

**CAP MEETING – 12 June 2024****ITEM 8.1**

<b>DEVELOPMENT NO.:</b>	23032098
<b>APPLICANT:</b>	Rossdale Homes
<b>ADDRESS:</b>	6 HILL VIEW RD BRIDGEWATER SA 5155
<b>NATURE OF DEVELOPMENT:</b>	Two storey detached dwelling, retaining walls and deck
<b>ZONING INFORMATION:</b>	<p><b>Zones:</b></p> <ul style="list-style-type: none"> <li>• Rural Neighbourhood</li> </ul> <p><b>Overlays:</b></p> <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> <li>• Traffic Generating Development</li> </ul> <p><b>Technical Numeric Variations (TNVs):</b></p> <ul style="list-style-type: none"> <li>• Minimum Site Area (Minimum site area is 1,000 sqm)</li> </ul>
<b>LODGEMENT DATE:</b>	7 Nov 2023
<b>RELEVANT AUTHORITY:</b>	Assessment Panel at Adelaide Hills Council
<b>PLANNING &amp; DESIGN CODE VERSION:</b>	2023.15 - 26/10/2023
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Brendan Fewster - Contract Planner James Booker – Team Leader Statutory Planning
<b>REFERRALS STATUTORY:</b>	Nil
<b>REFERRALS NON-STATUTORY:</b>	Council Engineering Council Environmental Health

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#### **DETAILED DESCRIPTION OF PROPOSAL:**

The proposal is for the construction of a two-storey detached dwelling with associated earthworks and retaining walls.

The street elevation is single storey in scale and incorporates small front windows and a double garage under the main roof. The long vertical plane of the main gable roof is a feature of the design. A 'concealed' lower level is stepped down below the road level as the land falls away significantly from the road frontage. The external material palette includes a mix of render and vertical Axon cladding finished in grey and dark colour tones.

The height of the dwelling varies across the site given the slope of the land and the split-level design. The highest point of the roof, which is above the garage, is approximately 10.2 metres above the lowest natural or finished ground level of any part of the proposed building.

The front of the dwelling is setback between 4.5 and 6 metres from the road boundary due to the angled front boundary. The sides of the dwelling are setback a minimum of 1.8 and 2.3 metres at the ground and upper levels while the rear of the dwelling is setback at least 32 metres from the southern boundary.

Retaining walls are to be provided along sections of the side boundaries and internally to stabilise earthworks at the front of the dwelling, both for the garage and front entrance and for the excavation associated with the lower level. The retaining walls vary between 0.25 and 1.5 metres in height.

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

**Location reference:** 6 HILL VIEW RD BRIDGEWATER SA 5155

**Title ref.:** CT 5219/122    **Plan Parcel:** F8131 AL262    **Council:** ADELAIDE HILLS COUNCIL

#### **Site Description:**

The subject land is commonly known as 6 Hill View Road, Bridgewater. The land consists of two contiguous allotments formally described as Allotment 262 and 263 in Filed Plan 8131, Certificate of Title Volume 5219 Folio 122/123. There are no registered interests on the land titles such as easements, encumbrances or Land Management Agreements.

The proposed development relates only to Allotment 262. This allotment is a rectangle shape with a frontage width of 20.06 metres, a depth of up to 50.56 metres and a site area of approximately 1015m<sup>2</sup>.

Currently occupying the site is a conventional detached dwelling and a freestanding carport located in front of the dwelling. Only the roof of the existing dwelling is readily visible from the road frontage as the floor level of the dwelling is positioned below road level and the frontage is densely vegetated.

The site is naturally sloping with a significant fall of over 12 metres from the road frontage to the rear boundary in a southerly direction.

There is some dense shrubbery adjacent to the road frontage and several trees within the rear yard. This vegetation is exotic species, not of Regulated Status and is not native vegetation.

#### **Locality**

The locality is residential in land use and built form character. Existing residential development comprises mostly of single storey detached dwellings on large allotments of 1000m<sup>2</sup> or more.

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The local area is characterised by mixed building styles and moderately sized dwellings that are setback from boundaries. Street boundary setbacks vary quite considerable due to the sloping topography of the land and abundance of vegetation.

The elevated land on the northern side of Hill View Road, the narrow carriageway of the road, and existing trees and well-established gardens are notable features of the locality.

The properties on the southern side of Hill View Road back onto the railway line that traverses the adjacent land from east to west. The Southeastern Freeway is appropriately 400 metres north of the subject land.

Overall, the locality has a pleasant living environment that is of high amenity.

### **CONSENT TYPE REQUIRED:**

Planning Consent

### **CATEGORY OF DEVELOPMENT:**

- **PER ELEMENT:**  
Detached dwelling: Code Assessed - Performance Assessed  
New housing  
Retaining walls  
Deck
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed
- **REASON**  
P&D Code; All elements are to be treated as Performance Assessed development.

### **PUBLIC NOTIFICATION**

- **REASON**  
The proposal has a building height in excess of 9 metres – Table 5 of the Hills Neighbourhood Zone.

Public Notification period – 8 January 2024 to 29 January 2024

- **LIST OF REPRESENTATIONS**

One (1) representation was received during the notification period that has requested to be heard by the Panel:

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Representor Name	Representor's Property Address	Wishes to be heard (Y/N)	Nominated Speaker (if relevant)
Mark Bickford	5 Hill View Rd Bridgewater	Yes	N/A

#### • SUMMARY

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

- Insufficient off-street parking for builders and deliveries.
- Trade vehicles will cause disruption to rubbish trucks.
- Hill View Road is narrow, and Council should upgrade the unused verge in front of 1 and 3 Hill View Road for car parking.

