dwellings in the streetscape, the 15.5m setback from the front boundary which is an increase of 1.4m from the original proposal is still considered to be a generous setback to ensure it meets the intent of the PO.

The policies in the most pertinent overlays being the Hazards (Bushfire - Medium Risk), Mount Lofty Ranges Water Supply Catchment (Area 2), Native Vegetation and Regulated and Significant Tree overlays are satisfied. In short the bushfire risks are adequately satisfied from a water supply, access and vegetation management perspective. Water quality requirements are satisfied as the property is connected to mains sewer. There was no native vegetation identified on site and as such the native vegetation overlay is satisfied. The Regulated and Significant Tree overlay was also satisfied with the impact on the one regulated tree identified considered to be within the permitted tolerance levels. Impacts on other trees was not deemed to be tree damaging activity that requires Council authorisation given the proximity of the trees to existing dwellings.

The relevant policies in the general policies section of the Code have also been satisfied. Whilst there are some slight departures from applicable DPFs relating to earthworks, these departures have been considered acceptable given their location and the fact that it is contributing to lowering the profile

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of the built form. The interface issues associated with the proposed tennis court and lighting has also been considered and deemed acceptable given that the lighting levels are within the Australian standards.

### **CONCLUSION**

The compromise proposal is for a replacement single storey dwelling with associated in-ground swimming pool and tennis court with lighting in the Rural Neighbourhood Zone.

The proposed dwelling is larger than the existing dwelling, which in turn has reduced the boundary setbacks. The setbacks have been amended from the original proposal with a significant increase in side boundary setbacks due to the removal of the third garage, a marginal decrease in side boundary setback for the tennis court at its closest point and also a marginal decrease in the setback from the northeastern side boundary. The setback from the front allotment boundary has also been increased by 1.5m. Whilst there are still some departures in relation to front boundary setback and setback in relation to the tennis court its is considered that these departures are minor in nature and their impacts have been adequately addressed.

The planting and ongoing maintenance of the proposed landscaping is ensured by two (2) of the recommended conditions (refer Conditions 10 and 11).

Other recommended conditions control the appearance of the proposed dwelling, and related matters such as stormwater management, erosion control during construction, access and bushfire safety.

Separate conditions controlling lighting of the tennis court are also recommended to ensure potential light spill impact is not unreasonable to adjoining residential properties (refer Condition 9).

### **RECOMMENDATION**

**It is recommended that the Council Assessment Panel resolve that:**

- 1) Pursuant to Section 107(2)(c) of the Planning, Development and Infrastructure Act 2016, and having undertaken an assessment of the application against the Planning and Design Code, the application is NOT seriously at variance with the provisions of the Planning and Design Code; and**
- 2) The Compromise Proposal for Development Application Number 23034228 by Scott Butler for single storey detached dwelling, in-ground swimming pool with associated safety barriers, tennis court with 4 x light poles and associated fencing, combined fence & retaining walls, retaining walls & 2 x water storage tanks at 47 Lesley Crescent, Crafers is ACCEPTED and an order be sought from the Environment, Resources and Development Court granting Planning Consent subject to the conditions below; and**
- 3) That delegation is given to the Assessment Manager to negotiate the final form and wording of an order from the Environment, Resources and Development Court to resolve the appeal.**

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**CONDITIONS**

**Planning Consent**

- 1) The development granted shall be undertaken and completed in accordance with the stamped plans and documentation, except where varied by conditions below.
- 2) The vehicle access point(s) and cross-over shall be constructed at a maximum width of 5 metres with splays. Any existing crossing places not providing vehicle access shall be considered redundant and shall be closed off.
- 3) All external lighting shall be directed away from residential development and shielded if necessary to prevent light spill causing nuisance to the occupiers of those residential properties.
- 4) The external finishes to the dwelling herein approved shall be as follows:  
  
    **WALLS:** Mixture of Render Colorbond Dover White, Carey Gully Sandstone and Brickwork Austral Hampton or similar  
    **ROOF:** Colorbond Monument or similar
- 5) Prior to commencement of work, straw bales (or other soil erosion control methods as approved by Council) shall be placed and secured below areas of excavation and fill to prevent soil moving off the site during construction.
- 6) A supply of water independent of reticulated mains supply shall be available at all times for fire-fighting purposes:
  - a minimum supply of 2,000 (two thousand) litres of water shall be available for fire-fighting purposes at all times; and
  - the water supply shall be located such that it provides the required water; and
  - the water supply shall be fitted with domestic fittings (standard household taps that enable an occupier to access a supply of water with domestic hoses or buckets for extinguishing minor fires); and
  - the water supply outlet shall be located at least 400mm above ground level for a distance of 200mm either side of the outlet; and
  - a water storage facility connected to mains water shall have an automatic float switch to maintain full capacity; and
  - where the water storage facility is an above-ground water tank, the tank (including any support structure) shall be constructed of non-combustible material.
- 7) Stormwater management shall be undertaken in accordance with the site works and drainage plan prepared by Herriot Consulting and approved by Adelaide Hills Council. All roof runoff generated by the development hereby approved shall be directed to a rainwater tank with overflow to the street (via a pump if necessary) to the satisfaction of Council within one month of the roof cladding being installed.
- 8) The tennis court lights shall be installed and angled in accordance with Australian Standard AS 2560.2.1—2007 Sports Lighting Part 2.1: Specific applications—Lighting for outdoor tennis

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courts. The lights shall be maintained in good condition at all times to the reasonable satisfaction of the Council.

- 9) The tennis court lights herein approved shall not operate between 10.00pm and 7.00am Monday through to Sunday.
- 10) Landscaping, as detailed in the landscaping plan version 4 prepared by Dan Davis of Ellava Garden Consultancy and Design shall be planted in the planting season following occupation and maintained in good health and condition at all times. Any such vegetation shall be replaced in the next planting season if and when it dies or, becomes seriously diseased.
- 11) The existing trees and vegetation as shown on the landscaping plan version 4 prepared by Dan Davis of Ellava Garden Consultancy and Design shall be retained and maintained in good health and condition at all times with any dead or diseased plants being replaced as necessary in the next planting season.
- 12) A Tree Protection Zone (TPZ) is required around
  - a. Tree 1, being a significant tree; and
  - b. Trees 2 and 3,as depicted on the site plan at page 3 of the Arborist's Report prepared by Comphort Technical Services (Arborist Report) is required. The protection zone is to encompass the tree protection zone of the trees and shall be determined by the project arborist. Prior to undertaking any earthworks or any other form of construction within the TPZ of any of trees 1 to 3, a tree protection management plan (Management Plan) is to be developed by the project arborist and approved by the Assessment Manager. The Management Plan is to provide a detailed scope of works proposed to be undertaken within the identified TPZ for each of trees 1 to 3 in accordance with Australian Standard AS4970-2009 *Protection of Trees on Development Sites* to the reasonable satisfaction of the Assessment Manager. The Management Plan must be complied with at all times during construction of the development approved herein.
- 13) The earthworks and retaining walls inside the TPZ of trees 2 and 3, shall be undertaken using non-invasive methods such as a Hydravac system or such other method recommended by the project arborist and approved by the Assessment Manager. Such works to be undertaken simultaneously with any building works on the site.
- 14) Pruning of trees 1 to 3 is not to be undertaken unless recommended by the project arborist and approved by the Assessment Manager.

### **OFFICER MAKING RECOMMENDATION**

**Name:** Doug Samardzija  
**Title:** Senior Statutory Planner