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

#### AGENCY REFERRALS

No agency referrals were required.

#### INTERNAL REFERRALS

##### • Engineer

I have reviewed the stormwater documents provided and note further clarification is required:

1. Please provide calculations indicating how a pre-development C value was achieved of 0.35.
2. Please provide calculations as to how a C value of 0.1 was achieved for the lawn area as this is considered low for this surface.
3. Please clarify if a 3000L underground sump pump is to be used, the pre and post development calculation page indicates no detention is required.

Additionally, in response to the representation, Council does not provide residential off-street parking. There are no plans to install a car parking area on Council verge. Any vehicles associated with building the proposed development will need to accommodate vehicle movement on Hill View Road.

##### • Environmental Health

Wastewater application has been approved (24/W045/473)

#### 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.*

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#### **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:**

#### **Rural Neighbourhood Zone**

<b>Desired Outcomes</b>	
DO1	Housing on large allotments in a spacious rural setting, often together with large outbuildings. Easy access and parking for cars. Considerable space for trees and other vegetation around buildings, as well as on-site wastewater treatment where necessary. Limited goods, services and facilities that enhance rather than compromise rural residential amenity.
<b>Performance Outcomes (PO) &amp; Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria</b>	
POs: 2.1, 3.1, 4.1, 5.1 and 6.1	
DPFs: 2.1, 3.1, 4.1, 5.1 and 6.1	

The existing dwelling on the subject land is located over both allotments (Lot 262 and 263). The existing dwelling will be demolished and replaced by a new two-storey detached dwelling to be located exclusively on Allotment 262. Allotment 263 is subject to a separate application for a dwelling (DA 23032213). As the proposed dwelling will replace an existing dwelling, the status quo will be maintained from a land use perspective.

The subject land is situated within the Rural Neighbourhood Zone of the Code. DO 1 and PO 1.1 of the Zone seek low-rise housing on large spacious allotments. Even though the siting of the new dwelling on Allotment 262 may potentially increase the dwelling density on the land (i.e. two dwellings instead of one), it is important to note that there will be no change to the size and configuration of the two existing allotments. The existing allotments are consistent with the established allotment pattern along Hill View Road and are large enough to accommodate a dwelling “in a spacious rural setting” as sought by DO 1.

The proposal is also a low-rise form of housing despite having two storeys and a maximum height of 10.2 metres. The Code defines low-rise as “up to and including 2 building levels”. The Code also defines building height as “the maximum vertical distance between the lower of the natural or finished ground level at any point of any part of a building and the finished roof height at its highest point”. DPF 2.1 of the Zone recommends a maximum height of 9 metres, and while the dwelling is 10.2 metres at its highest point, this is not a significant departure as the dwelling presents to the street as a single storey building and the tallest part of the building is to the rear where the visual bulk is concealed from the street. The two-storey section of the dwelling is also well-setback from side and rear boundaries with the main gable roof pitching away from the adjacent boundaries.

The proposal is supported from a building height and scale perspective as it is a low-rise form of development that would sufficiently complement the height of nearby buildings. PO 2.1 of the Rural Neighbourhood Zone is reasonably satisfied.

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The zone policies provide limited guidance with respect to the architectural style, form and appearance of buildings. The proposed dwelling is designed with a simple modern form and materials finished in grey and dark colour tones. A gable roof with a long vertical plane facing the street is a feature of the design. While the street elevation is quite restrained, with limited fenestration and detailing and a recessive front entrance, the simplicity of the design would not be at odds with local context, which has a mixed built form character.

The front of the dwelling is setback between 4.5 and 6 metres from the road boundary. These front setbacks are a little less than the average setback of the two adjoining buildings, however they are consistent with the existing dwelling that is to be replaced. The siting of the new dwelling will therefore maintain the existing streetscape in accordance with the PO 3.1 of the Zone.

The sides of the dwelling are setback a minimum of 1.8 and 2.3 metres at the ground and upper levels. DPF 5.1 of the Zone recommends a side boundary setback of at least 2 metres. The lower-level setback to the eastern side boundary is only 200mm less than the DPF recommendation, which will have no adverse visual or overshadowing impacts given the modest building size and noting that the adjoining land will become a vacant allotment. The taller upper storey walls are setback more than 2 metres from the side boundaries. PO 5.1 of the Zone is reasonably satisfied.

The rear of the dwelling is setback at least 32 metres from the rear boundary and satisfies PO1.1 and DPF 1.1 of the Zone.

### Overlays

#### Hazards (Bushfire- Medium Risk) Overlay

Desired Outcomes	
DO2	To facilitate access for emergency service vehicles to aid the protection of lives and assets from bushfire danger.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1, 2.2, 5.1 and 5.3	
DPFs: 2.2 and 5.1	

The subject land is with the Hazards (Bushfire – Medium Risk) Overlay.

As required by the Overlay, the proposal includes the following bushfire safety measures:

- A water supply of 2000 litres will be provided for the dwelling for firefighting in accordance with *Ministerial Building Standard MBS 008 - Designated bushfire prone areas - additional requirements*. The water tank will be fitted with the necessary CFS connections;
- The new buildings is not sited near any potentially hazardous vegetation;
- The site has frontage to a public road that will facilitate safe and effective access for fire-fighting vehicles (as per DPF 5.1) and
- Clear and unobstructed pedestrian pathways will be provided.

The bushfire risks have been adequately considered by the applicant with measures put in place that satisfy the requirements of the Hazards (Bushfire – Medium Risk) Overlay.

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

Desired Outcomes	
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.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1 DPFs: 1.1	

The proposal includes an engineered stormwater management system and adequate space will be maintained around the curtilage of the dwelling to mitigate any potential flooding impacts.

#### Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay

Desired Outcomes	
DO1	Safeguard Greater Adelaide's public water supply by ensuring development has a neutral or beneficial effect on the quality of water harvested from secondary reservoirs or diversion weir catchments from the Mount Lofty Ranges.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1, 1.2, 2.5, 3.2, 3.3 and 4.1 DPFs: 1.2, and 2.5	

DO 1 of the Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay is seeking the protection of public water supply in the Watershed area.

Council's Environmental Health Department has approved an on-site waste disposal solution for the site. The proposal utilises the existing system albeit with a new connection and plumbing system.

Given the suitability of the wastewater system and the residential use of the land, the proposal will not result in any negative impacts on the water quality within the catchment area. The proposal is therefore consistent with DO 1 and the relevant POs of the Mount Lofty Ranges Water Supply Catchment (Area 2) Overlay.

#### Native Vegetation Overlay

Desired Outcomes	
DO1	Areas of native vegetation are protected, retained and restored in order to sustain biodiversity, threatened species and vegetation communities, fauna habitat, ecosystem services, carbon storage and amenity values.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1 DPFs: 1.1	

There is some dense shrubbery adjacent to the road frontage and several trees within the rear yard, which is not classified as Native Vegetation.

The applicant has also provided a Native Vegetation Declaration advising that the proposal will not include the removal of native vegetation. The proposal is therefore consistent with DO 1 and PO 1.1.

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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	

The proposed dwelling will have direct access to a local road and will generate minimal traffic. The nearest access to the Southeastern Freeway is 500 metres away.

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

#### General Development Policies

##### Design

Desired Outcomes	
DO1	Development is: 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 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 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.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 6.1, 8.1, 8.2, 8.3, 8.4, 8.5, 10.1, 10.2, 11.1, 11.2, 12.1, 14.1 15.1, 17.1 19.1, 19.2, 19.3, 19.4, 19.5, 19.6 and 20.1	
DPFs: 6.1, 8.1, 8.2, 8.3, 8.4, 8.5, 10.1, 10.2, 11.1, 11.2, 12.1, 14.1 15.1, 17.1 19.1, 19.2, 19.3, 19.4, 19.5 and 19.6	

The proposed garage will not dominate the dwelling façade or detract from the streetscape as it is located 3 metres behind the main front wall and has a modest size door opening of only 4.8 metres. PO 14.1 of Design in Urban Areas is satisfied.

Although there is limited fenestration on the front façade and the entry door does not directly face the street, the front window adjacent to the entrance will provide adequate passive surveillance, noting also that the most properties on the low side have densely vegetated front yards. PO 11.1 is reasonably satisfied.

The proposal plans indicate that the elevated windows on the side elevations have raised sills to a height of at least 1.5 metres above the finished floor. This would mitigate direct overlooking into the neighbouring properties. While the rear elevation has a living room window with no privacy treatments, views from this window would be directly onto the rear yard of the subject land, with only oblique and incidental views of eastern and western neighbours. It is noted also that most properties naturally overlook each other at ground level due to the sloping topography of the land and a prevalence of open style fencing. The proposal adequately mitigates direct overlooking to habitable rooms and private open spaces of adjoining properties in accordance with PO 10.1.



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The dwelling will be provided with more than 700m<sup>2</sup> private open space. The amount of private open space satisfies the requirements of the Table 1 of the General Policies (Design) and is directly accessible to living areas. Suitable private open space for entertaining, clothes drying and other domestic functions is therefore provided for occupants of the dwelling as sought by PO 17.1.

Retaining walls are to be provided along sections of the side boundaries and internally to stabilise earthworks at the front of the dwelling for the garage and front entrance and excavation for the lower level. The retaining walls vary between 0.25 and 1.5 metres in height. The proposed earthworks and retaining is reasonable as it would not cause significant disturbance or scarring of the natural land topography.

#### Interface between Land Uses

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

Given the two-storey scale of the development it is expected that some shadow will be cast over adjoining land, the amount overshadowing is not expected to be significant given the north to south orientation of the land, the low-profile roof design, and separation to side boundaries.

Overall, the adjoining properties would experience a relatively small amount of overshadowing that would not adversely impact on their amenity. PO 3.1 and 3.2 of the General Development Policies (Interface between Land Uses) are satisfied.

#### Transport, Access and Parking

Desired Outcomes	
DO1	A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 5.1 and 10.1	
DPFs: 5.1 and 10.1	

A new crossover will be provided on Hill View Road for driveway access. The crossover location and design and the driveway gradients are considered acceptable in terms of demonstrating safe and convenient access.

When assessed against Table 1 – General Off-Street Car Parking Requirements, there is a requirement for at least two car parking spaces per dwelling, with one space to be covered. The dwelling is provided with two garage spaces, which is acceptable.

The proposal satisfies PO 5.1 and 10.1 of the General Development Policies (Transport, Access and Parking) and PO 19.3 and 19.4 (Design).

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

Having considered the proposal against the relevant provisions of the Planning and Design Code Version 2023.15 - 26/10/2023, the proposal is not considered to be seriously at variance with the provisions of the Planning and Design Code for the following reasons:

- The proposed dwelling is an envisaged land use in the Hills Neighbourhood Zone.
- The proposed built form is sufficiently compatible with the local context.
- It has been reasonably demonstrated that the proposal would not adversely impact upon the amenity of nearby sensitive uses.
- The development includes safe and convenient access and adequate car parking.

#### **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 proposed dwelling is a low-rise form of development that would maintain the existing rural setting.

The siting, size and design of the dwelling is in keeping with existing local character and the overall building height would sufficiently complement the height of nearby buildings.

It has also been demonstrated that adequate provision is made for private open space, landscaping and on-site car parking and that any increase in traffic movements would not adversely impact upon traffic or pedestrian safety on the adjacent road network.

Accordingly, the proposal would achieve the Performance Outcomes for the Rural Neighbourhood Zone and warrants the granting of Plan Consent subject to a reserved matter and 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 23032098 by Rossdale Homes for two storey detached dwelling, retaining walls and deck at 6 Hill View Road, Bridgewater is GRANTED Planning Consent subject to the following conditions:**

#### **RESERVED MATTER**

**Pursuant to Section 102(3) of the Planning, Development and Infrastructure Act 2016, the following matter shall be reserved for further assessment prior to the granting of Development Approval. The Assessment Manager is delegated to undertake this further assessment:**

- 1) A revised site works and drainage plan and supporting information prepared by a suitably qualified stormwater/civil engineer that addresses the following:**
  - Calculations indicating how a pre-development C value was achieved of 0.35;

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- Calculations as to how a C value of 0.1 was achieved for the lawn area as this is considered low for this surface; and
- Clarification if a 3000L underground sump pump is to be used.

Pursuant to Section 127(1) of the *Planning, Development and Infrastructure Act 2016*, the power to impose further conditions of consent in respect of the reserved matter above is delegated to the Assessment Manager.

### 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) 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.
- 3) 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.
- 4) Stormwater management shall be undertaken in accordance with the site works and drainage plan and stormwater calculations prepared by Intrax Engineering 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.
- 5) The external finishes to the dwelling herein approved shall be as follows:

WALLS - RENDER:	Dune or similar
WALLS – CLADDING:	Colorbond Monument or similar
ROOF:	Colorbond Monument or similar

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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:** Brendan Fewster

**Title:** Contract Planner

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**ITEM 8.2**

<b>DEVELOPMENT NO.:</b>	23037800
<b>APPLICANT:</b>	Cobbs Hill Estate
<b>ADDRESS:</b>	362 OAKWOOD RD OAKBANK SA 5243
<b>NATURE OF DEVELOPMENT:</b>	Change of use of existing cellar door building to include a restaurant, variation to DA 21017786 to remove the restaurant from the approved function centre building and to vary condition 13 to increase the days of restaurant operation from 2 days per week to 3 days per week plus public holidays and to vary condition 11 to increase the capacity of the cellar door to 200 persons on public holidays
<b>ZONING INFORMATION:</b>	<p><b>Zones:</b></p> <ul style="list-style-type: none"> <li>• Productive Rural Landscape</li> </ul> <p><b>Overlays:</b></p> <ul style="list-style-type: none"> <li>• Hazards (Flooding - Evidence Required)</li> <li>• Limited Land Division</li> <li>• Mount Lofty Ranges Water Supply Catchment (Area 2)</li> <li>• Native Vegetation</li> <li>• Prescribed Water Resources Area</li> <li>• Water Resources</li> <li>• Environment and Food Production Area</li> <li>• Hazards (Bushfire - High Risk)</li> </ul>
<b>LODGEMENT DATE:</b>	27 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 2023.19 - 21 December 2023
<b>CATEGORY OF DEVELOPMENT:</b>	Code Assessed - Performance Assessed
<b>NOTIFICATION:</b>	Yes
<b>RECOMMENDING OFFICER:</b>	Doug Samardzija Senior Statutory Planner
<b>REFERRALS STATUTORY:</b>	None
<b>REFERRALS NON-STATUTORY:</b>	None

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#### DETAILED DESCRIPTION OF PROPOSAL:

The proposed development application has two elements to it. The first is the change of use of the existing cellar door building to include restaurant and the second element of the proposal is a variation to DA 21017786 to remove the restaurant from the previously approved new function centre building and to vary restaurant and cellar door operating days and capacity. A more detailed breakdown of the proposal is provided below:

- Change of use of existing cellar door building to include a restaurant use three times a week on a Friday, Saturday, Sunday and public holidays from 11:00am to 10:00pm at 130-person capacity;
- Variation to DA 21017786 to remove the restaurant use from the approved function centre building;
- Variation to condition 13 of the previous approval to increase the days of restaurant use from 2 days a week to 3 days a week plus public holidays;
- Variation to condition 11 to increase the capacity of the cellar door use to 200 persons on public holidays.

#### BACKGROUND:

At its meeting on 8 March 2023, the Council Assessment Panel considered Development Application 21017786 for construction of a function centre and restaurant building with associated car parking and landscaping, 100,000 litre underground water storage tank and variations to Development Authorisation 16/973/473 to increase the overall capacity, the number of functions and operating hours and Development Authorisation 16/882/473 to increase the capacity of the existing cellar door and to undertake the development in two stages:

Stage 1: Vary cellar door capacity and number of functions, with deletion of special events, upgrade of car parking, vehicle access and waste control system, and

Stage 2: Construction of the function centre and restaurant building and remainder of works.

A total of fifteen (15) representations were received from nearby adjoining and adjacent landowners and occupiers of land during the notification period, of those nine (9) were heard by the Panel at the meeting. The Panel determined that the application was NOT seriously at variance with the provisions of the Planning and Design Code and granted Planning Consent the proposal subject to 21 Conditions. Stage 1 has received Development Approval and has been implemented whilst an application for Building Consent for Stage 2 is yet to be lodged. Previously approved plans and DNF are included in **Attachment 5**.

A full breakdown of all development applications approved on site are listed below:

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
08/03/2023	21017786	Construction of a function centre and restaurant building with associated car parking and landscaping, 100,000 litre underground water storage tank and variations to Development Authorisation 16/973/473 to increase the overall capacity, the number of functions and operating hours and Development Authorisation 16/882/473 to increase the capacity of the existing cellar door and to undertake the development in two stages: Stage 1: Vary cellar door capacity and number of functions, with deletion of special events, upgrade of car parking, vehicle access and waste control system, and Stage 2: Construction of the function centre and restaurant building and remainder of works

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18/08/2008	473/90/2006	Land Division - Boundary Realignment - DAC relevant authority
11/10/2016	473/466/16	Vineyard addition (11.33 hectares in total) to be undertaken in two (2) stages - Stage 1- 5.25 hectares - Stage 2- 6.08 hectares
13/11/2017	473/882/16	Change of use from dwelling to cellar door (maximum capacity 75) & motel (maximum of 6 guests), including two (2) freestanding advertising signs & associated car park & earthworks
01/06/2021	473/973/16	Change of use to a function centre (Special Events with maximum capacity 208 persons on 7 occasions a year & Functions with maximum capacity of 130 persons on 18 occasions a year) in association with existing cellar door & increase the car parking area (non-complying)
14/12/2021	20128842	Store building (bottled wine storage)
15/03/2021	21041517	Alterations and additions to existing cellar door (shop), verandah & deck
09/05/2022	22000517	Horticulture (vineyard)
29/02/2024	23036588	Variation of DA 21041517 - Internal stairs deleted, construct a deck and alteration to toilet lay out.

An Enforcement Notice was issued for an unlawful change of use on 17 November 2023 and an appeal application in relation to this was lodged in the Environment, Resource and Development Court on 1 December 2024. The matter is adjourned until 22 July 2024 to allow consideration of Development Application 23037800, the subject of this report.

**SUBJECT LAND & LOCALITY:****Site Description:**

The subject land is a large irregular shaped primary production allotment consisting of two pieces with a combined area of 88 hectares. The allotment has two frontages with the primary frontage and access to the site from Swamp Road via an internal gravel driveway, whilst the secondary frontage and access is from Oakwood Road. Swamp Road is a sealed road. The subject land is one of undulating topography containing a large water course running north-east through the land as well as a number of other smaller water courses scattered throughout the site. The primary use of the site is viticulture and associated cellar door and function venue, and a bed and breakfast as a further land use. All activities are contained within and surrounding the existing building on the site which was previously used as a homestead. Other site features include outbuildings and agriculture buildings predominantly clustered together with a small portion of buildings located in other areas of the allotment. Whilst not part of the development site, the immediate adjoining allotment to the south of the Swamp Road access known as 382 Swamp Rd, Oakbank is under the same ownership as the subject land and this allotment contains a dwelling that is occupied by the caretaker of the Cobbs Hill Estate.

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**Location reference:** 362 OAKWOOD RD OAKBANK SA 5243

**Title ref.:** CT 6035/473      **Plan Parcel:** D79870 QP1      **Council:** ADELAIDE HILLS COUNCIL

**Location reference:** 362 OAKWOOD RD OAKBANK SA 5243

**Title ref.:** CT 6035/473      **Plan Parcel:** D79870 QP2      **Council:** ADELAIDE HILLS COUNCIL

### Locality

The locality is characterised by a mixture of allotment sizes and uses predominantly ranging from smaller rural living allotments of approximately 1 hectare to large primary production allotments of up to 88 hectares. The majority of the allotments in the locality are used for rural living purposes however, there are a number of allotments smaller than the subject land which are also used for a range of different primary production purposes. The locality is also characterised by dense vegetation on surrounding allotments along with water courses. East of the locality are the two closest townships of Balhannah and Oakbank.

### CONSENT TYPE REQUIRED:

Planning Consent

### CATEGORY OF DEVELOPMENT:

- **PER ELEMENT:**  
Shop: Code Assessed - Performance Assessed  
Other - Commercial/Industrial - Variation of DA 21017786: Code Assessed - Performance Assessed
- **OVERALL APPLICATION CATEGORY:**  
Code Assessed - Performance Assessed
- **REASON**  
P&D Code - The proposal is not listed as Accepted, Deemed to Satisfy or Restricted in the Planning & Design Code, so it defaults to being a Performance Assessed type of development.

### PUBLIC NOTIFICATION

- **REASON**  
The proposal fails to satisfy Table 5 Column B exemptions for a restaurant. The floor area exceeds 100m<sup>2</sup> and the dining capacity exceeds 75 persons.

Public Notification period – 10 April 2024 to 01 May 2024

There were no representations received during the notification period.

### AGENCY REFERRALS

None

EPA was informally consulted on whether this application should be referred back to them and they advised that *“given the nature of this particular variation (i.e. no change in capacity or wastewater arrangements), I don’t think the EPA would have different/additional comments to make”*.



## INTERNAL REFERRALS

None

## 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 4 – Relevant P & D Code Policies**.

## Zone

### Productive Rural Landscape Zone

Desired Outcomes	
DO1	A diverse range of land uses at an appropriate scale and intensity that capitalise on the region's proximity to the metropolitan area and the tourist and lifestyle opportunities this presents while also conserving the natural and rural character, identity, biodiversity and sensitive environmental areas and scenic qualities of the landscape.
DO2	A zone that promotes agriculture, horticulture, value adding opportunities, farm gate businesses, the sale and consumption of agricultural based products, tourist development and accommodation that expands the economic base and promotes its regional identity.
DO3	Create local conditions that support new and continuing investment while seeking to promote co-existence with adjoining activities and mitigate land use conflicts.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1, 2.1, 2.2, 6.1, 6.2, 6.5, 6.6 and 11.1	
DPFs: 1.1, 2.1, 2.2, 6.1, 6.2, 6.5 and 6.6	

The Productive Rural Landscape Zone is one which encourages a diverse range of land uses of appropriate scale which are predominantly linked with the land either through a range of primary production related uses or associated value adding activities. The restaurant use was the only new element assessed with the previous development application 21017786 and this application is in essence transferring the restaurant use that was approved for the new building

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into an existing cellar door building on land and is proposing to add an additional operating day plus the public holidays. The proposal is therefore still consistent with PO 1.1 and DPF 1.1.

There are no changes proposed to the overall capacity of the restaurant at 130 persons except on public holidays when the applicant seeks to have up to 200 persons. Whilst there will be additional operating days, the increase in days is considered minor in nature and acceptable when factoring in the allotment size and the fact that the proposal is able to manage the environmental impacts with a new on-site waste system installed as a requirement of Stage 1 of Development Authorisation 21017786.

An amended traffic report has been prepared to address the proposed changes. The report concluded that the amendments to the previously approved development will not result in any changes to either the demand for on-site parking or volume of traffic movement.

The widening of the access point and the expansion of the car parking which was a requirement prior to commencement of stage 1 of the previous development approval has already occurred.

### Overlays

#### Environment and Food Production Area

Desired Outcomes	
DO1	Protection of valuable rural, landscape, environmental and food production areas from urban encroachment
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1 DPFs: -	

Considering that the proposed development is not related to land division the above overlay is not considered to be relevant in assessment of this application.

#### Hazards (Bushfire-High Risk)

Desired Outcomes	
DO1	Development, including land division is sited and designed to minimise the threat and impact of bushfires on life and property with regard to the following risks: a) potential for uncontrolled bushfire events taking into account the increased frequency and intensity of bushfires as a result of climate change b) high levels and exposure to ember attack c) impact from burning debris d) radiant heat e) likelihood and direct exposure to flames from a fire front.
DO2	Activities that increase the number of people living and working in the area or where evacuation would be difficult is sited away from areas of unacceptable bushfire risk.
DO3	To facilitate access for emergency service vehicles to aid the protection of lives and assets from bushfire danger.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1, 2.1, 3.1 and 6.1 DPFs: 6.1	

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Upgrades to the access point as approved with the previous development application have been undertaken. The access to the existing building along with the turning area is therefore adequate and consistent with PO 6.1 and DPF 6.1. Whilst the increase in days will increase the number of visitors in the area, the proposal has been designed in a way that ensures that those people are not exposed to unnecessary bushfire risk. The cellar door building is located away from hazardous vegetation and through the upgrade of the access point as well as the internal track in a way that ensures vehicles, including the emergency vehicles, can easily enter and exit the site. The proposal is therefore consistent with the intent of DO 2.

#### Hazards (Flooding-Evidence Required)

Desired Outcomes	
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.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1 DPFs: -	

The subject land is not flood prone nor is there any evidence to suggest that the site of development is flood prone. As such it is considered that the above overlay is not applicable to the assessment of this application.

#### Limited Land Division

Desired Outcomes	
DO1	The long term use of land for primary production is maintained by minimising fragmentation through division of land.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1 and 1.2 DPFs: -	

Considering that the proposed development is not related to land division the above overlay is not considered to be relevant in assessment of this application.

#### Mount Lofty Ranges Water Supply Catchment (Area 1)

Desired Outcomes	
DO	None
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 2.4 DPFs: -	

One of the main concerns with the original application was the on-site effluent disposal area and the impacts on the water quality because of the increased numbers. To ensure that the proposal does not impact on the water quality of the Watershed Area 1 an upgrade to the existing on-site waste system was reviewed and approved by the Department for Health and Wellbeing (DHW). The upgrade was also further reviewed by the EPA to ensure that the proposal resulted in a neutral and beneficial outcome on the water quality. This new waste system has now been installed and is operational. Council has informally asked EPA if the variation to the original DA needed to be referred back to them and the advice received was that the EPA did not require it to be.

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#### Mount Lofty Ranges Water Supply Catchment (Area 2)

Desired Outcomes	
DO1	Safeguard Greater Adelaide's public water supply by ensuring development has a neutral or beneficial effect on the quality of water harvested from secondary reservoirs or diversion weir catchments from the Mount Lofty Ranges.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1 and 1.2, 2.1, 2.4, 2.5, 3.1, 3.2, 3.6, 3.9 and 4.1	
DPFs: 1.2, 2.1, 2.4, 2.5, 3.1, 3.6 and 3.9	

As per the above comments, the on-site waste control system that was approved as part of the original application has now been installed. EPA have advised that they would not have any further comments to make given the nature of the variation.

#### Native Vegetation

Desired Outcomes	
DO1	Areas of native vegetation are protected, retained and restored in order to sustain biodiversity, threatened species and vegetation communities, fauna habitat, ecosystem services, carbon storage and amenity values.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1 and 1.2	
DPFs: 1.1	

The proposal does not include removal of any native vegetation. Additionally, a native vegetation declaration form has been signed and provided confirming that the proposal does not include removal of native vegetation. The proposal is therefore consistent with PO and DPF 1.1.

#### Prescribed Water Resources Area

Desired Outcomes	
DO1	Sustainable water use in prescribed surface water resources areas maintains the health and natural flow paths of water courses
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1	
DPFs: 1.1	

This application does not change anything in relation to the requirements of this overlay. The development still needs to have a lawful, sustainable, and reliable water supply that does not place undue strain on water resources in prescribed surface water areas. It is considered that the relocation of the restaurant use from one building to another as well as the increase in days of operations for the restaurant and the cellar door will have adequate on-site water supply to cater for the varied proposal. On-site water supply in the form of water tanks and bores with appropriate licences exist that will be provide the required water supply for the intended use and ensure compliance with PO 1.1 of the Overlay. This aspect was assessed with the original proposal and nothing has changed as a result of the variation.

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#### Water Resources

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.
DO2	Maintain the conveyance function and natural flow paths of watercourses to assist in the management of flood waters and stormwater runoff.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1, 1.2 and 1.5 DPFs: 1.5	

The proposal does not have any impacts on the watercourses on the subject land. The cellar door building is existing, and the relocation of the restaurant does not require any additional building work which might impact on the water courses.

#### General Development Policies

#### Clearance from Overhead Powerlines

Desired Outcomes	
DO1	Protection of human health and safety when undertaking development in the vicinity of overhead transmission powerlines.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1 DPFs: 1.1	

This proposal will not impact on any powerlines and a declaration to this effect has also been provided by the applicant confirming that construction of the building is going to be in accordance with the section 86 of the Electricity Act 1996.

#### Infrastructure and Renewable Energy Facilities

Desired Outcomes	
DO1	Efficient provision of infrastructure networks and services, renewable energy facilities and ancillary development in a manner that minimises hazard, is environmentally and culturally sensitive and manages adverse visual impacts on natural and rural landscapes and residential amenity.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1, 11.1, 12.1 and 12.2 DPFs: 11.1, 12.1 and 12.2	

The subject land is not connected to mains water which means that it does not satisfy the requirements of a DPF 11.1. That being said, adequate on-site water supply in the form of water tanks and bores with appropriate licences exist that will be provide the required water supply for the intended use and ensure compliance with PO 11.1.

As mentioned above, the original DA required an upgrade to the on-site waste system which was approved by Department for Health and Wellbeing (DHW) and subsequently also reviewed by the EPA. This system has now been installed as was the requirement of the original planning consent prior to enacting stage 1 of the approval. The proposed system will be able to cater for the increase in days for the restaurant and the cellar door use and as such the proposal satisfies PO 12.1.

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#### Interface between land Uses

Desired Outcomes	
DO1	Development is located and designed to mitigate adverse effects on or from neighbouring and proximate land uses.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.2, 2.1, 4.1, 4.2, 4.5, 4.6, 6.1 and 6.2	
DPFs: 2.1, 4.1 and 4.6	

As part of the original proposal, the majority of the concerns from the representors were related to the number of patrons and noise impacts that could result with the increase. At that time an acoustic report was prepared by BESTEC which concluded that based on the proposed numbers that all noise generating activities will meet the required criterion with some added restrictions mainly in relation to music.

With the variation application the applicant has undertaken further acoustic assessment looking at the impacts of the restaurant use in the existing upgraded building as opposed to in the proposed new building and in association with a combined cellar door use. The proposal was assessed based on the maximum overall site capacity at any one time being 330 persons, 130 in a restaurant and 200 persons in a cellar door and outdoor grounds. The Applicant's updated Acoustic Report assumes there will be no entertainment or amplified music played in the restaurant. The updated Acoustic Report concludes that in consideration of the different construction of the glazing and the roof of the extension of the upgraded cellar door building, used as a restaurant will not result in exceedance of the environmental noise criteria. The report states that the daytime environmental noise criterion will still be achieved in the event that the 130 patrons capacity as per DA21017786 is maintained in the restaurant portion of the cellar door building. A condition in relation to there being only background music in the restaurant is recommended (refer condition 4).

It is also important to note that this application does not seek to vary the capacity of the restaurant or the cellar door, nor is it seeking to alter the maximum overall capacity of the site and as such condition 10 of the previous approval is to remain as is. This condition has also been transferred across into this application as condition 2 (c). The only change is that the proposal would now also be able to operate during public holidays allowing for the maximum overall capacity of 330 persons.

Given there have been multiple variations of operating hours and capacity in separate consents the conditions relating to operations and overall capacity are consolidated as part of the recommended conditions so they are in one consent.

#### Transport, Access and Parking

Desired Outcomes	
DO1	A comprehensive, integrated and connected transport system that is safe, sustainable, efficient, convenient and accessible to all users.
Performance Outcomes (PO) & Deemed to Satisfy (DTS)/Designated Performance Feature (DPF) criteria	
POs: 1.1, 1.2, 1.3, 1.4, 3.1, 3.3, 3.4, 4.1, 5.1, 6.2, 6.4, 6.5, 6.6 and 6.7	
DPFs: 1.4, 3.1, 5.1 and 6.6	

As mentioned above, the proposal is not seeking to alter the overall capacity of the site nor is it changing the hours of operation. The relocation of the restaurant from proposed building to an existing building is not going to have any impacts on traffic movements to that assessed with the original application. The access point and the internal access track have been modified as per the requirements of the original application. Additionally, the car parking area has been increased to cater for the increased capacity as part of completion of Stage 1 works previously approved. Amended traffic report has been prepared to address the proposed changes including the increase in days of operation of restaurant use and cellar door use during public holidays. The report concluded that the amendments to the

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previously approved development will not result in any changes to either the demand for on-site parking or volume of traffic movement.

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

The proposal is not considered to be seriously at variance with the provisions of the P & D Code. The Productive Rural Landscape Zone policies stipulate shops as an envisaged form of land use provided it maintains a pleasant rural character and amenity. The original assessment concluded that the restaurant use and the expansion of the cellar door use was appropriate provided the interface issues with adjoining sensitive land receivers were adequately managed. This was done through carefully crafted conditions limiting the overall capacity of the site and the operational requirements relating to entertainment and these conditions will contain to remain in effect. The proposed changes to the restaurant location, the increase in days of operation for the restaurant from 2 days to 3 days and the increase in the cellar door capacity to 200 persons on public holidays is not going to have any additional impacts on the locality to the original proposal and this was confirmed by supporting documentation provided with the application being the amended acoustic and traffic report.

#### **CONCLUSION**

The proposal is for a change of use of existing cellar door building to include a restaurant, variation to DA 21017786 to remove the restaurant from the approved function centre building and to vary condition 13 to increase the days of restaurant operation from 2 days per week to 3 days per week plus public holidays and to vary condition 11 to increase the capacity of the cellar door to 200 persons on public holidays. The main concern with the proposal was if the proposed changes would result in traffic and noise impacts and the overall appropriateness of the change in the area.

Fundamentally, the restaurant use was assessed in the original application, and given that the proposal is essentially seeking to relocate that use from the approved building to the existing upgraded building without increasing the overall capacity and with the added day of operation, the proposal is considered acceptable. Considering that the existing cellar door building is in the same vicinity as the approved function building the relocation of the use would not have any increased impacts on the sensitive receivers.

The change to the cellar door operational matters to allow for a 200-person capacity during public holidays is also considered to be a small change to the original proposal. With majority of other cellar doors in the locality having the ability to operate during public holidays the proposed change is essentially seeking to bring this in line with what is a standard practice.

Council staff are satisfied the proposed development is not seriously at variance and is sufficiently in accordance with the Planning and Design Code to warrant consent.

#### **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**

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- 2) Development Application Number 23037800 by Cobbs Hill Estate for change of use of existing cellar door building to include a restaurant, variation to DA 21017786 to remove the restaurant from the approved function centre building and to vary condition 13 to increase the days of restaurant operation from 2 days per week to 3 days per week plus public holidays and to vary condition 11 to increase the capacity of the cellar door to 200 persons on public holidays at 362 Oakwood Road, Oakbank 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) a. The overall capacity of the cellar door shall be 75 persons Monday to Friday and 200 persons Saturday, Sunday and Public Holidays.  
  
b. The maximum capacity of the restaurant shall be 130 persons at any one time.  
  
c. Prior to 6:00pm the overall capacity of the site shall be limited to a maximum of 330 persons. After 6:00pm the overall capacity of the site shall be restricted to a maximum of 130 persons. This includes any associated outdoor areas for liquor licensing purposes allowing the restaurant and a function to operate concurrently or the cellar door and a function to operate concurrently.
- 3) The operating days and hours of the restaurant shall be Friday, Saturday, Sunday and Public Holidays from 11:00am to 10:00pm. Any increase in the hours or days of operation will require separate development approval.
- 4) Only background music shall be permitted in the restaurant portion of the cellar door building. No amplified music or entertainment is permitted in the restaurant portion of the cellar door building.
- 5) All waste shall be stored in a closed container with a close fitting lid and removed from the subject land at least once weekly. Collection of waste shall be carried out only between the hours of 7:00am and 5:00pm and only Monday to Friday.
- 6) Except where varied by this authorisation, all other conditions, plans and details relating to Development Authorisation 21017786, 16/973/473 and 16/882/473 continue to apply to this amended authorisation.

#### **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.



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